



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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COURTS POWER TO MODIFY ARBITRAL AWARDS:

GAYATRI BALASAMY V. ISG NOVASOFT TECHNOLOGIES LTD.

- Kriti Agrawal

One of the key aspects of arbitration system in India is achieving a balance between the definitive nature of arbitral awards and the imperative for judicial intervention to prevent injustices. Indian courts have long faced a jurisprudential challenge: when an arbitral award is erroneous, should the court annul the award, thereby requiring the parties to relitigate the dispute, or is it sufficient for the court to correct the identified error and thus resolve the matter? This issue has been at the heart of the landmark decision in *Gayatri Balasamy v. ISG Novasoft Technologies Limited*,¹ delivered on 30 April 2025. A Constitution Bench of five judges was constituted to resolve the conflict regarding the powers of a court as under Sections 34² and 37³ of the Arbitration and Conciliation Act, 1996. The principal legal issue that was underscored by the judges was whether the statutory power to "set aside" an award also entails the power to "modify" it.

The Apex Court, although divided in the opinions of Chief Justice Sanjiv Khanna and Justice K. V. Viswanathan, arrived at the conclusion that courts do not have the jurisdiction to modify an arbitral award. This judgment reinforces the principle of limited judicial intervention while also clarifying the permissible boundaries, including severability and remission, that litigants can use to safeguard awards from complete annulment.

The Arbitration Act of 1940 empowered courts under Section 15⁴ to alter awards and under Section 16⁵ to remit them. In contrast, the 1996 Act, which was enacted in accordance with the UNCITRAL Model Law, was specifically intended to reduce judicial intervention. In the case

¹ *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*, (2025) 7 SCC 1.

² Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

³ Arbitration and Conciliation Act, 1996, § 37, No. 26, Acts of Parliament, 1996 (India).

⁴ Arbitration Act, 1940, § 15, No. 10, Acts of Parliament, 1940 (India).

⁵ Arbitration Act, 1940, § 16, No. 10, Acts of Parliament, 1940 (India).

of Project Director NHAI v. M. Hakeem (2021),⁶ the Supreme Court ruled that Section 34 does not provide for modification. The Court concluded that if the award is flawed, it must be completely set aside, requiring the parties to initiate arbitration from the beginning. Despite this ruling, various judicial practices continued to exist. Various benches of the Supreme Court and High Courts continued to modify awards to achieve substantive justice. This led to a contradiction between a narrow statutory interpretation that prohibits modification and a practical judicial policy that endorses it.

The Gayatri Balasamy case has raised five significant questions for the Constitution Bench to consider:

1. Do the powers granted by Sections 34 and 37 include the authority to amend an arbitral award?
2. If amendments are permitted, do they only concern separable portions of the award?
3. Does the authority to "set aside" encompass the narrower authority to "modify"?
4. Can the authority to modify be inferred from Section 34?
5. Does the ruling in Project Director NHAI v. M. Hakeem establish the correct legal principle?⁷

The judgment is characterized by two distinct viewpoints: one from C.J.I. Sanjiv Khanna and the other from Justice K.V. Viswanathan. While they converge on the final ruling regarding severability and clerical errors, they differ markedly in their theoretical rationale for modification.

A prima facie understanding of law holds that no such power of modification exists. Justice Viswanathan contends that the majority opinion maintains that no authority to modify exists. The rationale for this conclusion is fundamentally based on interpretative analysis of the law. The Court determined that the 1996 Act represented a departure from the 1940 Act by intentionally omitting the authority to modify that was retained by the latter. This was a deliberate omission.⁸ The Court examined the arbitration statutes of the UK, Singapore, the US, and Australia. For instance, under the UK Arbitration Act, sections 67 and 69 provide the Court with the power to modify an award. Similarly, Singapore's Arbitration Act, section 49, grants the Court the authority to amend an award.⁹ The Indian statute does not contain similar

⁶ NHAI v. M. Hakeem, (2021) 9 SCC 1.

⁷ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, 1 ¶ 1.

⁸ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, 1 ¶ 16.

⁹ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, 1 ¶ 178.

provisions. Thus, it was held that the Parliament did not intend to confer such power upon the Court.

The appellants contended that the power to set aside an award was inclusive of the power to modify. However, the Court dismissed this contention, observing that the maxim “omnes majus continet in se minus,” which translates to the greater contains the lesser, is not applicable here.¹⁰ Justice Viswanathan drew a distinction between the powers to set aside and to modify, categorizing them into two different classes: the former nullifies, while the latter alters. Thus, the Court maintained the distinction between the power to set aside and the power to modify.

The court further clarified the methods through which certain aspects of an award can be amended. Both Chief Justice Sanjiv Khanna and Justice K. V. Viswanathan recognize that courts have the authority to separate the invalid parts of an award. This is supported by the proviso to Section 34(2)(a)(iv).¹¹ However, severance is permissible only when the invalid part is not inextricably linked to the valid part, i.e., that severance can be done only when the elements can be separated.¹² Where, severance cannot apply, the court should either maintain the entire award or vacate it in its entirety. Furthermore, they reaffirmed and operationalized Section 34(4) as a remedial mechanism, according to which, the court can stay the proceedings and remit the award to the tribunal for correction if the award contains defects such as gaps in reasoning.¹³ In the case of *Kinnari Mullick*,¹⁴ the Court further broadened the procedural interpretation by permitting remission applications to be made orally, rather than in writing. The Court can also, on its own accord, use remission to protect an award from being unenforceable.¹⁵

The point of divergence revolved around the issue of post-award interest. C.J.I. Khanna believed that there exists the authority to modify post-award interest. He asserted that arbitrators cannot foresee delays and that Section 31(7)(b)¹⁶ offers a framework that the courts may implement or modify.¹⁷ Furthermore, Article 142¹⁸ can be invoked in appropriate circumstances to amend the awards.¹⁹ Conversely, Justice Viswanathan maintained that if the

¹⁰ *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, (2025) 7 SCC 1, 1 ¶ 22.

¹¹ Arbitration and Conciliation Act, 1996, § 34(2)(a)(iv), No. 26, Acts of Parliament, 1996 (India).

¹² *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, (2025) 7 SCC 1, 1 ¶ 240.

¹³ *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, (2025) 7 SCC 1, ¶¶ 55-65.

¹⁴ *Kinnari Mullick v. Ghanshyam Das Damani*, (2018) 11 SCC 328.

¹⁵ *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, (2025) 7 SCC 1, 1 ¶ 221.

¹⁶ Arbitration and Conciliation Act, 1996, § 31(7)(b), No. 26, Acts of Parliament, 1996 (India).

¹⁷ *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, (2025) 7 SCC 1, 1 ¶ 76.

¹⁸ INDIA CONST. art. 142.

¹⁹ *Gayatri Balasamy v. ISG Novasoft Techs. Ltd.*, (2025) 7 SCC 1, 1 ¶ 82.

interest component is flawed, the judge ought to annul the interest awards or send them back for reconsideration.²⁰ He further stated that Article 142 cannot override the restriction on modification. Concluding the judgement, the Court enunciated a narrow exception of the cases of computation, clerical, or typographical errors.²¹

The judgment represents a conservative approach by the court, emphasizing procedural integrity over expediency. It fails to consider the difficulties experienced by parties who must restart arbitration when an award has been annulled. The Court refers to Section 43(4)²² of the Act, which excludes the duration of court litigation from the limitation period for arbitration. The Court maintains that this rule is legally appropriate, although it acknowledges that it does not mitigate the burdens and time losses faced by litigants. Thus, it recognizes the disconnect between the legal structure and the actual situation, but it asserts that little can be done to bridge this divide unless legislative action is taken.

The judgment raises concerns regarding the New York Convention. It suggests that if Indian Courts were to modify awards without the necessary statutory authority, akin to the United Kingdom's Section 71, any modified awards created abroad could be perceived as court judgments rather than arbitral awards. The Court warns that such an interpretation could undermine the international enforceability of Indian awards,²³ reflecting a reluctance to take on such a risk.

The judgment refers to the T.K. Viswanathan Committee Report, which proposed an amendment to the Act to allow for modifications in appropriate cases. The Court refrains from reinterpreting this power within the statute, implicitly indicating that any changes must be made through an Act of Parliament.²⁴ In other words, Parliament is called upon to legislate the modification instead of allowing it to be a matter of judicial interpretation.

The Gayatri Balasamy case provides a clear explanation of the legal authority of Indian courts as outlined in Section 34²⁵ of the Arbitration Act. These courts operate as a reviewing entity rather than as a court of first instance. Indian courts have the power to detach elements of an award and to remit an award for correction; however, they do not have the jurisdiction to modify the arbitrator's decision. It confirms that Hakeem is applicable for determining the law.

²⁰ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, 1 ¶ 73.

²¹ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, 1 ¶ 85.

²² Arbitration and Conciliation Act, 1996, § 43(4), No. 26, Acts of Parliament, 1996 (India).

²³ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, ¶¶ 20–23.

²⁴ Gayatri Balasamy v. ISG Novasoft Techs. Ltd., (2025) 7 SCC 1, 1 ¶ 179.

²⁵ Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

The narrow interpretation preserves the idea of judicial intervention, but it does not lessen the difficulties inherent in arbitration. Thus, this interpretation places the onus on the legislature, which has the authority to introduce provisions that could enable reform if necessary for the effectiveness of arbitration law in India.