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

CASE COMMENTARY

VIDYA DROLIA AND OTHERS V. DURGA TRADING CORPORATION

(2021) 2 SCC 1 | Supreme Court of India | 14 December 2020

- Chitranshi Singh

Bench: Justice Sanjiv Khanna, Justice Dinesh Maheshwari, Justice Hrishikesh Roy

Citation: (2021) 2 SCC 1; MANU/SCOR/46012/2020

Acts Referred: Arbitration and Conciliation Act, 1996 (Section 8, 11, 16, 34); Transfer of Property Act, 1882

I. INTRODUCTION

In India for a long time there is a debate that which kind of disputes can go to arbitration. Landlords & tenants often not sure whether the arbitration clause in their agreements and lease deed was actually enforceable. This debate was settled by the Supreme Court's three bench judgement in Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1, decided on 14 December 2020. It started when a two-judge bench in February 2019, questioned whether an earlier court decision in Himangni Enterprises v. Kamaljeet Singh Ahlumalia ((2017) 10 SCC 706) was correct. In the Himangani Enterprises case, the court said that landlord-tenant dispute under the Transfer of Property Act, 1882 could not be settled through arbitration. Justice Sanjiv Khanna, in the Vidya Drolia case disagreed with the earlier decision and laid down a four-fold test for non-arbitrability. Court also restricts the scope of judicial inquiry under Section 8 and 11 of the Arbitration and Conciliation Act, 1996, and clarified the legal rules for disputes involving fraud.

II. FACTS OF THE CASE

Durga Trading Corporation had taken certain property from Vidya Drolia and others through a lease agreement governed by the Transfer of Property Act, 1882, because no special rent control law applied to that property. A dispute arose between the landlord and tenant, the tenant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, seeking reference to the matter to arbitration as per the clause in the lease agreement/deed. Trial court reject their application and the High Court also rejected both relying on Himangni Enterprises. Then the matter came before the Supreme Court, where the two-judge bench found that the decision in the Himangni Enterprises case was legally incorrect. Because the two-judge bench could not change the decision of another bench with the same number of judges, it sent the matter to a three-judge bench, which later delivered the present landmark ruling.

III. ISSUES BEFORE THE COURT

1. Whether dispute between landlord-tenant under the TPA can be resolved through arbitration, and whether the Himangni Enterprises was correct.
2. What is the proper test for determining non-arbitrability of a dispute?
3. Whether is the scope of judicial examination permissible under Section 8 and 11 at the referral stage?
4. Whether allegations of fraud bar reference to arbitration?

IV. ARGUMENTS OF THE PARTIES

Appellants (Landlords): The landlord supported the view in Himangni Enterprises. They argued that tenancy disputes, even under the TPA, are closer to actions in rem, which the affect the public at large, than a purely private contracts. They referenced Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011) 5 SCC 532, which distinguished between rights in ren and rights in personam, stating only the latter can be subjected to arbitration. They also argued that allowing arbitration in property matter could weaken the civil court system and raised public policy issues.

Respondent (Tenant): The tenant argued that both parties had willingly agreed to arbitration in lease deed. There is no provision in the TPA that either expressly or impliedly excluded arbitration. The dispute is strictly personal and contractual between two parties, have no impact on any third person. Himangni Enterprises incorrectly applied reasoning from cases involving special rent control law, which do grant exclusive jurisdiction to certain tribunals, to situations governed solely by the TPA, where no such bar exists.

V. DECISION OF THE COURT

Overruling Himangni Enterprises: The bench unanimously deemed Himangni Enterprises to be incorrect. Landlord-tenant disputes under the TPA are arbitrable if there is a valid arbitration agreement and the subject matter isn't inherently non-arbitrable.

The Four-Fold Test: The court established that a dispute in non-arbitrable when it: (i) Relates to an action in rem that affect the public at large (through subordinate personal rights from such actions can still be arbitrated); (ii) has erga omnes effect, binding individuals beyond those in the arbitration agreement; (iii) is required by law to be resolved only before a specific court or public forum; or (iv) would contradict public policy if sent to arbitration. Since a TPA tenancy dispute meet none of these criteria, it is arbitrable.

Section 8 and 11, Restricted Judicial Role: During the referral stage, a court's role is limited to confirming the existence of a valid arbitration agreement. It should not delve into the merits of the dispute or settle disputed facts. The doctrine of competence-competence under Section 16 allows the arbitral tribunal to determine its own jurisdiction. Courts may deny a reference only in clear-cut cases, such as agreement involving a minor or a person deemed mentally unfit, and must otherwise refer the parties to arbitration.

Fraud and Arbitrability: Simple allegations of fraud in the underlying transaction do not render a dispute non-arbitrable. Only if the fraud undermines the arbitration agreement itself, making it void, can arbitration be refused. This aligns with the Court's stance in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.

VI. ANALYSIS AND CRITICAL EVALUATION

Vidya Drolia is well-regarded for the clarity it introduced to Indian arbitration law. The four-fold test replaced a vague, intuitive approach with a structured framework that courts, and practitioners can apply more consistently. By overturning Himangni Enterprises, the judgment opened a significant category of commercial lease disputes to arbitration, offering relief in a country where landlord-tenant ligitation can drag on in civil courts for years.

The Court's emphasis on limiting judicial interference under Section 8 and 11 to the existence of the arbitration agreement and leaving other issues to the arbitral tribunal is conceptually sound. It respects the principle of competence and aligns Indian law with global best practices in arbitration. The review at the Section 34 stage (challenge to the award) also ensures that serious errors do not uncorrected.

However, the judgment has received valid criticism. Limiting courts to examining arbitrability only at the Section 34 stage can lead to parties undergoing a full. Arbitral process before addressing a fundamental issue, which is inefficient and costly. A more balanced approach that allows some scrutiny of obvious non-arbitrability at the referral stage could be more practical. The Supreme Court in Pravin Electricals (P) Ltd. v. Galaxy Infra and Engg. (P) Ltd. (2021) noted the ruling's tensions, especially regarding unequal treatment of order under Section 8 and 11 regarding appealability, and indicated that legislative changes may be necessary.

The introduction of the erga omnes concept into the non-arbitrability analysis, while intellectually useful, has created some uncertainty about its practical scope. Not every commentator agrees on identifying a dispute with 'erga omnes effect', and this ambiguity could lead to new litigation issues. Despite these challenges, Vidya Drolis strongly promotes a pro-arbitration perspective, viewing arbitration as a legitimate and preferred venue for commercial disputes, rather than a lesser option to litigation.

VII. CONCLUSION

Vidya Drolia v. Durga Trading Corporation marks a significant change in India arbitration law. In one judgement, the Supreme Court clarified the arbitrability of TPA tenancy disputes, provided a principled four-fold test for non-arbitrability of TPA tenancy disputes, provided a principled four-fold test for non-arbitrability, redefined court roles at the referral stage, and clarified the fraud-arbitrability relationship. The message is clear: parties choosing arbitration in their contracts should generally be held to that choice. Courts should not expand non-arbitrable categories beyond what the law and public policy require. The real test of this ruling will be how courts implement the four-fold framework moving forward. With careful application, it can significantly reduce pre-arbitration conflicts and enhance India's reputation as an arbitration-friendly jurisdiction.

KEY REFERENCES

- Vidya Drolia and Others v. Durga Trading Corporation, (2021) 2 SCC 1
- Himangni Enterprises v. Kamaljeet Singh Ahlumalia (2017) 10 SCC 706
- Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011) 5 SCC 532
- SCC Online Blog, ‘Supreme Court Post Vidya Drolia: Reconsidering Referral Jurisprudence in India’ (2022)
- Pravin Electricals (P) Ltd. v. Galaxy Infra and Engg. (P) Ltd. (2021)
- Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.