

PROCEDURES IN ARBITRATION

INTRODUCTION

Section 19 ACA provides for determination of rules of procedure and says the parties are free to agree on the procedure to be followed by the arbitral tribunal (subject to mandatory provisions of ACA) and failing an agreement the tribunal can conduct the proceedings in the manner as considered appropriate.

Jagjeet Singh Lyallpuri (cited *infra*) reiterates the statutory law where the parties had agreed that the witnesses would not be cross-examined. The set-aside application on the ground of ‘inability to present’ the case was rejected. But the appellate court remanded the matter back to the tribunal. The Supreme Court assessed the matter and overturned the High Court’s decision observing that having consented to the procedure, the respondent could not turn around and challenge.

It will be useful to note here that the question of whether an award can be set aside and then remanded has been discussed in *Kinnari Mullick v. Ghanshyam Das Damani*, (2018) 11 SCC 328 (Dipak Misra, A.M. Khanwilkar, M.M. Shantanagoudar JJ). The court held that remand and set-aside are alternatives. Once it is set aside, there is nothing to remand. Then, in *Radha Chemicals v. Union of India*, Civil Appeal Number 10386 of 2018 decided on 10 October 2018 (R.F. Nariman and Navin Sinha JJ), the court noted “in a series of judgments culminating in *Kinnari Mullick and Another v. Ghanshyam Das Damani*, (2018) 11 SCC 328 held that the court while deciding a Section 34 petition has no jurisdiction to remand the matter to the arbitrator for a fresh decision. This was in a context where in a Section 34 petition, the court found that the point of limitation had not been decided correctly and, therefore, remanded the matter to the arbitrator in order that the point be decided afresh.

It does not appear from *Jagjeet* that any issue on set aside v remand based on *Kinnari* or *Radha Chemicals* was raised.

In *Sai Babu v. Clariya Steel Pvt. Ltd.*, 2019 (5) SCJ 503, the court held that no application for recall would lie in a case covered under Section 32 (3) ACA.