

Dispute Resolution Hotline

November 02, 2018

SUPREME COURT OF INDIA 'RULES OUT' THE RULEBOOK IN FAVOR OF SUBSTANTIVE RIGHTS

This article was originally published in the 21st September 2018 edition of



as well as in the August/September issue of

YSIAC's Newsletter

Recently, in the case of *State of Bihar & Ors. v Bihar Rajya Bhumi Vijas Bank Samiti* the Supreme Court of India held that Section 34 (5) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") was a directory, and not a mandatory provision of law. Section 34 (5) of the Arbitration Act requires a party filing an application to set aside an arbitral award, to issue prior notice of such intention to the other party and only thereafter file the application along with an affidavit attesting to compliance with the notice requirement. The Supreme Court held that a failure to provide such notice under Section 34 (5) would not defeat an application to set aside an arbitral award, as such the provision to provide such a notice was only directory. Through this judgment, the Supreme Court of India affirms that procedural provisions of law ought not to defeat substantive rights and that while adherence to procedure is important, administration of justice remains paramount.

In this article (to access click [here](#)), we discuss the SC's observations on mandatory and directory provisions of laws, interpretation of past precedents, with the purpose of analyzing the impact of this judgment on the various new provisions introduced across various statutes in India, such as provisions imposing strict time lines for the resolution of disputes, whether through arbitration, litigation, or corporate insolvency.

— Tanisha Khanna & Siddharth Ratho

You can direct your queries or comments to the authors

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