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Interim Relief in Arbitration: Section 9 of the Arbitration and Conciliation Act 1996 and Orders 38 & 39 of the CPC

Sneha Kumari[a] Nandini Prakash[b]

[a]Amity Law School, Noida, India [b]Amity Law School, Noida, India

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Interim relief is a critical component of an effective arbitration process because an award is of little value if the assets to support it are dissipated. Section 9 of the Arbitration and Conciliation Act, 1996 authorises courts to grant relief, but does not specify the criteria for granting relief. Orders 38 and 39 of the Code of Civil Procedure, 1908 have therefore posed difficulty for courts as to whether the technical aspects of the CPC apply to a Section 9 court or only the underlying principles of the CPC. This paper takes up this question throughout a doctrinal study and analysis of statutory provisions and judicial decisions such as Sundaram Finance, Adhunik Steels, ArcelorMittal v Essar Bulk Terminal, Essar House and Amazon v Future Retail. It also takes into account the limitation in Section 9(3) and the impact of emergency arbitration on court proceedings. The paper contends that Indian courts have shifted towards adopting a principles-based approach, but the ambiguity in both the application and the nature of the overlapping provisions between Sections 9 and 17 needs to be clarified by the courts and, to a limited extent, by statute.

Keywords: *interim relief, section 9, order 39, arbitration, emergency arbitration.*

INTRODUCTION

Although arbitration is perceived as a faster and more convenient alternative to litigation, it remains ineffective if the assets needed to enforce an arbitral award have been wasted.

Interim relief is therefore central to the effectiveness of arbitration. In India, the Arbitration and Conciliation Act, 1996 (the Act) addresses this need through Section 9, which empowers courts to grant interim relief before, during, or after arbitral proceedings. Section 17 gives similar powers to the arbitral tribunal.[1]

Section 9 does not provide its own comprehensive standard for deciding such applications. Courts therefore refer to the Code of Civil Procedure, 1908 (CPC), particularly Orders 38 and 39[2], which deal with attachment before judgment and temporary injunctions in civil proceedings. This has created considerable uncertainty over whether courts acting under Section 9[3] must follow the technical requirements of the CPC or apply only its underlying principles. Decisions such as Adhunik Steels Ltd. v Orissa Manganese and Minerals Pvt. Ltd.[4] and Essar House Pvt. Ltd. v Arcelor Mittal Nippon Steel India Ltd[5] support a flexible approach.

The problem gained momentum with the Arbitration and Conciliation (Amendment) Act, 2015 (the 2015 Amendment), which introduced Sections 9(2) and 9(3) to restrict the role of courts.[6] In Amazon.com NV Investment Holdings LLC v Future Retail Ltd.[7], the Supreme Court held that an emergency arbitrator's order is enforceable. These developments raise questions about the appropriate balance between courts and tribunals in granting interim relief.

This paper examines three questions:

1. To what extent are courts under Section 9 bound by Orders 38 and 39 of the CPC?
2. How have courts interpreted the Section 9(3) restriction on entertaining applications after the tribunal is constituted?
3. Does the growing role of emergency arbitrators reduce the need for court-based interim relief?

[1] Arbitration and Conciliation Act 1996, ss 9 and 17
[2] Code of Civil Procedure 1908, Or 38 and 39
[3] Code of Civil Procedure 1908, s 9
[4] *Adhunik Steels Ltd v Orissa Manganese and Minerals (P) Ltd* (2007) 7 SCC 125
[5] *Essar House (P) Ltd v Arcellor Mittal Nippon Steel India Ltd* (2021) SCC OnLine Bom 149
[6] Arbitration and Conciliation (Amendment) Act 2015; Arbitration and Conciliation Act 1996, ss 9(2) and 9(3)
[7] *Amazon.Com NV Investment Holdings LLC v Future Coupons (P) Ltd & Ors* 2021 INSC 385

The paper argues that, although Indian courts have gradually moved towards a principles-based approach under Section 9, inconsistent application and the overlap between Sections 9 and 17 call for clearer judicial guidelines.[8] The study is doctrinal and relies on statutory provisions, judicial decisions, and the 246th Report of the Law Commission of India.[9] Part 2 sets out the legal framework, Part 3 explains the judicial approach, and Part 4 provides a critical analysis, followed by recommendations in Part 5.

LEGAL FRAMEWORK

Orders 38 and 39 of the CPC: Orders 38 and 39[10] derive from Section 94 of the CPC, which empowers the court to order arrest before judgment, attachment before judgment, temporary injunctions, the appointment of receivers and such other interlocutory orders as may appear just and convenient. Section 151 of the CPC, which preserves the inherent powers of the court, is sometimes invoked alongside these provisions where no specific provision applies.[11]

Order 39 is about temporary orders in civil cases. The court has the authority to prevent a party from destroying, selling or otherwise dealing with property in dispute, or from violating a contract or otherwise doing harm, pursuant to Rules 1 and 2.[12]

So, for a remedy to be granted, three conditions must be met:

- There must be a 'prima facie' case;
- The balance of convenience is in favour of the applicant;
- There is a likelihood of an irreparable loss if the remedy is not granted.

According to Rule 3 of Order 39, it is necessary to notify the opposite party about an application for injunction before it is granted. An ex parte order is permissible only in extreme circumstances, and the court must record its reasons. Where an ex parte injunction is granted, Rule 3A requires the court to endeavour to dispose of the application within thirty days from the date the injunction was granted.[13]

[8] Arbitration and Conciliation Act 1996, ss 9 and 17
[9] Law Commission, *Report No 246: Amendments to the Arbitration and Conciliation Act, 1996* (2014)
[10] Code of Civil Procedure 1908, Ord 38 and 39
[11] Code of Civil Procedure 1908, ss 94 and 151
[12] Code of Civil Procedure 1908, Ord 39, rr 1 and 2
[13] Code of Civil Procedure 1908, Ord 39, rr 3 and 3A

Modification, cancellation, or setting aside of the Order is provided for pursuant to Rule 4 herein and punishment for disobedience is provided pursuant to Rule 2A herein[14]; Order 43 Rule 1(r) provides for an appeal.[15] These provisions are supplemented by Order 38 Rule 5, which permits property of the defendant to be attached prior to judgment.[16]

Section 9: Interim Measures by Courts: In terms of Section 9 of the Act, a party may approach the court for interim relief before, during and after the arbitral proceedings but prior to the award being enforced. Under Section 9(1), the court may appoint a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings, and may grant interim measures of protection in respect of:

- Preservation, interim custody or sale of goods that are the subject matter of the arbitration agreement;
- Securing the amount in dispute;
- Detention, preservation or inspection of property;
- An interim injunction or the appointment of a receiver; and
- Any other interim measure that appears to the court to be just and convenient.

The 2015 Amendment places two restrictions:

- Section 9(2): If relief is granted prior to the beginning of the arbitration, the arbitration shall begin no later than 90 days after the date of the order or such other period as the court may allow.
- Section 9(3): The court shall not entertain an application under Section 9 once the tribunal is constituted, unless the remedy under Section 17 is found to be inefficacious.

An appeal against a Section 9 order is pursuant to Section 37(1)(b).[17]

The Tribunal's Own Powers (Section 17): The arbitral tribunal may take measures during and after the arbitral proceedings and before the award is enforced under Section 17. Following the 2015 Amendment, Section 17(1) gives the tribunal the same range of interim measures that Section 9(1) gives the court, and under Section 17(2) a tribunal's order is

[14] Code of Civil Procedure 1908, Ord 39, rr 2A and 4
[15] Code of Civil Procedure 1908, Ord 43, r 1(r)
[16] Code of Civil Procedure 1908, Ord 38, r 5
[17] Arbitration and Conciliation Act 1996, ss 9 and 37(1)(b)

deemed an order of the court and is enforceable under the CPC.[18] This position was first clarified in Alka Chandewar v Shamshul Ishrar Khan[19]. In Amazon v Future Retail[20], the Supreme Court later held that emergency arbitrators' orders are enforceable in the same way.

Comparative Overview:

Basis of Comparison	**Orders 38 and 39 of the CPC, 1908**	**Section 9 of the Arbitration and Conciliation Act, 1996**
Primary Purpose	Protect parties' rights and preserve property during civil proceedings.	Preserve the subject matter of arbitration and protect the effectiveness of arbitral proceedings and awards.
Stage of Application	Generally, applies in the context of civil suits and related proceedings.	Available before or during arbitral proceedings and after the award but before its enforcement.
Applicable Standards	Temporary injunctions are assessed using the applicable equitable principles; attachment before judgment is subject to the specific conditions in Order 38 Rule 5.	Relevant CPC principles guide judicial discretion, but technical CPC requirements do not necessarily apply rigidly in every Section 9 application.
Types of Relief	Includes temporary injunctions under Order 39 and attachment before judgment under Order 38.	Includes measures such as preservation of goods or property, securing the amount in dispute, inspection, and temporary

[18] Arbitration and Conciliation Act 1996, s 17(1-2)
[19] *Alka Chandewar v Shamshul Ishrar Khan* (2017) 16 SCC 119
[20] *Amazon.Com NV Investment Holdings LLC v Future Coupons (P) Ltd & Ors* (2021) INSC 385

		injunctions, as applicable under Section 9(1).
Time-related Requirements	Order 39 Rule 3A directs the court to endeavour to dispose of an injunction application within 30 days of granting an ex parte injunction.	Under Section 9(2), where relief is granted before arbitral proceedings begin, proceedings must commence within 90 days of the order or within a further period allowed by the court.
Appeal	Order 43 Rule 1(r) provides an appeal against specified orders under Order 39.	Section 37(1)(b) provides an appeal against an order granting or refusing interim measures under Section 9.

JUDICIAL APPROACH

Sundaram Finance, Adhunik Steels and Arivind Constructions: In Sundaram Finance Ltd. v NEPC India Ltd[21]., the Supreme Court held that a court can grant interim relief under Section 9 without waiting for arbitral proceedings to commence, as long as an arbitration agreement is in place and the applicant has shown a genuine intention to arbitrate.[22]

Adhunik Steels Ltd. v Orissa Manganese and Minerals Pvt. Ltd.[23] addressed how courts are expected to exercise this power. The Supreme Court held that a court under Section 9 is not obliged to follow the strict provisions of Order 39 Rules 1 and 2,[24] yet it is not in a position to overlook the principles underlying them, namely a prima facie case, balance of convenience and irreparable loss. Section 9[25] therefore does not give courts unfettered discretion. In Arvind Constructions Co. Pvt. Ltd. v Kalinga Mining Corporation,[26] the Supreme Court

[21] *Sundaram Finance Ltd v NEPC India Ltd* (1999) 2 SCC 479
[22] Arbitration and Conciliation Act 1996, s 9
[23] *Adhunik Steels Ltd v Orissa Manganese and Minerals (P) Ltd* (2007) 7 SCC 125
[24] Code of Civil Procedure 1908, Or 39, rr 1 and 2
[25] Arbitration and Conciliation Act 1996, s 9
[26] *M/S Arvind Constructions Co (P) Ltd v Kalinga Mining Corporation & Ors* (2007) 6 SCC 798

applied the same approach to Order 38 Rule 5[27]. It ruled that under Section 9[28] courts do not have to abide by the technicalities of the CPC. However, the courts must be guided by the principles contained in Orders 38 and 39[29]. The courts should not order the securing of the amount in dispute without a prima facie case and relevant grounds to presume that the opposing party may defeat the award.

Essar House and the Relaxation of Order 38 Rule 5: The recent case of Essar House Pvt. Ltd. v ArcelorMittal Nippon Steel India Ltd. (2022) [30]is also noteworthy. The Supreme Court opined that the conditions of Order 38 Rule 5 CPC are not to be strictly followed by a court exercising jurisdiction under Section 9.[31] However, there are basic considerations laid down by the court while granting the relief and the court under Section 9 cannot deny proper application just because it was not a technically perfect application in the context of CPC. This further loosens the criteria but gives a lot of room for interpretation.

The Section 9(3) Restriction: The amendments of 2015 made to the Act excluded consideration of a Section 9 application after the tribunal was established, unless the Section 17 remedy is found to be inefficacious. In ArcelorMittal Nippon Steel India Ltd. v Essar Bulk Terminal Ltd.[32], the question was whether the term ‘entertain' implied that the bar would apply to every application pending at the time of constitution, or just to applications which have not yet been considered by the court substantially. The Supreme Court was in favour of the second opinion. A court is said to have entertained an application if it has considered the merits of the application and not only when it is filed, listed, or a notice is issued. Where the court has already considered the application on the merits when the tribunal is constituted, the application may continue; where it has not, the applicant must approach the tribunal under Section 17[33]. This becomes a matter of timing and of the correct behaviour, and not only of the first application to the tribunal. It also reveals a vulnerability—the result would depend on how advanced the court was, which can vary from bench to bench. This backs up the 'inefficacious' argument in 4.2, which, as stated, is uncertain.

[27] Code of Civil Procedure 1908, Ord 38, r 5
[28] Arbitration and Conciliation Act 1996, s 9
[29] Code of Civil Procedure 1908, Ords 38 and 39
[30] *Essar House (P) Ltd v Arcellor Mittal Nippon Steel India Ltd* (2021) SCC OnLine Bom 149
[31] Code of Civil Procedure 1908, Ord 38, r 5
[32] *Arcelor Mittal Nippon Steel (India) Ltd v Essar Bulk Terminal Ltd* (2022) 1 SCC 712
[33] Arbitration and Conciliation Act, 1996 s 17

Emergency Arbitrators: The Supreme Court in Amazon.com NV Investment Holdings LLC v Future Retail Ltd. (2021)[34] confirmed that an order made by an emergency arbitrator is an order made under Section 17(1) and may be enforced by an order made under Section 17(2).[35] The Court also noted that party autonomy is a relevant factor in favour of the recognition of emergency arbitration when the rules and procedures of the institution chosen for arbitration permit it.

Trend Summary –

Case	Key Principle
Sundaram Finance Ltd. v NEPC India Ltd. (1999)	Section 9 permits courts to grant interim relief before arbitral proceedings commence, provided a valid arbitration agreement exists and the applicant demonstrates a genuine intention to pursue arbitration.
Adhunik Steels Ltd. v Orissa Manganese and Minerals Pvt. Ltd. (2007)	Courts must consider established principles governing interim injunctions when exercising jurisdiction under Section 9. The provision does not create an unrestricted discretion to grant relief.
Arvind Construction Co. Pvt. Ltd. v Kalinga Mining Corporation (2007)	A Section 9 court is not bound by technicalities by Order 38 and 39 but must be guided by their underlying principles before granting relief such as securing the amount in dispute.
ArcelorMittal Nippon Steel India Ltd. v Essar Bulk Terminal Ltd. (2021)	The phrase 'entertaining an application' in Section 9(3) means the court has applied its

[34] *Amazon.Com NV Investment Holdings LLC v Future Coupons (P) Ltd & Ors* (2021) INSC 385
[35] Arbitration and Conciliation Act 1996, s 17(1-2)

	mind to the merits, not merely that the application was filed or listed. Applications not yet considered on the merits when the tribunal is constituted must go to the tribunal under Section 17, unless that remedy is inefficacious.
Amazon.com NV Investment Holdings LLC v Future Retail Ltd. (2021)	An emergency arbitrator's order made under applicable institutional rules can be treated as an order under Section 17(1) and enforced under Section 17(2), where the parties' arbitration framework recognises that procedure.
Essar House Pvt. Ltd. v ArcelorMittal Nippon Steel India Ltd. (2022)	The technical requirements of Order 38 Rule 5 CPC should not be applied mechanically to Section 9 applications. Courts should consider the underlying principles and the circumstances justifying interim protection.

CRITICAL ANALYSIS

Absence of a Settled Standard: The issues considered in Part 3 indicate a shift towards a principles-based approach, but do not establish a final norm. The principles that inform a Section 9 court are those of the CPC, and the technical requirements do not apply to such a court, as Adhunik Steels, Arvind Constructions and Essar House have established[36]. But none of the decisions sets out the extent to which a requirement like the purpose of defeating a decree under Order 38 Rule 5[37] can be relaxed. This means that benches can use different standards for the same facts. This lack of certainty diminishes predictability that parties seek

[36] *Adhunik Steels Ltd v Orissa Manganese and Minerals (P) Ltd* (2007) 7 SCC 125; *M/S Arvind Constructions Co (P) Ltd v Kalinga Mining Corporation & Ors* (2007) 6 SCC 798; *Essar House (P) Ltd v Arcellor Mittal Nippon Steel India Ltd* (2021) SCC OnLine Bom 149

[37] Code of Civil Procedure 1908, Ord 38, r 5

from arbitration and renders an applicant unable to assess the success of a Section 9 petition in advance.[38]

Meaning of the term 'inefficacious' in Section 9(3): Section 9(3) provides that no application can be made to the court after the constitution of the tribunal, unless the Section 17 remedy is found to be inefficacious.[39] But the Act itself does not provide any definition of this term and its interpretation is subject to the discretion of the courts. A narrow reading can leave an aggrieved party without immediate protection, such as if the tribunal could not take action immediately or if the respondent was in the process of disposing of assets. A broad reading, however, would mean that the parties could circumvent the tribunal, thus nullifying the intent behind the 2015 Amendment. Moreover, there is some forum shopping potential between Sections 9 and 17[40], since a party could select the forum that it thinks will be more favourable.

Emergency Arbitrators and the Role of Courts: In Amazon v Future Retail, the Court found that an emergency arbitrator's order is enforceable under Section 17(2), which strengthened the availability of private interim relief.[41] But it would be wrong to imply that judicial intervention is no longer needed. First, a tribunal's powers are exercised only over the parties to the arbitration agreement. Section 17(1) empowers the tribunal only on the application of a party, so it cannot reach non-parties.[42] That may mean that relief against third parties (such as the banks or the purchasers of the property) may be required from the courts. Secondly, enforcement of tribunal orders under Section 17(2) still requires court machinery. In Alka Chandewar v Shamshul Ishrar Khan[43], the Supreme Court held that an interim order of an arbitral tribunal under Section 17 is enforceable as an order of the court under the CPC, and disobedience of such an order can attract proceedings under Order 39 Rule 2A[44]. This shows that the tribunal cannot enforce its orders on its own; final enforcement depends on the court. A party who has won relief from the tribunal must still approach the court to make it effective. Third, emergency arbitration is available only where the institutional rules chosen

[38] Arbitration and Conciliation Act 1996, s 9
[39] Arbitration and Conciliation Act 1996, ss 9(3) and 17
[40] Arbitration and Conciliation Act 1996, ss 9 and 17
[41] *Amazon.Com NV Investment Holdings LLC v Future Coupons (P) Ltd & Ors* (2021) INSC 385
[42] Arbitration and Conciliation Act 1996, s 17(1)
[43] *Alka Chandewar v Shamshul Ishrar Khan* (2017) 16 SCC 119
[44] Code of Civil Procedure 1908, Ord 39, r 2A and s 17

by the parties provide for it. Emergency arbitration is an adjunct to Section 9, and is not a replacement for it.[45]

Foreign-Seated Arbitrations: Whether Section 9 is available in foreign-seated arbitrations has changed over time. In Bhatia International v Bulk Trading S.A.[46], the Supreme Court held that Part I of the Act, including Section 9, applied to international commercial arbitrations held outside India unless the parties excluded it expressly or impliedly. In Bharat Aluminium Co. v Kaiser Aluminium Technical Services Inc. (BALCO)[47], a Constitution Bench ruled that Part I would be applicable only to arbitrations seated in India, which was a prospective decision. This situation was partially reversed in the 2015 Amendment. Section 9, together with Sections 27 and 37(1)(a) and 37(3), now applies to international commercial arbitrations seated outside India unless otherwise agreed by the parties, where the award made or to be made is enforceable under Part II of the Act.[48] This benefits a party whose adversary owns property in India. It also leaves room to consider how Indian courts ought to work with the seat court and under what circumstances Indian courts ought to refrain from acting; that is, when the seat court is better positioned. The case law regarding this overlap is not yet completely clarified.

The 90-Day Rule under Section 9(2): According to Section 9(2), where a court grants interim relief before arbitral proceedings begin, arbitration must commence within ninety days of the order or within such further time as the court may determine.[49] The idea is that a party should not use Section 9 as a standalone remedy and leave the arbitration unstarted. Under Section 21 of the Act, arbitral proceedings commence on the date the respondent receives the request to refer the dispute to arbitration, unless the parties have agreed otherwise.[50] Thus, a notice invoking arbitration is sufficient to comply with this rule, even before the tribunal is constituted. However, the provision does not say what happens if this time limit is missed. It does not state whether the interim order comes to an end, nor on what grounds or at what stage the court may extend the time, including whether an extension can be sought after the

[45] Arbitration and Conciliation Act 1996, s 9
[46] *Bhatia International v Bulk Trading SA & Anr* (2002) 4 SCC 105
[47] *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* (2012) 9 SCC 552
[48] Arbitration and Conciliation Act 1996, ss 9, 27, 37(1)(a) and 37(3)
[49] Arbitration and Conciliation Act 1996, s 9(2)
[50] Arbitration and Conciliation Act 1996, ss 9 and 21

ninety days have expired. It is left to the courts to fill this gap, which may yield different results from bench to bench.

Enforcement of Tribunal Orders under Section 17: The 2015 Amendment aimed at making orders under Section 17 as effective as court orders. Section 17(2) states that the interim order of the tribunal is to be considered an order of the court and enforced under the CPC.[51] However, the tribunal cannot enforce its own order. The party that has obtained the order must still approach the court and apply for enforcement.

This comes with two drawbacks. The first is delay: a party that has obtained urgent relief from the tribunal may lose most of the benefit while waiting for the enforcement request to be considered by the court. This is the concern that the 2015 Amendment, including Section 9(3), sought to address. The second is that the tribunal's orders operate only against the parties, and non-parties such as banks and purchasers, discussed in 4.3, fall outside them. An enforcement application therefore gives no remedy against any bank or purchaser that is not a party to the arbitration agreement.

These weaknesses indicate that the 2015 reform has strengthened Section 17 only on paper. Where enforcement through the court is slow, parties can still apply to the court directly under Section 9[52], which is the forum shopping discussed in 4.2. This supports recommendation 5.4, which states that quicker and clearer enforcement of tribunal decisions would reduce the need to go to the court.

Findings: Based on this analysis, the following conclusions are drawn: First, the principles of Orders 38 and 39 are followed by courts under Section 9, but technical requirements are not.[53] Secondly, Section 9(3)[54] is interpreted as obligating the applicant to approach the tribunal first, and court relief is the exception, though its scope is not well defined. Thirdly, although the arbitrators' role is to help avoid application of interim relief in court, they do not eliminate interim relief. Fourth, Section 9(2)[55] does not say whether an interim order

[51] Arbitration and Conciliation Act 1996, s 17(2)
[52] Arbitration and Conciliation Act 1996, ss 9 and 17
[53] Code of Civil Procedure 1908, Ors 38 and 39; Arbitration and Conciliation Act 1996, s 9
[54] Arbitration and Conciliation Act 1996, s 9(3)
[55] Arbitration and Conciliation Act 1996, s 9(2)

lapses if arbitration is not commenced in time. Fifth, orders of the tribunal under Section 17[56] still depend on the court for enforcement.

SUGGESTIONS

Based on the above analysis, the following measures are recommended.

5.1 Statutory Clarification: Section 9[57] may be supplemented by an explanation to the effect that the court, while considering an application, shall be guided by the principles regarding temporary injunctions and attachment before judgment found in Orders 38 and 39 of the Code of Civil Procedure, without being bound by their technical stipulations.[58] This would settle the uncertainty discussed in 4.1.

Guidelines on 'Inefficacious': An Explanation to Section 9(3) may provide that the remedy under Section 17 is not efficacious where, having regard to the circumstances:

(a) urgent relief is sought, and the tribunal cannot intervene in time,

(b) the tribunal is unable to function,

(c) the relief sought is against persons who are not parties to the arbitration agreement, or

(d) the relief sought needs powers available only to the court. Until Parliament acts, courts may be guided by these factors.[59]

Time-Bound Disposal: High Courts can make directions for early disposal of Section 9 applications which are consistent with the policy of Order 39 Rule 3A to prevent delaying the remedy[60].

Strengthening Section 17:[61] The faster and clearer implementation of the orders of the tribunal and of the emergency arbitrators would decrease the need to approach the court and would strengthen the 2015 reform.

[56] Arbitration and Conciliation Act 1996, s 17
[57] Arbitration and Conciliation Act 1996, s 9
[58] Code of Civil Procedure, 1908 Ords 38 and 39
[59] Arbitration and Conciliation Act 1996, ss 9 and 17
[60] Code of Civil Procedure 1908, Ord 39; Arbitration and Conciliation Act 1996, s 9
[61] Arbitration and Conciliation Act 1996, s 17

Consequences under Section 9(2):[62] An interim order granted under Section 9 should lapse if arbitration is not commenced within the prescribed period. Otherwise, such orders might continue indefinitely, which is not the intention of the Act.

CONCLUSION

The effectiveness of arbitration is centred on interim relief, and Section 9 of the Arbitration and Conciliation Act 1996 is the court-based avenue for interim relief. That provision has been looked at in this paper in relation to Orders 38 and 39 of the CPC[63]. The analysis reveals that Indian courts have shifted from strict compliance with the requirements of the CPC to a principles-based approach, where prima facie case, balance of convenience and irreparable injury are the guiding principles for the court as opposed to the technical conditions. This change is evident in some of the decisions like Adhunik Steels, Arvind Constructions and Essar House.

The paper also revealed that the switch is not complete. The standard for relief is unresolved; the term 'inefficacious' in Section 9(3) is ambiguous; and there is overlap between the provisions of Sections 9 and 17,[64] enabling forum shopping. The role of the tribunal has been further enhanced by the recognition of the process of Emergency Arbitration in Amazon v Future Retail, which does not eliminate the necessity of court for relief against third parties or for enforcement.

The recommendations in Part 5 (statutory clarity, guidelines under Section 9(3), time-bound disposal, and clarification under Section 9(2))[65] are aimed at providing greater certainty to the law. This is a prerequisite if India is to play a more significant role as an arbitration venue of choice.

[62] Arbitration and Conciliation Act 1996, s 9(2)
[63] Code of Civil Procedure 1908, Ords 38 and 39; Arbitration and Conciliation Act 1996, s 9
[64] Arbitration and Conciliation Act 1996, ss 9 and 17
[65] Arbitration and Conciliation Act 1996, ss 9