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# JUDGEMENTOPEDIA

*(Learning Judgements For A Living)*

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Rahee Industries Limited Vs Export Credit  
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[1 S.C.R. 443]





# Whether under Clause 16 of the Specific Shipments (Political Risks) Policy, ECGC is entitled to 90% of the increased recovery (including exchange rate gains) made by the exporter after indemnifying the original loss?

**CONTEXT:** This civil appeal stemmed from a dispute over a Specific Shipments (Political Risks) Policy issued by the Export Credit Guarantee Corporation of India Ltd. (ECGC) to the exporter, M/s Ramchander Heeralal. The exporter had a contract with Egyptian National Railways for the supply of clip bolts. A portion of the payment was deferred and insured against political risks. Due to an embargo imposed by the Egyptian Government, the foreign buyer's bank could not remit the deferred payment to India, resulting in a loss for the exporter. ECGC indemnified 90% of the loss under the policy terms. Later, once the embargo was lifted, the buyer remitted the amount in U.S. dollars. Due to rupee depreciation during this time, the recovered amount (when converted to INR) was significantly higher than the sum ECGC had initially paid. A dispute arose over whether ECGC was entitled to 90% of the entire recovered sum or only the amount it had paid. The Single Judge ruled in favour of the exporter. However, the Division Bench of the Calcutta High Court allowed ECGC's appeal.

The Supreme Court dismissed the exporter's civil appeal, upholding the Division Bench's decision that ECGC was

1 entitled to 90% of the total recovered amount, including any gains from currency fluctuation.

The Court held that Clause 16 of the policy clearly stated that "*any sums recovered*" in respect of the insured loss should be divided in a 90:10 ratio. It emphasized that the policy was a contract of indemnity, and all recoveries related to the insured loss—regardless of exchange rate changes—must be shared proportionately.

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**RAHEE INDUSTRIES  
LIMITED VS. EXPORT  
CREDIT GUARANTEE  
CORPORATION OF  
INDIA LIMITED AND  
ANOTHER**  
**[008 INSC 11683]**

**CLAUSES 7, 8, 9, 10, 11,  
13, 14, 16 OF THE  
SPECIFIC SHIPMENTS  
(POLITICAL RISKS)  
POLICY DATED 27-1-  
1987**

# **Whether, as the award has not been stamped, it can be enforced under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996?**

**CONTEXT:** The case involves the enforcement of a foreign arbitral award delivered in London in favour of Rioglass Solar SA against Shriram EPC Limited. The award, dated 12.02.2015, directed the appellant to pay €4,366,598.70. Shriram EPC's objections under Section 34 of the Arbitration and Conciliation Act, 1996, were dismissed as Section 34 does not apply to foreign awards. The respondent sought enforcement under Section 47, which the Single Judge of the Madras High Court allowed. The Division Bench dismissed the appeal as not maintainable under Section 50. In the Supreme Court, the appellant argued solely that the foreign award was unenforceable for lack of stamping under the Indian Stamp Act, 1899.

① The Supreme Court held that foreign arbitral awards are not liable for stamp duty under the Indian Stamp Act, 1899. It ruled that:

- The term “award” in the Stamp Act applies only to domestic awards.
- Foreign awards are excluded and thus not chargeable with stamp duty.
- Unstamped foreign awards remain enforceable under Sections 48 and 49 of the Arbitration and Conciliation Act, 1996.
- Non-payment of a non-applicable duty does not breach Indian public policy.

② Stamp duty is not a prerequisite for enforcing foreign arbitral awards in India.

**M/S. SHRIRAM EPC  
LIMITED VS. RIOGLASS  
SOLAR SA  
[CIVIL APPEAL NO.  
9515 OF 2018 (ARISING  
OUT OF SLP (CIVIL)  
NO.13913 OF 2018)]**

**SECTION 2(1)(c), 44,  
46, 47, 48, 49 OF THE  
ARBITRATION AND  
CONCILIATION ACT,  
1996**

**SECTION 2(14), 3, 33,  
35 OF THE INDIAN  
STAMP ACT, 1899**

**ARTICLE III OF THE  
NEW YORK  
CONVENTION, 1958**



# A DNA test cannot override the presumption of legitimacy without proof of non-access

**CONTEXT:** In this case, the husband filed for divorce under Sections 13(1)(i) and (ia) of the Hindu Marriage Act, alleging the wife’s adulterous relationship with another man. He sought a court-directed DNA test of their second child, Master "X", to prove infidelity. Relying on a private DNA report suggesting he was not the biological father, the husband contended that a DNA test was necessary to establish adultery. The Family Court and the Bombay High Court allowed the test, stating that refusal would justify drawing an adverse inference under Section 114(h) of the Indian Evidence Act, 1872.

- 1 The Supreme Court allowed the wife’s appeal, setting aside the lower court orders.  
  
It ruled that the direction for a DNA test was unjustified without a plea of non-access, which is necessary to rebut the presumption under Section 112 of the Evidence Act, 1872—conclusively presuming legitimacy if the child is born during a valid marriage.
- 2 Non-access refers to the absence of opportunity for sexual relations between the spouses during the probable time of conception.  
  
The Court emphasized that a DNA test cannot override this presumption unless strong evidence of non-access exists. Further, adultery must be proven independently and not merely inferred from the child’s paternity.
- 3 Drawing an adverse inference under Section 114(h) was also held inappropriate, as the wife’s refusal protected the child’s welfare.
- 4 The Court underscored the child’s right to privacy and identity, holding that DNA tests should not be ordered lightly, especially when they may harm the child’s well-being.

**APARNA AJINKYA**  
**FIRODIA VS. AJINKYA**  
**ARUN FIRODIA**  
**[CIVIL APPEAL NO. OF**  
**2023 (ARISING OUT OF**  
**SLP (C)**  
**NO.9855/2022)]**

**SECTION 4, 112, 114,**  
**148(4) OF THE INDIAN**  
**EVIDENCE ACT, 1872**

**SECTIONS 13(1)(I) AND**  
**(IA) OF THE HINDU**  
**MARRIAGE ACT, 1955**

**SECTION 14 OF THE**  
**FAMILY COURTS ACT,**  
**1984**

# **Can Constitutional Courts grant bail for violations of fundamental rights like the right to a speedy trial, despite restrictions under Section 43-D(5) of the Unlawful Activities (Prevention) Act (UAPA), 1967?**

**CONTEXT:** The respondent (K.A. Najeeb) was accused of conspiring in an attack on a professor over an objectionable exam question. The attack involved severing the professor's right palm and using country-made bombs. He allegedly facilitated the crime, arranged resources, helped the attackers, and absconded, leading to his separate trial. Charged under the Indian Penal Code, 1860, Explosive Substances Act, 1908, and UAPA, he was denied bail multiple times due to a prima facie case. After nearly five and a half years in custody and slow trial progress, the High Court granted him bail, which was challenged by the National Investigation Agency Act (NIA) 2008 in the Supreme Court.

① The Supreme Court upheld the High Court's order granting bail, dismissing the NIA's appeal.

② It held that prolonged custody (over five years) and unlikely early trial (276 witnesses pending) justified bail under Article 21, which ensures fair procedure and speedy trial.

③ The Court stated that undertrials cannot be detained indefinitely, and constitutional rights override statutory restrictions like Section 43-D(5) of UAPA when trials are unduly delayed.

④ It clarified that this provision is less stringent than NDPS Act's Section 37. Unlike in NIA v. Zahoor Ahmad Shah Watali (2019) 5 SCC 1, the High Court here did not re-evaluate evidence but granted bail based on delay. Additional conditions, including weekly police reporting, were imposed.

**UNION OF INDIA V. K. A. NAJEEB**  
**[1 S.C.R. 443]**

**SECTIONS 16, 18, 18-B, 19, 20, 43-D(5) OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 (UAPA)**

**SECTION 3 OF THE EXPLOSIVE SUBSTANCES ACT, 1908**

**SECTION 37 OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (NDPS)**

**SECTION 20(8) OF THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987 (TADA)**