IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Leave to Appeal to the Supreme Court in terms of section 5(1) of the High Court Special Provisions Act no. 10 of 1996 against the order dated 25.03.2019

SC APPEAL 08/2021

Leave to Appeal No.
SC/HC/LA/26/2019

High Court Case No.
CHC/346/2016/ARB

Sinhaputhra Finance PLC.
No. 11, Hill Street,
Kandy.

PETITIONER

Vs.

1. Chandrapatti Mohottilage Mahanthe
   Gedara Chndrarathna Banda
   No.17/8,
   Abagahapalassa.

2. Balagolla Gedera Piyadasa
   No. 17/11, 6th Mile Post,
   Abagahapalassa.

3. Dissanayake Mudiyanselage Ajith Kumara
   Dissanayake
   No. 17/16 A,
   Abagahapalassa.

4. Konara Mudiyanselage Thushari Dammika
   Polpitiya
   No. 17/8,
   Abagahapalassa.

RESPONDENTS

AND BETWEEN

Chandrapatti Mohottilage Mahanthe
Gedara Chndrarathna Banda
No.17/8,
Abagahapalassa.

1ST RESPONDENT-APPELLANT

Vs.

Sinhaputhra Finance PLC.
No. 11, Hill Street,
Kandy.

PETITIONER-RESPONDENT

2. Balagolla Gedera Piyadasa
   No. 17/11, 6th Mile Post,
   Abagahapalassa.

3. Dissanayake Mudiyanselage Ajith Kumara
   Dissanayake
   No. 17/16 A,
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4. Konara Mudiyanselage Thushari Dammika
Polpitiya
No. 17/8,
Abagahapalassa.

RESPONDENTS-RESPONDENTS

AND NOW BETWEEN

Sinhaputhra Finance PLC.
No. 11, Hill Street,
Kandy.

And now

LOLC Finance PLC
(Sinhaputhra Finance has amalgamated with Commercial Leasing and Finance PLC and thereafter Commercial Leasing and Finance PLC has amalgamated with LOLC Finance PLC)

No. 100/1,
Sri Jayawardenapura Mawatha,
Rajagiriya

PETITIONER-RESPONDENT-APPELLANT

Vs.

Chandrapatti Mohottilage Mahanthe
Gedara Chndrarathna Banda
No.17/8,
Abagahapalassa.

1ST RESPONDENT-

APPELLANT-RESPONDENT

2. Balagolla Gedera Piyadasa
   No. 17/11, 6th Mile Post,
   Abagahapalassa.

3. Dissanayake Mudiyanselage Ajith Kumara
   Dissanayake
   No. 17/16 A,
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4. Konara Mudiyanselage Thushari Dammika
   Polpitiya
   No. 17/8,
   Abagahapalassa.

RESPONDENTS-

RESPONDENTS-RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
JANAK DE SILVA, J. AND
MAHINDA SAMAYAWARDHENA, J

COUNSEL: Chathuranga Perera with Ms. Niluka Sujeewani instructed by Ms. Priyanka Dilhani for the Petitioner-Respondent-Appellant

Aruna Pathirana Arachchi instructed by Ms. I. Weerakkody for the 1st Respondent-Appellant-Respondent

WRITTEN SUBMISSIONS: Appellant-Respondent-Appellant 19th March 2024
Written submissions were not filed by the Respondents

ARGUED ON: 02nd April 2024

DECIDED ON: 01st July 2025

THURAIRAJA, PC, J.

1. This appeal arises from an application, challenging an order delivered by the Commercial High Court of the Western Province holden in Colombo (hereinafter referred to as "the Commercial High Court" or the "High Court"), instituted by 'Sinhaputhra Finance PLC', which now operates under the name 'LOLC Finance PLC' following the amalgamation of Sinhaputhra Finance PLC with 'Commercial Leasing and Finance PLC' on 21st March 2022, and the subsequent amalgamation of Commercial Leasing and Finance PLC with LOLC Finance PLC on 31st March 2022 (Petitioner-Respondent-Appellant, hereinafter referred to as "the Appellant").

2. In order to avoid any confusion regarding the identification of the parties, this Court wishes to note at the outset that it has taken the liberty of correcting the caption to

accurately reflect the Appellant party, who had been incorrectly referred to as the 'Petitioner' in the amended caption and the written submissions filed by the registered attorney.

3. Furthermore, it is noted that the Respondent party has failed to file written submissions in compliance with the Supreme Court Rules.

FACTS OF THE MATTER

4. The factual matrix reveals that the Appellant and the 1st Respondent-Petitioner-Respondent (hereinafter referred to as "the 1st Respondent") entered into a Lease Agreement bearing No. HOLELE1301234800 dated 29th November 2013. The agreement was executed for the lease of a Hand Tractor, specified to be of Model Number K600A22888 and bearing Serial Number GA75-009790, to the 1st Respondent by the Appellant.

5. With the execution of the Lease Agreement, the parties also entered into an Arbitration Agreement dated 29th November 2013, wherein the parties mutually agreed to settle all dispute by way of arbitration under and in terms of the *Arbitration Act No. 11 of 1995* (hereinafter sometimes referred to as "the Act"). The said clause of the Lease Agreement is as follows:

> *"…all disputes, controversies or differences which may arise between OWNER/LESSOR/LENDER and OBLIGOR hereto, out of or in relation to or in connection with the aforesaid Lease Agreement No. HOLELE1301234800 dated 29/11/2013 shall be settled by arbitration under the provisions of Arbitration Act No. 11 of 1995 of the Democratic Socialist Republic of Sri Lanka…"*

6. The initial dispute between the parties arose when the 1st Respondent failed to remedy a default in the leased machine, as specified by the Appellant. As a result, the Appellant

declared the lease agreement between the parties to be terminated, asserting that the property leased to the Respondent was no longer held with the Appellant's permission or consent.

7. Thereafter, the Appellant informed the 1st Respondent of the total outstanding amount due, including interest, and requested the return of the leased vehicle in good working condition. The Appellant further stated that failure to comply would require both the Respondents and the guarantors to proceed in accordance with the arbitration agreement entered into by the parties.

8. As the Respondent failed to settle the outstanding payments or return the vehicle, the Appellant, by letter dated 31st December 2014, formally informed the Respondents that a dispute had arisen between the parties. In keeping with the arbitration agreement entered into on 29th November 2013, the Appellant indicated that such dispute would be referred to arbitration.

9. In the said letter, the Appellant proposed the appointment of Mr. M. S. Munasinghe as the arbitrator, as he was one of the arbitrators listed in the arbitration agreement. The Appellant further invited the Respondents to suggest an alternative arbitrator, should they wish to do so, within 14 days of the date of the said letter. As no objections or counter-proposals were made by the Respondents within the stipulated period, Mr. M. S. Munasinghe was duly appointed as the arbitrator.

10. In accordance with the appointment, the arbitration proceedings commenced on the 31st January 2015. While the Appellant appeared before the arbitrator, the Respondents or their representatives failed to attend. Consequently, the matter was adjourned and re-fixed for 14th March 2015, as recorded in the minutes of the proceedings dated 31st January 2015. In those minutes, the arbitrator stated that he would notify the

Respondents of both the agenda of the proceedings and the adjourned date by registered post.

11. By letters dated 7th March 2015, the Appellant too wrote to the Respondents, requesting their presence at the arbitration on 14th March 2015 at the same venue. These letters included the minutes of the arbitration session held on 31st January 2015.

12. However, on the adjourned date, 14th March 2015, the Respondents once again failed to appear before the arbitral tribunal, while the Appellant remained present. In light of the continued absence of the Respondents, and upon the request of the Appellant, the arbitrator allowed the matter to proceed *ex parte*. According to the minutes of the arbitration held on 14th March 2015, the arbitrator granted leave for the Appellant to submit its evidence by way of affidavit on 17th October 2015.

13. Accordingly, on 17th October 2015, the Appellant tendered its submission *ex parte* in the form of an affidavit. Upon consideration of the submissions and materials placed before him, the arbitrator delivered an arbitral award dated 19th October 2015, in favour of the Appellant.

14. In the said award dated 19th October 2015, the arbitrator made several key findings. It was observed and confirmed that both the Appellant and the 1st Respondent had duly signed the lease agreement as well as the arbitration agreement. The arbitrator further noted that the Respondents had been informed, by letter dated 11th March 2014, that the lease agreement would be terminated, and that a formal notice of termination had subsequently been issued on 23rd April 2014. Following the termination, letters of demand had been sent by the Appellant to the Respondents, calling for the settlement of outstanding payments.

15. Noting that the Respondents had failed to settle the outstanding amount payable under the lease agreement, accordingly, the arbitrator made an award in favour of the Appellant, directing the 1st Respondent to pay the outstanding sum of Rs. 495,538.91 as at 8th May 2014, together with legal interest from the date of this request until full settlement. The Respondent was further directed to return the hand tractor identified in the Schedule of the lease agreement in good working condition. In the event the tractor could not be returned in such condition, they shall be entitled to a sum of Rs. 399,900. Additionally, a sum of Rs. 9,000 was awarded against the Respondents as arbitration fees.

16. There is proof that the arbitration award dated 19th October 2015, the arbitration minutes of 17th October 2015, and letters dated 14th and 23rd November 2015 were duly served by the Appellant on all Respondents. Despite receipt of these documents, neither the 1st Respondent nor any of the other Respondents made any applications challenging the said arbitral award before any court.

17. Subsequently, the Appellant filed an application dated 3rd June 2016 before the Commercial High Court of the Western Province holden in Colombo, seeking enforcement of the arbitral award. At the inquiry into the said application, none of the Respondents appeared or participated in the proceedings. Consequently, the learned High Court Judge delivered the judgment *ex parte,* on 8th December 2017, in favour of the Appellant. A decree was also entered on the same date.

18. Following this, the Appellant made an application dated 8th March 2018 to the Commercial High Court seeking execution of the said decree. Pursuant to this application, a writ of execution was issued to the Fiscal of the High Court of Kandy to seize the properties listed in the Appellant's schedule of assets.

19. Thereafter, on 1st October 2018, the 1st Respondent filed a petition and affidavit under Section 839 of the *Civil Procedure Code*, seeking to set aside the judgment of 8th

December 2017. It was the 1st Respondent's contention that the said judgment had been delivered *per incuriam* and had been obtained by misrepresentation of material facts by the Appellant.

20. The 1st Respondent alleged in their Petition that, although the lease agreement specified a vehicle bearing a particular model and serial number, the vehicle actually delivered to him was different, bearing a separate model and serial number altogether. It was further alleged that the Appellant had engaged in similar deceptive conduct with several other customers. In support of these claims, the 1st Respondent relied on the document marked 'X1', the notice of execution of writ issued to the fiscal of the High Court of Kandy, which referenced a different model of tractor, suggesting that the vehicle given to him was not the one identified in the lease agreement.

21. Pursuant to the 1st Respondent's application filed under Section 839 of the *Civil Procedure Code*, the Learned High Court Judge delivered an order staying the judgment previously entered by the Commercial High Court. In the said order dated 25th February 2019, the Judge observed that it was apparent the arbitral award and resulting enforcement proceedings concerned a different vehicle than the one actually provided to the 1st Respondent.

22. The Court further noted that the Appellant's company had failed to provide a satisfactory response regarding this discrepancy. Accordingly, the learned Judge held that the arbitration award pertained to a vehicle unrelated to the one delivered under the lease agreement, and therefore, the Court lacked jurisdiction to enforce such an award. As such, the High Court found that there was an error in the order made and entered a stay order against the judgment of the Commercial High Court dated 8th December 2017.

QUESTIONS OF LAW

23. Being aggrieved with the said order, the Appellant filed the present appeal before this Court, challenging the stay order. Leave to proceed was granted on 11th January 2021 on the following questions of law:

"

I. Did the Commercial High Court err and/or misdirect and/or non-direct itself by not giving due regard to the material evidence placed on record when it categorically failed to identify that, the Appellant had in fact handed over to the 1st Respondent the vehicle as stated in the lease agreement?

II. Did the Commercial High Court err and/or misdirect and or non-direct itself with the available evidence when holding that the Court has no jurisdiction to make order to enforce such an arbitral award simply on the ground that the vehicle handed over to the 1st Respondent was not the vehicle or which the lease agreement was entered, was an order made simply on the strength of the averments of the Petition preferred by the 1st Respondent without adequately looking into the evidence place in record?

III. *Did the Commercial High Court err and/or misdirect and/or non-direct itself when making the order marked Y (the order by the commercial high court dated 25th February 2019), on the strength of an application made under Section 839, of Civil Procedure Code whereas from 08th of December 2017 up until 01st of October 2018 the 1st Respondent had not opted to any statutory relief either by way of appeal or otherwise to get such order vacated?*" [1]

24. In addition to the above questions of law raised by the Appellant, the Court also framed the following further question of law:

[1] Reproduced verbatim

IV. *"Whether the relief prayed for in the Petition dated 01/10/2018, filed in the High Court of Provinces established by the Act No. 54 of 2006 could have been granted by the High Court?"*

ANALYSIS

25. I will first address the third question of law, as it raises a fundamental issue concerning whether the High Court possessed the jurisdiction to stay or set aside the arbitral award. This question strikes at the core of this appeal, and therefore, it is appropriate to address this issue before examining the merits of the case.

Have the Respondents invoked Section 32(1) of the Arbitration Act?

26. This Court notes that the Appellant's application for the enforcement of the arbitral award has been made under and in terms of Sections 31(1) to 31(5) of the *Arbitration* Act. There is no indication that the Appellant has failed to comply with any of the procedural or substantive requirements prescribed under these provisions.

27. In these circumstances, Section 31(6) of the Act provides as follows:

> *"Where an application is made under subsection (1) of this section and there is no application for the setting aside of such award under section 32 or the court sees no cause to refuse the recognition and enforcement of such award under the provisions contained in sections 33 and 34 of this Act, it shall on a day of which notice shall be given to the parties, proceed to file the award and give judgment according to the award. Upon the judgment so given a decree shall be entered."*

28. Accordingly, it is evident that where an application has been made under Section 31(1) of the Act for the enforcement of an arbitral award, and the Court is satisfied that the applicant has duly complied with the requirements set out in Sections 31(2) to 31(5),

Section 31(6) obliges the Court to file the arbitral award, deliver judgment in accordance with the award, and cause a decree to be entered thereon.

29. Furthermore, it is equally apparent from the language of Section 31(6) that the Court is permitted to refrain from granting such recognition and enforcement only in the following two situations:

    (i) where there exists an application by a party to the arbitration, seeking to set aside the arbitral award under Section 32 of the Act, and such application is pending determination; or

    (ii) where the Court, on its own accord, finds cause to refuse the recognition and enforcement of the arbitral award under the provisions contained in Sections 33 and 34 of the Act.

30. However, this Court observes that, in the present case, the Respondent has not, at any stage, made an application under Section 32 of the Act seeking to set aside the arbitral award. As such, the first ground outlined above is not applicable. With regard to the second ground, that, too, is inapplicable, as Sections 33 and 34 of the Act apply exclusively to foreign arbitral awards. The award in question, having been made in Sri Lanka, does not fall within the scope of those provisions. Accordingly, neither of the exceptions under Section 31(6) operates in the present matter.

31. In ***Lanka Orix Leasing Limited v. Weeratunge Arachchige Piyadasa***,[2] Prasanna Jayawardena PC, J. observed:

    "…in the present case, the respondent has not made an application under section 32 of the Act to set aside the arbitral award and, therefore, ground (i) stated above

[2] SC Appeal No. 113/2014, S.C. Minutes of 05th April 2019, at pp. 6-7

will not apply. [....]

Consequently, the learned High Court Judge had no jurisdiction to set aside the arbitral award under the provisions of section 31 (6) of the Act in the course of determining the appellant's application made under section 31 (1) to enforce the arbitral award"

32. Subsequently, His Lordship further held that,

"A party who wishes to set aside an arbitral award made in Sri Lanka must file an application under section 32 (1) and pray to have the arbitral award set aside."[3]

33. Further guidance is found in ***Southern Group Civil Construction (Pvt) Ltd v. Ocean Lanka (Pvt) Ltd***,[4] where it was held that an arbitral award made in Sri Lanka may be set aside on the grounds stipulated in Section 32(1)(a) or 32(1)(b) of the Act only if the party concerned has formally invoked Section 32(1), expressly requesting that the award be set aside.

34. In view of the foregoing, this Court is compelled to conclude that the High Court has erred in interfering with the arbitral award in the absence of an application under Section 32(1) of the *Arbitration Act*. Accordingly, this Court takes the view that the learned High Court Judge had no jurisdiction to set aside the arbitral award in the course of determining the appellant's application made under section 31 (1) of the Act to enforce the arbitral award.

[3] ibid

[4] [2002] 1 Sri LR 190

Is the Respondent's application time-barred?

35. In any event, at the time of making the application in question, the Respondents could not have maintained an application under Section 32(1) of the Act to set aside the arbitral award, as such an application would have been time-barred. Section 32(1) clearly stipulates that an application to set aside an arbitral award must mandatorily be made within sixty days of the party concerned receiving the arbitral award.

36. As Shirani Bandaranayake, J. (as Her Ladyship was then) observed in ***Southern Group Civil Construction (Pvt) Ltd v. Ocean Lanka (Pvt) Ltd***,[5]

> *"The next question that has to be considered relates to the application of the time bar contained in the opening paragraph of section 32 (1). I have at the commencement of this judgment adverted to the distinction between the respective time periods with which applications could be made for recognition and enforcement on the one hand and to set aside an award on the other. The clear Legislative intent in having a shorter time period for setting aside an arbitral award is to ensure that a challenge to the validity of the award should be made early and the party having the benefit of the award may take a longer time to enforce it."* [6]

37. In the present case, the Respondents failed to act within this prescribed period. The judgment enforcing the arbitral award was delivered by the Commercial High Court on 8th December 2017, whereas the Respondents filed their application by way of Petition and Affidavit only on 1st October 2018—approximately 297 days later.

38. I wish to clarify how the determination is made regarding compliance with the sixty-day time limit under Section 32(1) for setting aside an arbitral award. This time frame begins

[5] [2002] 1 Sri LR 190

[6] ibid at 195-196

from the date of receipt of the award, and where a party claims that the award was only received upon being served with notice of the other party's enforcement application under Section 31(1), they may still file an application to set aside the award within sixty days from that service. However, in such instances, it is the responsibility of the party seeking to set aside the award to satisfy the Court that they had not received the award earlier. Section 40 further reinforces this, requiring that a certified copy of the arbitral award be annexed to the enforcement application and be duly served on the other party.

39. In this regard, Prasanna Jayawardena, PC, J. in ***Lanka Orix Leasing Limited v. Weeratunge Arachchige Piyadasa*** observed as follows:

> *"I wish to add that the requirement in section 32 (1) that an application made thereunder to set aside an arbitral award must be made within sixty days of the receipt of the arbitral award, necessarily means that a party who claims that he did not receive a copy of the arbitral award until he was served with notice of the other party's application under section 31 (1) to enforce the arbitral award, will be entitled to make an application under section 32 (1) to set aside the arbitral award within sixty days of being served with notice of the application to enforce the arbitral award.*
>
> *In this connection, it may be mentioned that section 40 of the Act requires that an application under section 31 (1) to enforce an arbitral award must be by way of a petition with, inter alia, the arbitral award or a duly certified copy annexed thereto and that these documents must be served on the other party. Needless to say, in cases where an application under section 32 (1) to set aside an arbitral award is made only upon service of notice of an application for enforcement, the party who has made the application under section 32 (1) to set aside the arbitral award will have to satisfy the High Court that he had not received a copy of the arbitral award*

prior to service of that notice and that his application to set aside the arbitral award is made within sixty days of service of that notice." [7]

40. In the present case, the Respondents have made no attempt to assert that the arbitral award was not served on them earlier; nor have any such claim been raised in their petition before the Commercial High Court.

41. Any party seeking to challenge the award must bring all grounds of challenge within that time frame and place before the High Court all the supporting material, including that which is intended to invoke the Court's intervention under Section 32(1)(b). This ensures finality in arbitral proceedings and discourages parties from attempting to reopen matters long after the award has been made and served. It further provides certainty to parties who have acted on the outcome of the award, preventing unnecessary disruption to commercial arrangements.

42. It must be underscored that arbitration, as a mode of dispute resolution, exists not merely as an alternative to litigation but as a framework designed to promote finality, expediency, and party autonomy in the resolution of commercial disputes. The statutory time limits imposed for challenging an award are not procedural technicalities, but an essential feature of that framework, intended to provide closure and certainty to parties who have chosen to resolve their disputes privately and efficiently through arbitration. To permit belated or procedurally irregular challenges would not only erode the effectiveness of the arbitral process but also undermine the legislative intent, which places a premium on respecting the integrity and conclusiveness of arbitral awards. In this instance, it is evident that the Respondents have not acted within the boundaries set by law, nor have they demonstrated cause for judicial intervention at this stage.

[7] SC Appeal No. 113/2014, S.C. Minutes of 05th April 2019, p.9

43. Accordingly, in light of the above discussion, I answer the third question of law in the Affirmative, for the Respondents have not duly made an application under Section 32 of the Arbitration Act to challenge the arbitral award.

44. In light of this finding, I am of the view that there is no necessity to consider the fourth question of law.

45. Considering the first and second questions of law together, the 1st Respondent claims that the Appellant had leased to him a vehicle different from the one identified in the lease agreement, asserting that although the lease states the model number as 'K600A22888,' the document marked 'X1' being the notice of writ issued to the Fiscal of the High Court of Kandy, refers to the model as 'K75'. Based on this discrepancy, the 1st Respondent alleges that the Appellant engaged in a fraudulent transaction.

46. This Court finds that the arbitral award was issued in relation to the lease agreement bearing No. HOLELE1301234800, which specifically identifies the vehicle with the model number 'K600A22888' and the serial number 'GA75-009790'. These same details are reflected in the vehicle registration document and the delivery order, both of which have been included in the brief as part of the Appellant's supporting material and are relied upon to substantiate the Appellant's position.

47. In response to the seizure order subsequently issued during writ execution contains a reference to the model number 'K75', the Appellant submits that this may have been the result of an inadvertent clerical error in the enforcement process.

48. This Court wishes to make clear that it is not within its scope to determine whether the vehicle delivered was different from the one referred to in the lease agreement. The allegation of factual inconsistency based on a model number discrepancy would require a re-evaluation of evidence already presented to and assessed by the arbitral tribunal.

Arbitration is a distinct and final form of dispute resolution, designed to limit judicial intervention and expedite the settlement of disputes. The Arbitration Act confines judicial intervention with respect to arbitral awards strictly to the grounds enumerated in Section 32.

49. In the present instance, the issue raised by the 1st Respondent does not fall within any of the limited grounds under Section 32(1)(a) or (b), namely, incapacity, lack of notice, excess of jurisdiction, procedural irregularity, or conflict with public policy. Crucially, the Respondents have not even invoked Section 32 at all.

50. As noted by Tilakawardane, J. in ***Light Weight Body Armour Ltd. v. Sri Lanka Army***,[8]

> *"Arbitration is an alternate means of dispute resolution which has been introduced and developed in order to reduce the amount of time spent in litigation. In this light, the Arbitration Act contemplates that the arbitral Award is not susceptible and not vulnerable to any challenge except that permitted under the Act. This is on the basis that it is conclusive as a judgment between the two parties and could only be set aside [on] the grounds explicitly set out in section 32 of the Act."*[9]

51. The onus of proving that it falls within the ambit of the said provision lies on the party making such an application. The legislative intent behind the Act is clearly to confer a degree of finality to decisions of an arbitral tribunal, which is the arbiter of both questions of fact and law referred to it.

52. Thus, even in exercising jurisdiction under Section 32 of the Act, as Tilakawardane, J. noted,

[8] [2007] 1 Sri LR 411

[9] ibid 417

> *"...the Court cannot sit in appeal over the conclusions of the arbitral Tribunal by re-scrutinizing and re-appraising the evidence considered by the arbitral Tribunal[...] The Court cannot re-examine the mental process of the Arbitral Tribunal contemplated in its findings, nor can it revisit the "reasonableness" of the deductions given by the arbitrator, since the Arbitral Tribunal is the sole judge of the quantity and quality of the mass of evidence led before it by the parties."*[10]

53. Accordingly, I answer the first question of law in the negative. As it is not within the preview of the High Court to reconsider the evidence on record, it cannot be said that the learned Judge erred or misdirected himself in not giving due regard to the material evidence.

54. However, where the learned Judge has erred is in concluding that the Court lacked jurisdiction, relying on factual circumstances that do not meet the grounds set out in Section 32 for challenging an arbitral award. Accordingly, the second question of law is answered in the affirmative.

55. It must be underscored that arbitration is a consensual mechanism chosen by parties to resolve disputes arising from their contractual relationship, and operates independently of the traditional judicial process. By opting for arbitration, parties expressly agree to be bound by the decision of the arbitral tribunal, which serves as the final adjudicator of both facts and law. In this framework, the power of the High Court to intervene is strictly confined to the parameters established by the Arbitration Act.

56. The Court is not authorised to second-guess or override the arbitral process based on perceived factual anomalies or general notions of fairness. Any judicial interference outside the express limits of the Act not only contravenes the statutory framework but

[10] ibid 418

also undermines party autonomy and the finality of arbitral awards, effectively defeating the purpose of alternative dispute resolution. Judicial restraint in this context is not a matter of discretion but a legal imperative flowing from legislative intent.

57. I would be remiss if I did not address the legal foundation upon which the 1st Respondent sought to challenge the judgment of the Commercial High Court dated 08th December 2017. The application was filed under Section 839 of the *Civil Procedure Code*, which preserves the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. It does not provide a basis for reopening matters that have already been conclusively determined by an arbitral tribunal acting under the authority of the *Arbitration Act*.

58. In the present case, the 1st Respondent sought to invoke Section 839 of the *Civil Procedure Code* on the ground that the judgment enforcing the arbitral award had been entered *per incuriam*. However, a careful examination of the pleadings and of the High Court's order dated 25th February 2019 makes it clear that the contention advanced by the 1st Respondent centred not on any procedural oversight committed by the Court, but rather on factual assertions relating to the vehicle delivered under the lease agreement, assertions which had not been raised before the arbitral tribunal, and which were not addressed in the award. The effect of the application was thus to invite the Court to re-evaluate matters that were, by that stage, beyond the Court's jurisdiction. The *per incuriam* rule has no application in this context.

59. In my view, the learned High Court Judge, in granting the said application, exceeded the scope of their jurisdiction under Section 839 of the *Civil Procedure Code*. The jurisdiction conferred by said provision does not permit a court to displace the legal effect of an arbitral award by re-examining facts that were, or could have been, raised in arbitration. To do so amounts to sitting in appeal over an arbitral award.

60. The *Arbitration Act* sets out a detailed and exclusive procedure for challenging an arbitral award, under Section 32(1) of the Act, subject to strict time limits and limited grounds. In this instance, no application was made by the 1st Respondent to set aside the award. Nor was leave sought to appeal to the Supreme Court on a question of law under Section 37(2) of the Act. The award, once enforced by judgment, stood final and binding, and could not have been displaced through an application under Section 839 of the *Civil Procedure Code*.

61. In the circumstances, it is my considered opinion of this Court that the learned High Court Judge erred in law by granting relief under Section 839 of the *Civil Procedure Code*.

62. The order dated 25th February 2019 amounts to an unwarranted and procedurally flawed interference with a valid and unchallenged arbitral award. For that reason, the said decision cannot stand, and it is accordingly set aside.

63. The Appeal is allowed. Parties shall bear their costs.

Appeal Allowed.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

64. I have had the benefit of reading in draft the judgment proposed to be delivered by my learned brother Thurairaja, PC, J. I agree with his conclusion that the appeal must be allowed and the order of the Commercial High Court dated 25th February 2019 set aside.

65. I wish to set forth succinctly my reasons for allowing the appeal.

66. The Commercial High Court by its judgment dated 8th December 2018 granted the application made by the Petitioner-Respondent-Appellant (Appellant) to enforce the arbitral award. Sometime thereafter, the 1st Respondent-Petitioner-Respondent (Respondent) made an application to the Commercial High Court under Section 839 of the Civil Procedure Code to have the judgment dated 8th December 2018 set aside on *per incuriam* basis.

67. It was the contention of the Respondent that though the model number and the serial number as depicted in the lease agreement was in fact the vehicle claimed to have been given on lease, in actual fact it was a different vehicle given to the Respondent bearing a different model number and serial number. It was claimed that the Appellant had engaged in similar type of deceptive transactions with several other customers of the Appellant. The Respondent asserted that the fact the Appellant had given a different vehicle on lease, other than the vehicle bearing the model number and the serial number as stated in the lease agreement to the Respondent is evident from the fact that, in the document marked X1, a different model tractor has been mentioned as belonging to the Appellant. The Respondent therefore contended that arbitration proceedings could not have commenced.

68. It appears that the learned judge of the Commercial High Court had granted the Appellant several dates in order to clarify the position but it was not done. The impugned order was made thereafter.

69. The Appellant has in the petition filed in this Court conceded that in the document marked X1, the hand tractor model inadvertently states as "K75" whereas the correct model number should read as "K600A22888". The Appellant has sought to produce the vehicle registration number document and delivery order of the vehicle issued to the Respondent to substantiate its position. However, these documents were not before the Commercial High Court and cannot be examined by this Court.

70. Nevertheless, the procedure adopted by the Respondent as well as the Commercial High Court is deeply flawed.

71. The Arbitration Act No. 11 of 1995 (Act) has specifically set out in Sections 31 and 32 respectively, the procedure for the enforcement and setting aside of arbitral awards made in Sri Lanka.

72. As my learned brother points out, the Respondent did not assert at any point of time that the arbitral award was never served on him. Hence his remedy was to invoke the jurisdiction of the Commercial High Court in terms of Section 32 to set aside the arbitral award within 60 days of the receiving of the award. He failed to do so.

73. Recently I had the occasion to examine the scope of Sections 31, 32 and 40 of the Act in ***Sri Lanka Ports Authority v. Daya Constructions (Private) Limited (Presently Olympus Construction (Pvt) Ltd.)*** **[S.C. Appeal No. 35/2012, S.C.M. 14.05.2025].** I held that the procedures envisaged in Section 31 and 32 for the recognition and enforcement and the setting aside of an arbitral award are distinct procedures. A respondent in an application for setting aside of an arbitral award cannot pray for the enforcement of the award. A separate application must be filed in terms of Section 31 of the Act. Similarly, a respondent in an application to enforce an arbitral award cannot pray for the setting aside of the award. A separate application must be filed in terms of Section 32 of the Act.

74. Having failed to do so, the Respondent cannot resort to the inherent powers of court in terms of Section 839 of the Civil Procedure Code. The inherent power specified therein has no application when there is specific statutory procedure.

75. For the foregoing reasons, I allow the appeal and set aside the order of the Commercial High Court dated 25th February 2019.

JUDGE OF THE SUPREME COURT