SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 1 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

tenant. His remedy would, therefore, to be entirely under the Act. This is just by way of an illustration. If such a situation arises what procedure should the court follow in a pending suit which was instituted in a competent court having jurisdiction at the date of its institution. It would seem unfair to non-suit the plaintiff altogether for no fault of his own. We think, in such a situation where the entire dispute falls outside the civil court's jurisdiction on account of the change in law the proper course would be to follow in spirit the procedure outlined in Order 7 Rules 10 and 10-A of the Code of Civil Procedure.

12. Since the paper-book in this appeal does not contain the original plaint and the written statement and counsel were unable to enlighten us on the actual nature of the pleadings we have tried to indicate the procedure to be followed by the civil court on illustrative fact-situations. In the circumstances, we are left with no alternative but to remit the matter to the trial court with a direction to follow the course that may be found appropriate in the fact-situation arising out of the pleadings in this case and the nature of the questions required to be determined for grant or refusal of relief claimed in the suit. We would like to make it clear that the hypothetical situations may or may not apply to the fact-situation that may emanate from the pleadings in this case and it would be for the trial court to determine the course of action to be adopted in the light of the guidelines indicated hereinabove.

13. In view of the foregoing discussion, we allow this appeal, set aside the order of the High Court which in either case lacked jurisdiction to decide the question regarding tenancy on merits and remit the matter to the trial court for further orders in the light of the observations hereinabove made. Having regard to the peculiar facts and circumstances of the case, we make no order as to costs.

(1993) 3 Supreme Court Cases 137

(BEFORE M.N. VENKATACHALIAH, C.J. AND G.N. RAY, J.)

M. DAYANAND REDDY .. Appellant;

Versus

A.P. INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED AND OTHERS .. Respondents.

Civil Appeal No. 1427 of 1993†, decided on March 24, 1993

Arbitration Act, 1940 — Ss. 2(a) & 8 — Arbitration agreement — Not incorporated in the original agreement — Incorporation may be by reference to a specific document — Clear intention of the parties to be ascertained on construction of the documents — Mere inadvertent inclusion of an arbitration clause in a copy of the agreement not sufficient to prove incorporation thereof

† From the Judgment and Order dated February 13, 1992 of the Andhra Pradesh High Court in Civil Revision Petition No. 2269 of 1991

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 2 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

Held :

Under the Arbitration Act, 1940, only an arbitration agreement in writing is recognised. It is not necessary that the contract between the parties should be signed by both the parties. But it is necessary that the terms should be reduced in writing and the agreement between the parties on such written terms be established. It is not necessary that all the terms of the agreement should be contained in one document. Such terms may be ascertained from the correspondence consisting of number of letters. An arbitration clause is not required to be stated in any particular form. If the intention of the parties to refer the dispute to arbitration can be clearly ascertained from the terms of the agreement, it is immaterial whether or not the expression arbitration or 'arbitrator' or 'arbitrators' has been used in the agreement. It is also not necessary that agreement to arbitration should appear in the document containing the other terms of agreement between the parties. Arbitration clause may be incorporated by reference to a specific document which is in existence and whose terms are easily ascertainable. The intention to refer to arbitration by such incorporation must be clear and specific. The question whether or not the arbitration clause contained in another document is incorporated in the contract, is always a question of construction. This depends on the interaction of the parties to be gathered from the relevant documents and surrounding circumstances. (Paras 8 and 9)

Jugal Kishore Rameshwardas v. *Mrs Goolbai Hormusji*, AIR 1955 SC 812: (1955) 2 SCR 857; *Union of India* v. *A.L. Rallia Ram*, AIR 1963 SC 1685: (1964) 3 SCR 164; *Rukmanibai Gupta (Smt)* v. *Collector, Jabalpur*, (1980) 4 SCC 556: AIR 1981 SC 479, *relied on*

In the present case the original agreement signed between the parties does not contain any clause for arbitration. It is not the case of the applicant that the applicant had no occasion to know the terms of the agreement since signed by the parties and there was any clear representation that the copy of agreement was to be followed by the parties and terms contained in the copy were to be treated as the terms of agreement between the parties. Hence, it cannot be held that after the signed agreement the parties had clearly intended to include arbitration clause in the standard specifications. In the absence of clear intention of both the parties, agreement for arbitration cannot and should not be inferred more so when the specific case of the respondents is that by mistake the clause relating to arbitration crept in the copy of agreement. Therefore, the civil court had erred in allowing the application for appointment to arbitrator simply on the ground that a copy of the agreement was forwarded to the appellant with the seal and signature of the principal wherein there was a reference for arbitration as contained in the standard specifications. In the facts of the case, only the original agreement, and not the copy, was binding between the parties. Hence, no reference to arbitration could be made. (Paras 9 and 8)

Arbitration Act, 1940 — S. 2(a) — Arbitration agreement — Arbitration clause and other clauses in the agreement — Distinction between

The arbitration clause is quite distinct from the other clauses of the contract. Other clauses of agreement impose obligation which the parties undertake towards each other. But arbitration clause does not impose on any of the parties any obligation in favour of the other party. Such arbitration agreement embodies an agreement between the parties that in case of a dispute, such dispute shall be settled by arbitrator, or umpire of their own constitution or by an arbitrator to be appointed by the Court in an appropriate case. In an ordinary contract the obligation of the parties to each other cannot, in general, be specifically enforced and breach of such terms of contract results only in damages. The arbitration clause however can be

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 3 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

specifically enforced by the machinery of the Arbitration Act. The appropriate remedy for breach of an agreement to arbitrate is enforcement of the agreement to arbitrate and not to damages arising out of such breach. Moreover, there is a further significant difference between an ordinary agreement and an arbitration agreement. In an arbitration agreement, the courts have discretionary power of dispensation of a valid arbitration agreement but the courts have no such power of dispensation of other terms of contract entered between the parties. An arbitration agreement in no way classifies the right of the parties under the contract but it relates wholly to the mode of determining the rights. (Para 8)

Heyman v. *Darwins Ltd.*, 1942 AC 356: (1942) 1 All ER 337; *North Western Rubber Company and Huttenbach & Co.,* Re, (1908) 2 KB 907: 78 LJKB 51; *Produce Brokers Co.* v. *Olympia Oil and Cake Co.,* (1916) 1 AC 314 (HL), *referred to*

Appeal dismissed R-M/12064/C

Advocates who appeared in this case :
S.K. Mehta, Advocate, for the Appellant;
K. Ram Kumar, Advocate, for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J.— Leave granted.

2. Pursuant to the notice issued on the Special Leave Petition No. 7575 of 1992, the respondents have appeared and have filed counter-affidavits and the appellant has also filed affidavit of rejoinder. The special leave petition out of which this appeal arises is directed against order dated February 13, 1992 passed by the Andhra Pradesh High Court in Civil Revision No. 2269 of 1991. The said civil revision was filed by the respondents against order dated May 10, 1991 by which the learned 5th Additional Judge, City Civil Court of Hyderabad allowed the application filed under Sections 3, 5, 11 and 12 read with Sections 8 and 9 of the Indian Arbitration Act for removal of the named arbitrator in the agreement dated December 11, 1986 and to appoint the sole arbitrator in his place.

3. The learned Judge, City Civil Court, inter alia came to the finding that it was a fit case where the sole arbitrator should be appointed for adjudicating the disputes and differences between the parties arising out of the agreement in question and the learned Judge appointed a retired District Judge as the sole arbitrator for adjudicating the disputes and differences arising out of the arbitration agreement for entering upon the reference and sign and pass the award according to law.

4. The case of the appellant in short is that the appellant is a Class I Contractor. He entered into an agreement with respondent 1, A.P. Industrial Infrastructure Corporation Ltd., for the construction of main sewer line from Point (H) near C.C. Building IDA Nacharam to the disposal units of Nallacheru (near Uppal) on December 11, 1986. Pursuant to such agreement, the appellant completed the work in question. Since certain disputes and differences had arisen between the appellant and the said Corporation during the execution and completion of the contract, the appellant by notice dated June 27, 1988 requested the

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 4 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

Chairman of the Corporation to refer the dispute for arbitration as per Clause 73 of the preliminary specifications of A.P. standard specifications, hereinafter referred to as the standard specifications. As the first respondent refused to settle the claims, the appellant sent a claim petition dated October 3, 1988 to the named arbitrator which was received by the said named arbitrator on October 5, 1988. As the appellant did not receive any communication from the named arbitrator, he sent a reminder under registered post on November 28, 1988 to the named arbitrator. The named arbitrator, however, did not enter upon the reference within a period of one month and also did not pass any award within a period of four months as contemplated in the Indian Arbitration Act. The appellant also contended in the said application for appointment of arbitrator in place of the named arbitrator that the Chairman of the Corporation, namely, the first respondent had sent an undated letter signed on November 8, 1988 informing the appellant that para 3 of the article of the agreement since referred to by the appellant was erroneous and while making copies of the arbitration agreement entered into between the parties, wrong sheets were enclosed but in the original agreement, since signed between the parties, there was no arbitration clause for the work in question. The appellant, however, gave a further notice dated January 5, 1989 through his learned advocate calling upon the said respondent to concur for the appointment of anyone of the three persons named in the said notice to act as an arbitrator to adjudicate the disputes and differences arising between the parties. On receiving such notice, the first respondent by his letter dated January 18, 1989 informed the learned advocate of the appellant that as there was no arbitration clause in the agreement entered into between the parties, the question of entertaining the request to appoint arbitrator did not arise. In view of such failure on the part of the respondent to refer the dispute to the arbitration in terms of the said agreement between the parties, the appellant made a prayer for removing the named arbitrator in respect of the works in question and to appoint anyone of the three persons named in the application as sole arbitrator to adjudicate the disputes and differences. On such application made by the applicant in the court of the 5th Additional Judge, City Civil Court, Hyderabad, the proceeding being O.P. No. 132 of 1989 arose.

5. Respondent 1 opposed the said application and filed counter to the said application inter alia contending therein that the appellant entered into the agreement dated December 11, 1986 with the A.P. Industrial Infrastructure Corporation for the said work and the time stipulated for the construction of the work was six months from the date of handing over of the site. The appellant, however, completed only a part of the work although the site was handed over to him. But before the completion of the entire work, the accounts were settled between the parties and the final bill was also paid to the appellant and the balance of work was got

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 5 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

completed through other agencies. It was further contended that the original agreement signed between the parties did not provide for any arbitration clause and such fact was made known to the appellant. In view of the aforesaid position, the question of referring the matter to the arbitration or to the named arbitrator or to any other arbitrator did not arise.

6. The learned Judge inter alia came to the finding that the original agreement dated December 11, 1986 executed between the parties in relation to the contract work did not contain any arbitration clause and the articles of the agreement only provided for various terms and conditions of the work and such agreement containing the aforesaid terms was also signed by both the parties. The learned Judge, however, held that conspicuously the agreement was silent about the mode of settlement of the disputes, if any, arising between the parties in respect of the work. Generally, every agreement of civil contract between the Government and the contractors or between the local bodies and the contractors contains an arbitration clause for settling the disputes between the parties. In the copy of the agreement which was supplied to the appellant since marked as Ex. A-3, the clauses appearing in the agreement were similarly entered without variation. In the copy of the agreement since furnished to the applicant, there was a clause being Clause 3 which provided for reference to arbitration in accordance with the standard specifications. It was further held by the learned Judge that the copy since supplied to the applicant had the stamp of respondent 2 and the covering letter under which the copy of the agreement was forwarded to the applicant also bore the seal and signature of the second respondent. Since the said copy of the agreement had not been fabricated by the applicant, the respondents were bound by the said clause 3 as referred to in the copy of the agreement. As, despite such agreement, the respondents failed and neglected to refer the matter for arbitration, the learned Judge was of the view that the application should be allowed. The learned Judge, therefore, appointed Shri J. Venugopal Rao, a retired District Judge, as the sole arbitrator for adjudicating all the disputes and differences between the parties and for entering upon the reference and thereafter sign and pass the award in accordance with law.

7. The respondents being aggrieved by the aforesaid order of the learned Civil Additional Judge, moved the Andhra Pradesh High Court for revision. The learned Judge inter alia came to the finding that the original agreement Ex. B-1 since signed by the parties did not contain any arbitration clause at all. A copy of the agreement (Ex. A-3) was, however, forwarded to the applicant eleven days after the original agreement and the clause relating to arbitration as contained in Ex. A-3 was absent in the original agreement. The learned Judge was of the view that only the terms contained in original agreement since signed by the parties and not the

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 6 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

terms contained in the copy forwarded to the applicant were binding between the parties. The learned Judge was also of the view that as in the original agreement, (Ex. B-1) signed by both the parties, there was no arbitration clause at all, it was not necessary to look into the other material or to consider other circumstances for the purpose of finding that the parties had also agreed for arbitration. The contention on behalf of the applicant that in the absence of any specific clause for reference of disputes to arbitration in the original agreement (Ex. B-1) the existence of such a clause should be assumed because the Government contractors are governed by the standard specifications, was not accepted by the High Court. In that view of the matter, the revision application was allowed by the High Court inter alia holding that the impugned order appointing an arbitrator was erroneous and not sustainable in law. As aforesaid, such order of the Andhra Pradesh High Court is impugned in the instant appeal.

8. Under the Arbitration Act, 1940, only an arbitration agreement in writing is recognised by the Act. It has been held by this Court in *Jugal Kishore Rameshwardas* v. *Mrs Goolbai Hormusji*[1] that it is not necessary that the contract between the parties should be signed by both the parties. But it is necessary that the terms should be reduced in writing and the agreement between the parties on such written terms is established. It has also been held by this Court in *Union of India* v. *A.L. Rallia Ram*[2] that it is not necessary that all the terms of the agreement should be contained in one document. Such terms may be ascertained from the correspondence consisting of number of letters. In *Rukmanibai Gupta (Smt)* v. *Collector, Jabalpur*[3] this Court has laid down that an arbitration clause is not required to be stated in any particular form. If the intention of the parties to refer the dispute to arbitration can be clearly ascertained from the terms of the agreement, it is immaterial whether or not the expression arbitration or 'arbitrator' or 'arbitrators' has been used in the agreement. It is also not necessary that agreement to arbitration should appear in the document containing the other terms of agreement between the parties. Law is well settled that arbitration clause may be incorporated by reference to a specific document which is in existence and whose terms are easily ascertainable. It is to be noted, however, that the question whether or not the arbitration clause contained in another document is incorporated in the contract, is always a question of construction. It should also be noted that the arbitration clause is quite distinct from the other clauses of the contract. Other clauses of agreement impose obligation which the parties undertake towards each other. But arbitration clause does not impose on any of the parties any obligation in favour of the other party. Such arbitration agreement embodies an agreement between the parties that in

1 (1955) 2 SCR 857: AIR 1955 SC 812
2 (1964) 3 SCR 164: AIR 1963 SC 1685
3 (1980) 4 SCC 556: AIR 1981 SC 479

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 7 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

case of a dispute, such dispute shall be settled by arbitrator, or umpire of their own constitution or by an arbitrator to be appointed by the Court in an appropriate case. It is pertinent to mention that there is a material difference in an arbitration agreement inasmuch as in an ordinary contract the obligation of the parties to each other cannot, in general, be specifically enforced and breach of such terms of contract results only in damages. The arbitration clause however can be specifically enforced by the machinery of the Arbitration Act. The appropriate remedy for breach of an agreement to arbitrate is enforcement of the agreement to arbitrate and not to damages arising out of such breach. Moreover, there is a further significant difference between an ordinary agreement and an arbitration agreement. In an arbitration agreement, the courts have discretionary power of dispensation of a valid arbitration agreement but the courts have no such power of dispensation of other terms of contract entered between the parties. This very distinctive feature of an agreement for arbitration has been highlighted in the decision in *Heyman* v. *Darwins Ltd.*[4] It has been held in *North Western Rubber Company and Huttenbach & Co., Re*[5] (overruled in *Produce Brokers Co.* v. *Olympia Oil and Cake Co.*[6] on other points), that an arbitration agreement in no way classifies the right of the parties under the contract but it relates wholly to the mode of determining the rights. In the backdrop of such position in law relating to an agreement for arbitration, it is to be decided whether the existence of an agreement to refer the dispute to arbitration can be clearly ascertained in the facts and circumstances of the case. This, in turn, depends on the interaction of the parties to be gathered from the relevant documents and surrounding circumstances. In the instant case, it is the specific finding of the learned Judge of the City Civil Court, Hyderabad and also the Andhra Pradesh High Court that in the original agreement signed by the parties, there is no clause for referring the disputes to arbitration. The agreement between the parties in this case has been reduced in writing and has been signed by both the parties. It is therefore not necessary to make any effort for the purpose of finding out as to what were the terms agreed between the parties. The learned Judge, City Civil Court, allowed the application for appointment to arbitrator simply on the ground that a copy of the agreement was forwarded to the appellant with the seal and signature of a competent officer of the Corporation, namely, respondent 2 and in such copy, which was not fabricated by the applicant there was a reference for arbitration as contained in the standard specifications. The learned Judge, City Civil Court, also proceeded on the footing that usually in the agreements relating to the nature of the contract, a provision for arbitration is made. As in the original agreement signed between the

4 1942 AC 356: (1942) 1 All ER 337
5 (1908) 2 KB 907: 78 LJKB 51
6 (1916) 1 AC 314 (HL)

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 8 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

parties there was no such provision and the agreement was silent on the question as to what would happen if the disputes would arise between the parties, it should be presumed that the parties had really intended to refer the dispute to arbitration in accordance with the standard specifications and in the copy of the agreement which was forwarded to the applicant the provision for arbitration was included. The High Court however, was not inclined to accept this view of the learned Judge of the City Civil Court. The High Court was of the view that it was the signed agreement between the parties which was binding on the parties and only such written terms in the original agreement signed by the parties should be taken into consideration and not the terms contained in the copy of the agreement which was forwarded to the applicant after some time.

9. It has been indicated hereinbefore that the case of respondent is that through mistake the clause containing the arbitration agreement was not scored out in the copy of the agreement since forwarded to the applicant. The attention of the appellant was drawn to such mistake by the respondents before initiation of the proceedings before the City Civil Court. It also appears that on April 9, 1984, which is long before the agreement dated December 11, 1986, respondent 1, Corporation, came to the decision that arbitration was not really necessary as the aggrieved party to the agreement could always seek redress in a court of law. It was, therefore, decided that the arbitration clause in the standard specifications should be deleted altogether and the agreement was to be finalised in respect of engineering work without any provision for arbitration. It was also indicated that the instruction for deleting the arbitration clause should be followed with immediate effect. If in spite of such policy decision, the original agreement entered between the parties had contained the arbitration clause there is no manner of doubt that the parties to the agreement would have been bound by such arbitration agreement. Admittedly, in the instant case, in the original agreement signed between the parties, there is no clause for arbitration and the reason for absence of arbitration clause can be well explained by the aforesaid policy decision of the Corporation. An arbitration clause may be incorporated by reference to a specific document but the intention to refer to arbitration by such incorporation must be clear and specific. In the instant case, the original agreement signed between the parties does not contain any clause for arbitration. It is not the case of the applicant that the applicant had no occasion to know the terms of the agreement since signed by the parties and there was any clear representation that the copy of agreement was to be followed by the parties and terms contained in the copy were to be treated as the terms of agreement between the parties. Hence, it cannot be held that after the signed agreement the parties had clearly intended to include arbitration clause in the standard specifications. In the absence of clear intention of both the parties, agreement for arbitration cannot and

SCC Online Web Edition, © 2026 EBC Publishing Pvt. Ltd.
Page 9 Friday, January 16, 2026
Printed For: Neeti Niyaman
SCC Online Web Edition: https://www.scconline.com
TruePrint™ source: Supreme Court Cases, © 2026 Eastern Book Company. The text of this version of this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 paras 61, 62 & 63.

should not be inferred more so when the specific case of the respondents is that by mistake the clause relating to arbitration crept in the copy of agreement. In our view, the High Court was justified in holding that in the facts of the case, only the original agreement, and not the copy, was binding between the parties. Hence, no reference to arbitration could be made. In the aforesaid circumstances, no interference is called for in the instant appeal and the appeal, therefore, fails and is dismissed, without, however, any order as to costs.

(1993) 3 Supreme Court Cases 145

(BEFORE K. JAYACHANDRA REDDY AND G.N. RAY, JJ.)

GAUNTER EDWIN KIRCHER .. Appellant;

Versus

STATE OF GOA, SECRETARIAT PANAJI, GOA .. Respondent.

Criminal Appeal No. 642 of 1991†, decided on March 16, 1993

Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 27 — Ingredients of

Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 27 Expln. (1) — 'Small quantity' — Defined by Central Govt. notification dated November 14, 1985 as quantity of 5 gms or less — Two pieces of charas, one weighing 5 gms and the other 7 gms, alleged to have been recovered from the possession of appellant — But only the piece weighing 5 gms sent for chemical analysis — Report of chemical analysis confirming that the piece contained charas — In view of failure to send the alleged piece weighing 7 gms for chemical analysis, held, possession of more than the small quantity of charas not established beyond reasonable doubt — Procedure for sending the substance for chemical analysis indicated — Prevention of Food Adulteration Rules, 1955, Rr. 22 and 22-B — Drugs and Cosmetics Act, 1940, S. 23

Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 27 Expl. (2) — 'For his personal consumption and not for sale or distribution' — Burden of proof on accused — Held, on facts burden discharged

The appellant, a German national, was found by the police party to be sitting on a wooden log. On suspicion they went near him and noticed a chillum (smoking pipe) in front of him lying on the log. The SI secured the presence of panch witnesses and searched the accused and recovered a polythene pouch from his pyjama pocket in which there were tobacco, one cigarette paper packet and two cylindrical pieces of "charas". The two pieces of charas were weighed and found to be 7 gms and 5 gms respectively. They were seized under a panchnama and were separately sealed in two different envelopes. One of the pieces weighing less than 5 gms was sent for chemical analysis and the other piece weighing 7 gms was not sent nor part of it by way of sample was sent for chemical analysis. On chemical analysis the substance was found to have charas. A panch witness supported the prosecution case. The accused when examined under Section 313 CrPC denied being in possession of any charas and said that he had only a pouch containing

† From the Judgment and Order dated April 25, 1991 of the Bombay High Court in Criminal Appeal No. 25 of 1990