

LAWWORLD

Emergency Relief in Arbitration: Sections 9 and 17

Court versus tribunal interim measures, enforceability, models and
appeal routes

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Preface

Interim protection is the lifeblood of arbitration. Without swift measures to preserve the subject matter, secure assets or maintain the status quo, an eventual award can become an empty victory. This handbook maps the two statutory routes to interim relief under the 1996 Act: the court under Section 9 and the tribunal under Section 17. It explains when each route is available, how the 2015 and 2019 amendments altered the balance, and what practitioners must do to obtain or resist relief at every stage of the arbitration lifecycle. The text supplies model pleadings, an urgency affidavit template, an annexure checklist and a decision tree for Section 37 appeals. All guidance is anchored in the statutory text and the principles that courts consistently apply. Advocates, in-house counsel and students will find a single, practice-ready reference that moves from statutory comparison to drafting to appellate strategy without repetition or theoretical digression.

01

Interim Protection in Indian Arbitration

Purpose and statutory framework

Minimal intervention with an express carve-out

Section 5 of the Arbitration and Conciliation Act, 1996 directs that no judicial authority shall intervene except where so provided in Part I. Section 9 supplies the express exception by empowering courts to grant interim measures.

LAWWORLD 2004 KAR 0140

High Court of Karnataka

There is no conflict between Sections 9 and 17; Section 5 forbids intervention only in matters not specifically provided for, and Section 9 is an express exception.

LawWorld ID: LAWWORLD 2004 KAR 0140

Why preservation of the status quo matters

Arbitration proceedings take time. Without interim protection, assets may be dissipated, bank guarantees invoked or property dealt with in a manner that renders the final award meaningless. Section 9 therefore permits relief before arbitral proceedings commence, during the proceedings and after the award but before enforcement.

LAWWORLD 1999 SC 0110

Supreme Court

Section 9 permits interim measures before or during arbitral proceedings and after the award but before enforcement; these are distinct stages.

LawWorld ID: LAWWORLD 1999 SC 0110

Two parallel tracks and handbook roadmap

Section 9 confers wide powers on courts. Section 17 confers corresponding powers on the arbitral tribunal, though narrower in territorial reach and enforcement. The handbook examines both routes, their interaction under Section 9(3), enforceability, common reliefs, timing, drafting models and appeals.

1. Chapter 2 details Section 9 powers across the three temporal windows.
2. Chapter 3 examines Section 17 powers and their limits.
3. Chapters 4-11 cover the Section 9(3) bar, enforceability, relief categories, timing, model applications, urgency affidavits and appeals.

02

Section 9: Court Powers Before, During and After Arbitration

Text, timing and limits

Statutory framework and meaning of 'entertain'

Section 9 empowers a court to grant interim measures of protection in aid of arbitration. The provision operates at three distinct stages and remains available even when arbitral proceedings have not yet begun.

LAWWORLD 2021 SC 093

2021

Section 9(1) enables parties to approach the court before commencement of arbitral proceedings, during such proceedings or after the award but before enforcement under Section 36. The expression 'entertain' means to consider by application of mind to the issues raised.

LawWorld ID: LAWWORLD 2021 SC 093

Three temporal windows

Section 9 contemplates three stages: before arbitral proceedings commence, during the proceedings, and after the award but before its enforcement under Section 36. A party may approach the court for interim protection even prior to initiation of arbitral proceedings.

LAWWORLD 1999 SC 0110

1999

Section 9 permits the court to grant interim measures before or during arbitral proceedings and also after the award but before enforcement; these words contemplate two distinct stages and must be given their literal meaning.

LawWorld ID: LAWWORLD 1999 SC 0110

LAWWORLD 2000 KAR 0821

2000

Section 9 contemplates three stages-before, during, and after arbitral proceedings (but before enforcement under Section 36). The power is independent and any contrary view would defeat legislative intention.

LawWorld ID: LAWWORLD 2000 KAR 0821

LAWWORLD 2009 KAR 0853

2009

The civil court retains power to grant interim measures before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced, even after appointment of an arbitrator.

LawWorld ID: LAWWORLD 2009 KAR 0853

Proximity requirement for pre-arbitration applications

An application filed before arbitral proceedings must satisfy a proximity test. Arbitral proceedings must be actually contemplated or manifestly intended and must positively commence within a reasonable time; otherwise the link between the Section 9 order and the arbitration snaps.

LAWWORLD 2004 SC 0129

2004

The word 'before' requires proximity: arbitral proceedings must be actually contemplated or manifestly intended and positively commence within a reasonable time, failing which the relief ceases to be 'before' arbitral proceedings.

LawWorld ID: LAWWORLD 2004 SC 0129

LAWWORLD 2017 KAR 066

2017

Where an application for interim measure is made before initiation of arbitral proceedings, if arbitral proceedings are not commenced within three months from presentation, any interim order shall stand vacated automatically.

LawWorld ID: LAWWORLD 2017 KAR 066

Wide powers to grant protective measures

The court may secure amounts in dispute, preserve property that is the subject-matter of the dispute, and grant such other interim measures of protection as may appear to the court to be just and convenient. These powers remain independent of the tribunal's existence.

TIP

Practical note

Courts exercise these powers to maintain the status quo and prevent irreparable prejudice pending the arbitral process.

03

Section 17: Tribunal Powers and Their Limits

Scope during the currency of the tribunal

Powers under Section 17(1)

Section 17(1) empowers the arbitral tribunal to grant interim measures of protection in respect of the subject-matter of the dispute. These measures include interim injunctions restraining parties from dealing with property, appointment of receivers, and orders for preservation, custody or sale of goods.

LAWWORLD 2020 SC 0142

2020

Section 17 empowers arbitral tribunals to grant wide interim measures, including interim injunctions and receivership, enforceable as court orders.

LawWorld ID: LAWWORLD 2020 SC 0142

Narrower Reach Compared with Court Orders

The tribunal's powers under Section 17 are narrower than those of the court under Section 9. The tribunal lacks inherent territorial reach beyond the parties and cannot directly enforce its orders against third parties or through coercive state machinery.

LAWWORLD 2004 KAR 0140

2004

The power of the Tribunal under Section 17 is narrower and does not control or exclude the court's power under Section 9.

LawWorld ID: LAWWORLD 2004 KAR 0140

- No power to bind non-parties to the arbitration agreement
- Orders cannot be executed directly through court processes without further steps
- Limited ability to grant relief affecting property located outside India

Duration and Termination of Tribunal Orders

Tribunal orders under Section 17 operate only while the tribunal exists. They cease to have effect once the arbitral proceedings terminate under Section 32 or the tribunal's mandate ends.

LAWWORLD 2004 SC 0129

2004

Section 17 empowers the arbitral tribunal to grant interim measures during its existence.

LawWorld ID: LAWWORLD 2004 SC 0129

WARNING

Practical consequence

Parties must convert effective Section 17 orders into enforceable court orders before the tribunal ceases to exist, otherwise the protection lapses.

04

The Section 9(3) Bar and the Efficacy Exception

When the court must stay its hand

The Two-Limb Prohibition

Section 9(3) imposes a clear bar once the arbitral tribunal has been constituted. The provision operates in two limbs: first, the court shall not entertain any application under Section 9; second, any application already pending must be disposed of only if the tribunal is yet to be constituted. The bar is triggered by constitution of the tribunal, not by the mere filing of an application before it.

LAWWORLD 2021 SC 093

2021

Where Section 9 applications had been fully heard and reserved before the tribunal was constituted, the Supreme Court held that the bar in Section 9(3) does not require a fresh assessment of Section 17 efficacy at that stage. The Court permitted the Commercial Court to pronounce orders already reserved.

LawWorld ID: LAWWORLD 2021 SC 093

Meaning of 'Inefficacious'

The exception to the bar arises only when the remedy under Section 17 would be inefficacious. Inefficacy is not presumed from the mere existence of the tribunal. It must be demonstrated that the tribunal lacks the practical ability to grant or enforce the interim measure sought, particularly where enforcement requires court process or where the relief involves third parties outside the tribunal's direct reach.

LAWWORLD 2017 SC 0769

2017

The Court held that Sections 9 and 17 provide alternative remedies and parties are put to an election. The election would be meaningless if tribunal orders were 'written in water'; therefore the statutory scheme must ensure that Section 17 orders carry real efficacy through enforcement mechanisms.

LawWorld ID: LAWWORLD 2017 SC 0769

Election and the Practical Test

Parties must elect between the two remedies. Once the tribunal is constituted, the default route shifts to Section 17. A party may still approach the court only if it can show that

the tribunal remedy is inefficacious on the facts. Courts examine whether the application was already entertained before constitution and whether the relief sought can be effectively secured by the tribunal.

05

Enforceability of Section 17 Orders

Making tribunal relief effective

Statutory Mechanism

Section 17(2) provides that any interim measure ordered by the arbitral tribunal shall be enforceable as if it were an order of the court. This deeming provision, read with Section 27(5), routes enforcement through the civil court having jurisdiction over the arbitration.

LAWWORLD 2017 SC 0769

Supreme Court, 2017

The Court held that the election between Sections 9 and 17 would be meaningless if tribunal orders were written in water; the statutory scheme including Section 27(5) must therefore ensure real enforceability.

LawWorld ID: LAWWORLD 2017 SC 0769

LAWWORLD 2021 SC 081

Supreme Court, 2021

Enforcement proceedings such as recourse to Order XXXIX Rule 2-A CPC are directly traceable to Section 17(1) read with Section 17(2); tribunal orders must enjoy the same enforcement route as court orders.

LawWorld ID: LAWWORLD 2021 SC 081

Contempt Consequences

Once a tribunal order is treated as a court order, disobedience attracts the same contempt remedies available under the Code of Civil Procedure. The court may initiate proceedings under Order XXXIX Rule 2-A or invoke its inherent contempt jurisdiction.

WARNING

Practical Warning

Parties should record the exact terms of the tribunal order in the enforcement application to avoid disputes over what constitutes breach.

Practical Steps to Convert Tribunal Direction into Executable Process

06

Reliefs Commonly Granted: Preservation, Injunctions and Custody

Principles from leading authorities

The Three-Part Test

Courts apply a consistent three-part test before granting any interim measure under Section 9. The applicant must establish a *prima facie* case, demonstrate that the balance of convenience lies in its favour, and show that irreparable injury will result if relief is refused.

LAWWORLD 2016 SC 0541

2016

The Court granted injunction against encashment after finding that the contractor had established *prima facie* case, balance of convenience and irreparable loss where the guarantee related to a completed contract while the claim arose from a separate disputed contract.

LawWorld ID: LAWWORLD 2016 SC 0541

Preservation and Interim Custody of Goods

Section 9(1)(ii)(a) empowers the court to order preservation, interim custody or sale of goods that form the subject-matter of the arbitration agreement. Such orders are granted only when the goods are subject to speedy decay or other just cause exists, applying the standards of Order 39 Rule 6 CPC.

LAWWORLD 1999 KAR 0984

1999

Interim sale of iron and steel materials was set aside because the lower court failed to record any finding that the goods were perishable or that any other sufficient cause existed under Order 39 Rule 6 CPC.

LawWorld ID: LAWWORLD 1999 KAR 0984

LAWWORLD 1999 KAR 0955

1999

The court directed preservation of raw materials and finished goods pending commencement of arbitration, holding that effective steps to protect the subject-matter must accompany any Section 9 order.

LawWorld ID: LAWWORLD 1999 KAR 0955

Injunctions Restraining Invocation of Bank Guarantees

Injunctions against encashment of bank guarantees are granted only in two narrow circumstances: clear fraud of an egregious nature or special equities resulting in irretrievable injury. A bank guarantee is an independent contract and courts do not examine performance of the underlying agreement.

LAWWORLD 2006 SC 024

2006

The Supreme Court held that injunction against unconditional bank guarantees can be granted only on proof of egregious fraud or irretrievable injustice; the bank must honour the guarantee according to its terms.

LawWorld ID: LAWWORLD 2006 SC 024

LAWWORLD 2003 KAR 0285

2003

Appeals against refusal of injunction were dismissed where the guarantees had been converted to unconditional form at the appellant's request and no specific evidence of fraud or irretrievable injustice was pleaded.

LawWorld ID: LAWWORLD 2003 KAR 0285

Appointment of Receivers

Section 9(1)(ii)(d) authorises the appointment of a receiver as an interim measure. The power is exercised sparingly and only when it is just and convenient to preserve the property or secure the amount in dispute, subject to the same three-part test.

Orders directing deposit or furnishing of bank guarantees under Section 9(ii)(e) must satisfy the preconditions of Order 38 Rule 5 CPC, including specific allegations and prima facie material showing likelihood of dissipation of assets.

LAWWORLD 2022 SC 093

2022

The Supreme Court set aside a direction to deposit invoked bank guarantee amounts because the conditions of Order 38 Rule 5 CPC had not been satisfied; mere apprehension without cogent material is insufficient.

LawWorld ID: LAWWORLD 2022 SC 093

07

Timing Across the Arbitration Lifecycle and Emergency Arbitrators

From pre-notice to post-award

Pre-notice stage

A party may approach the court under Section 9 as soon as a dispute arises and arbitral proceedings are contemplated. The court may grant preservation orders, injunctions or other protective measures provided the application demonstrates proximity to the intended arbitration. Once notice is issued, the same Section 9 window remains open until the tribunal is constituted.

Practical example: a claimant facing imminent asset dissipation may file a Section 9 petition with an urgency affidavit showing that the respondent is removing funds. The court can restrain the dissipation even before a formal notice of arbitration is sent, preserving the subject matter for later adjudication.

Emergency Arbitrator stage

Institutional rules frequently permit appointment of an emergency arbitrator before the tribunal is constituted. Parties who adopt such rules authorise the emergency arbitrator under Sections 2(6), 2(8) and 19(2). The resulting order operates as an interim measure under Section 17(1).

LAWWORLD 2021 SC 081

2021

Emergency Arbitrator's award as order under Section 17(1) and enforceable under Section 17(2). Held, parties may authorise an arbitral institution and its rules under Sections 2(6), 2(8), 19(2) and 21; interim orders of an Emergency Arbitrator fall within Section 17(1); Section 17(2) deems such orders to be court orders for all purposes and enforceable.

LawWorld ID: LAWWORLD 2021 SC 081

Where the emergency arbitrator's order cannot be enforced through Section 17(2) because the tribunal has not yet been constituted or the seat rules differ, a party may convert the protection into a Section 9 order. The court treats the emergency relief as evidence of urgency and may continue equivalent measures until the tribunal assumes jurisdiction.

Earlier judgment on Emergency Arbitrator - no decision on merits of enforcement. The Court clarifies that its earlier judgment dated 06.08.2021 answered only two legal questions and did not return any factual findings on the Emergency Award or its enforcement.

LawWorld ID: LAWWORLD 2022 SC 0273

Tribunal constitution and post-award window

Once the tribunal is constituted, Section 9(3) bars fresh court applications unless Section 17 relief would be ineffectual. Emergency-arbitrator orders already in force may be continued by the tribunal or, where enforcement gaps exist, converted into Section 9 orders that survive until the award is enforced.

After the award but before enforcement, Section 9 again becomes available. A successful party may seek orders securing the award amount or preserving assets. An unsuccessful claimant cannot invoke Section 9 to obtain positive relief that the tribunal has denied.

Practical example: after an award directing payment, the decree-holder may obtain a Section 9 injunction preventing the award-debtor from dissipating funds pending enforcement proceedings. The court applies the same prima facie case, balance of convenience and irreparable injury test used at earlier stages.

Model Section 9 and Section 17 Applications

Drafting essentials

Pre-tribunal Section 9 application

The cause title must name the Principal District Judge as the Court under Section 2(e). The petition opens with a concise statement of the arbitration agreement and the dispute.

Urgency averment : The applicant must plead that irreparable injury is imminent unless protection is granted before the tribunal is constituted. **Prima facie case** : Set out the existence of a valid agreement and a live dispute referable to arbitration.

Prayer must be precise, e.g., restraint on encashment of a named bank guarantee or appointment of a receiver over identified property. Verification follows Order 6 Rule 15 CPC.

LAWWORLD 1999 SC 0110

1999

Section 9 permits interim measures before arbitral proceedings commence once a valid arbitration agreement and a referable dispute are shown.

LawWorld ID: LAWWORLD 1999 SC 0110

Post-tribunal Section 9 application

After constitution, the applicant must additionally plead that the remedy under Section 17 is inefficacious. The same cause title and verification requirements apply.

Supporting documents include the tribunal order sheet, if any, and evidence of urgency arising after constitution. The relief sought must remain limited to interim protection.

Section 17 application before the tribunal

The application is addressed to the sole arbitrator or tribunal. It must mirror the urgency and prima facie averments but also demonstrate that the measure falls within Section 17(1).

Annexures comprise the arbitration agreement, notice invoking arbitration and documents showing balance of convenience. Verification is by affidavit.

Drafting checklist

09

Urgency Affidavit, Annexure Checklist and Resisting Over-Broad Relief

Templates and defensive strategy

Model Urgency Affidavit

An urgency affidavit must be filed with every pre-tribunal Section 9 application and with Section 17 applications where expedited hearing is sought. It should state the precise facts showing that the subject matter of the arbitration is under immediate threat and that delay will render the final award infructuous.

The deponent must aver the existence of a prima facie case, balance of convenience in favour of the applicant, and likelihood of irreparable injury. The affidavit should also record that arbitral proceedings are contemplated or have been initiated within a reasonable time.

LAWWORLD 2021 SC 093

Supreme Court, 2021

Interim relief applications are inherently urgent and are granted to protect the property forming the subject-matter of arbitration so that the award does not become an award on paper of no real value. The three settled principles are good prima facie case, balance of convenience, and likelihood of irreparable injury.

LawWorld ID: LAWWORLD 2021 SC 093

Standard Annexures for Section 9 and Section 17 Applications

- Arbitration agreement or relevant extract
- Notice invoking arbitration or request for arbitration
- Pleadings or correspondence showing the dispute and the relief claimed in arbitration
- Documents evidencing the property or amount sought to be protected (title deeds, bank statements, photographs)
- Any prior interim order or emergency arbitrator order
- Affidavit of urgency (original)
- Vakalatnama and board resolution (if applicable)

Resisting Over-Broad Relief and Seeking Modification or Vacation

A respondent faced with vague or excessively wide prayers should first object to the lack of specificity in the application itself. Courts and tribunals are reluctant to grant relief

that goes beyond what is strictly necessary to preserve the subject matter.

TIP

Drafting tip

When drafting the counter, attach a marked-up version of the applicant's prayer clause showing the deletions or substitutions sought. This assists the court in crafting a precise order.

10

Section 37 Appeals and the Decision Tree

Routes, limitation and strategy

Appealable Orders

Section 37(1)(b) permits an appeal from an order of the court granting or refusing to grant any measure under Section 9. Section 37(2)(b) permits an appeal from an order of the arbitral tribunal granting or refusing to grant any interim measure under Section 17(1).

LAWWORLD 2021 SC 081

2021

Section 37 is a complete code; enforcement orders under Section 17(2) are not appealable.

LawWorld ID: LAWWORLD 2021 SC 081

LAWWORLD 2020 KAR 061

2020

Only orders granting or refusing interim measures enumerated in Section 17(1) are appealable under Section 37(2)(b).

LawWorld ID: LAWWORLD 2020 KAR 061

Decision Tree

Limitation, Forum and Bar on Second Appeals

An appeal under Section 37 must be filed within ninety days from the date of the order. The forum is the High Court for Section 9 orders and the court defined in Section 2(1)(e) for Section 17 orders. Section 37 expressly bars any second appeal from an appellate order.

LAWWORLD 2024 KAR 079

2024

Appeals against ex parte Section 9 orders are maintainable but confined to whether deferral of ex parte relief was justified; main application remains pending.

LawWorld ID: LAWWORLD 2024 KAR 079

LAWWORLD 2022 SC 0430

2022

Appellate jurisdiction under Section 37 is strictly limited to examining the merits of the Section 9 order; extraneous supervision is impermissible.

Practice Pointers

11

Synthesis and Outlook

Choosing the right forum and protecting the award

Comparative Advantages

Section 9 offers wider territorial reach and direct enforceability through court processes, including attachment and receivership. Section 17 provides specialist knowledge of the dispute and operates without the Section 9(3) bar once the tribunal exists. The Supreme Court has stressed that the election between the two must remain meaningful, requiring that tribunal orders carry real enforcement weight.

LAWWORLD 2017 SC 0769

2017

Sections 9 and 17 are alternative remedies; the scheme becomes meaningless if tribunal orders lack enforceable effect.

LawWorld ID: LAWWORLD 2017 SC 0769

Urgency and Drafting Precision

Every successful application rests on demonstrated urgency and narrowly drawn prayers. Vague or over-broad relief invites vacation or modification. The same three-part test-prima facie case, balance of convenience and irreparable injury-governs both forums, yet the court additionally insists on proximity to actual or imminent arbitral proceedings.

TIP

Drafting reminder

State the exact relief sought, annex the arbitration agreement and supporting documents, and file a separate urgency affidavit limited to facts showing immediate threat.

Emerging Issues

Enforcement of emergency-arbitrator orders continues to require conversion into a Section 9 order for practical execution. Cross-border interim relief remains unavailable under Part I where the seat lies outside India; parties must therefore rely on the seat court or other available remedies.

LAWWORLD 2012 SC 0965

2012

Section 9 does not extend to foreign-seated arbitrations; Indian courts lack power to grant interim measures in such cases.

LawWorld ID: LAWWORLD 2012 SC 0965

Final Checklists for Advocates

Disclaimer

This handbook is for educational and professional reference only. It does not constitute legal advice. Readers must verify current statutory text and case law before relying on any template or proposition.

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