

2025 LiveLaw (SC) 1144

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

J.B. PARDIWALA; J., K.V. VISWANATHAN; J.
SLP(C)NOS.17231-17233 OF 2025; 18 November, 2025
POPULAR CATERERS *versus* AMEET MEHTA & ORS.

Arbitration and Conciliation Act, 1996 - Section 36(3) - Stay of Arbitral Award for Payment of Money - Conditions for Unconditional Stay- Held that the mere filing of an application to set aside an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, does not render the award unenforceable; a separate application for stay must be filed- Held that Court has discretionary power under Section 36(3) to grant a stay "subject to such conditions as it may deem fit"- For an arbitral award for payment of money, the Court must have "due regard" to the provisions for grant of stay of a money decree under the Code of Civil Procedure, 1908 (CPC)- Unconditional stay of a money award is generally governed by the Second Proviso to Section 36(3), which mandates an unconditional stay if a prima facie case is made out that the arbitration agreement, contract, or the making of the award was induced or effected by fraud or corruption- Supreme Court held that for granting the benefit of unconditional stay of execution of a money-decree (or an arbitral award in the form of a money-decree), an "exceptional case" must be established, meaning the award must be shown to be more than prima facie- i. Egregiously perverse; ii. Riddled with patent illegalities; iii. Facially untenable; iv. Or such other exceptional causes similar in nature- The Supreme Court set aside the High Court's order granting an unconditional stay because the award-debtors did not claim the award was induced by fraud or corruption, nor did their case fall into any of the exceptional categories laid down in the Lifestyle Equities case- **Appeals allowed. [*Relied on: Lifestyle Equities C.V. and Another v. Amazon Technologies Inc., 2025 INSC 1190; Paras 26-34*]**

[Arising out of impugned final judgment and order dated 22-01-2025 in IA(L) No. 8589/2023 22-01-2025 in IA(L) No. 8941/2023 22-01-2025 in IA(L) No. 7149/2024 passed by the High Court of Judicature at Bombay]

For Petitioner(s): Mr. Chander Uday Singh, Sr. Adv. Mr. Gaurav Srivastav, Adv. Mr. Pramit Saxena, AOR Ms. Priyanka Gharge, Adv.

For Respondent(s) :Mr. Shailesh Madiyal, Sr. Adv. Ms. Vidhi Pankaj Thaker, AOR Mr. Prastut Mahesh Dalvi, Adv. Mr. Abhishek Singh, Adv. Mr. Jijo Oomen Eappan, Adv. Mr. Yash Chaturvedi, Adv. Mr. Dhananjay Kumar, Adv. Mr. Shashank Shekhar, AOR Mr. Dr. A.M. Singhvi, Sr. Adv. Mr. D.S. Naidu, Sr. Adv. Mr. Shrey Fatterpekar, Adv. Mr. Sumit Chander, Adv. Mr. Nirav Jitesh Marjadi, Adv. Ms. Srushti Bakul Mehta, Adv. Ms. Rebha Jagdish Dogra, Adv. Mr. Kushal Babulal Harnesha, Adv. Ms. Pooja Zagde, Adv. Ms. Mithu Jain, AOR Mr. Mohit khubhchandani, Adv. Ms. Bansuri Swaraj, Sr. Adv. Ms. Nina Nariman, Adv. Ms. Sneha Sanjay Botwe, AOR Mr. Karl Tamboly, Adv. Mr. Siddharth S. Chapalgaonkar, Adv. Mr. Akash Tripathi, Adv. Mr. Saurabh Guha, Adv.

ORDER

1. Leave granted.
2. These appeals arise from the common judgment and order passed by the High Court of Judicature at Bombay dated 22.01.2025 in Interim Application (L) No. 8589 of 2023 filed in Commercial Arbitration (L) Petition No. 7842 of 2023 with Interim Application (L) No.8941 of 2023 in Commercial Arbitration (L) Petition No.7800 of 2023 with Interim Application (L) No.7149 of 2024 in Commercial Arbitration (L) Petition No.8421 of 2023,

respectively, by which the Interim Applications filed by the Award Debtors i.e. the respondents before us came to be allowed, and an unconditional stay of execution of the Arbitral Award dated 28.11.2022 as corrected by the corrigendum dated 19.12.2022 came to be granted till the final disposal of the Arbitration Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the Act, 1996”).

3. It appears from the materials on record that the appellant herein is a partnership firm engaged in the business of catering. The respondent no.6-Maple Leaf Enterprises is a Limited Liability Partnership (LLP). The parties entered into an agreement dated 25.05.2017.

4. The promoters Mr.Drunal Shailesh Mody, Mr. Yogesh Mansukhlal Popat, Mr. Bhargav Nagindas Patel, Mr. Surendra Narayan Poojary and Mr. Ameet Mehta, respectively in their capacity as the promoters of Maple Leaf Enterprises (LLP) entered into a memorandum of understanding with M/s. Popular Caterers, i.e., the appellant herein before us.

5. The Memorandum of Understanding arrived at between the parties in writing is dated 25.05.2017.

6. It appears *prima facie* that Maple Leaf Enterprises (LLP) was desirous of availing the services of the appellant firm for the purpose of providing pure vegetarian food (catering service) for the events that may be held at the Tulip Star Hotel, located at Juhu Tara Road, Juhu, Mumbai.

7. In accordance with the terms of the Memorandum of Understanding, the appellant was to pay Rs.8,00,00,000/- (Rs. Eight crore only) towards adjustable interest free security deposit.

8. It is not in dispute that the appellant paid Rs.4,00,00,000/-(Rs. Four Crore only) towards security deposit and the same was received by the respondent No.6herein, i.e., Maple Leaf Enterprises.

9. Before, the balance amount of Rs.4 crore could be paid, disputes cropped up between the parties as early as 08-06-2017 i.e., barely within 12 days from the signing of the MoU.

10. At this stage, it is relevant to note that disputes cropped up because the State authorities prohibited the Tulip Star Hotel from organising any event at their place. In other words, a notice was served to the Hotel Tulip Star by the Mumbai Suburban Collector directing the hotel management to stop renting out their plot for functions.

11. In such circumstances, referred to above, the appellant herein was left with no option but to invoke arbitration.

12. An Arbitrator came to be appointed by the High Court *vide* order dated 11.11.2019 passed in Arbitration Petition No. 1150 of 2018 and Arbitration Application No. 349 of 2019 respectively.

13. The Arbitrator ultimately passed an award dated 28.11.2022. The operative part of it reads thus: -

“(A) The Respondent Nos.1 to 5 are jointly and severally directed to pay to the Claimant the principal sum of Rs.4,00,00,000/- along with interest thereon at 9.00% p.a. from 21.06.2017 till date of the award.

(B) *The Respondent Nos.1 to 5 are jointly and severally directed to pay further interest at 9.00% p.a. on the principal sum of Rs. 4,00,00,000/- from date of the award till payment and/or realization.*

(C) *The Counter Claim of the Respondent No.6 stands rejected.*

(D) *The Respondents are directed to jointly and severally pay to the Claimant a sum of Rs. 19,18,675/- towards costs of arbitration."*

14. On 19.12.2022 few errors in the award came to be rectified and a corrigendum was accordingly issued.

15. The respondents herein, having suffered an arbitral award of Rs.4 crore with interest @9% per annum from the date of MoU, went before the High Court by way of petitions under Section 34 of the Act, 1996.

16. The Section 34 petitions came to be admitted.

17. In the said Section 34 petitions, interim applications came to be filed by the respondents herein praying for stay of the execution of the award. The High Court by way of impugned order allowed the interim applications and granted unconditional stay of the execution of the arbitral award.

18. Being dissatisfied with the impugned order, the appellant is here before us with the present appeals.

19. We heard Mr. C.U., Singh, the learned senior counsel appearing for the appellant and Mr. Shailesh Madiyal, the learned senior counsel appearing for the respondent nos. 2 and 4 respectively, Ms. Bansuri Swaraj, the learned senior counsel appearing for the respondent no.3 and Ms. Nina Nariman, the learned counsel appearing for the respondent no.5, respectively.

20. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order granting unconditional stay of the execution of the arbitral award.

21. Although the High Court has taken pains to look into the matter threadbare and has at many stages talked about the arbitral award being perverse, yet we are of the view that all the aspects looked into by the High Court ought to have been considered at the time of final hearing of the Section 34 petitions.

22. This very Bench in the recent past had the occasion to consider a matter wherein the appellate court had thought fit to grant unconditional stay of a money-decree. The matter we are talking about is titled *Lifestyle Equities C.V. and Another v. Amazon Technologies Inc.* reported in 2025 INSC 1190.

23. In the said, case, the High Court on its original side allowed the suit and passed a money decree. The judgment debtor challenged the judgment and decree in appeal. The appellate court of the High Court, by a reasoned order thought fit to grant an unconditional stay of the money-decree.

24. The decree-holder being dissatisfied with the order passed by the appellate court of the High Court challenged the same before this Court. In the said matter, we got a chance to discuss various principles of law governing grant of benefit of stay of the money decree without imposing any conditions like, deposit of the decretal amount or asking the judgment-debtor to furnish tangible security etc.

25. In the said matter incidentally, we also had the occasion to consider Section 36(3) of the Act, 1996. Although in the said case, we were not concerned with Section 36(3) of the Act, 1996 and what was necessary to be looked into was the provision of Order XLI Rule (3) and (5) of the CPC yet the discussion therein assumes importance even in so far as the case on hand is concerned. We quote the relevant observations:

“96. Section 36 reads thus:

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a Prima facie case is made out that,—

- (a) the arbitration agreement or contract which is the basis of the award; or*
- (b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.*

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016)”

(Emphasis supplied)

97. Section 36 of the Arbitration Act was substituted vide the Arbitration and Conciliation (Amendment) Act 2015 (for short, “the Amendment Act, 2015”). Prior to the 2015 Amendment, the mere filing of an application challenging arbitral award under Section 34 of the Arbitration Act was understood in many quarters as a stay of the award in terms of the unamended Section 36 of the Arbitration Act.

98. This “automatic stay” became a subject matter of legal debate as being a great obstacle to the ease of enforcement of arbitral awards. In such circumstances, and with a view to address this lacuna, the Amendment Act, 2015, was introduced in the Arbitration Act. Under the Amendment Act, 2015, the existing provision in Section 36 was wholly substituted. Sub-section (2) of the amended provision provided that the filing of an application to set aside the arbitral award did not by itself render the award unenforceable unless an order was passed by “granting a stay on the operation of the award pursuant to a separate application filed to that effect”. Therefore, Section 36(2) of the Arbitration Act contemplated a separate application seeking stay.

99. In *Hindustan Construction Company & Anr. v. Union of India & Ors.*, reported in (2020) 17 SCC 324, this Court held that there would be no automatic stay on the enforcement of an arbitral award under Section 36 of the Arbitration Act due to the mere fact that an application to set aside the award under Section 34 had been filed before a court. In the said case, the constitutional validity of Section 87 of the Arbitration Act as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 (for short, “the Amendment Act, 2019”) was challenged along

with repeal of Section 26 of the Amendment Act, 2015 by Section 15 of the Amendment Act, 2019. This Court in the final analysis held as under:

(i) The language of Section 36 of the Arbitration Act does not warrant an automatic stay on the enforcement of an arbitral award due to the mere filing of a Section 34 petition.

(ii) The legislature, by inserting Section 87 and deleting Section 26 through the Amendment Act, 2019, had subverted the purpose of the Arbitration Act, 1996 and the Amendment Act, 2015, and was contrary to public interest because it sought to revive the pre-2015 Amendment automatic stay regime that was a major cause of delay to the disposal of arbitral proceedings, and thus, the Court declared Section 13 and 15 of the Amendment Act, 2019 as manifestly arbitrary and unconstitutional as being violative of Article 14 of the Constitution.

(iii) The ratio in the *BCCI v. Kochi Cricket Pvt. Ltd.*, reported in (2018) 6 SCC 287, was the position of law, prevailing at that time and would be used to interpret the applicability of the Amendment Act, 2015, to the arbitral proceedings and proceedings in relation to them.

100. Section 36(3) of the Arbitration Act provides that upon such an application being filed, the court may grant a stay “subject to such conditions as it may deem fit” for reasons to be recorded in writing. In terms of Section 36(3) of the Arbitration Act, the Court is conferred with the discretionary power to grant a stay of an arbitral award. Such discretionary power flows from the usage of the words “may” for grant of stay and the employment of the phrase “such conditions as it may deem fit” for the conditions that may be imposed if a stay was granted. Therefore, in terms of Section 36(3), the court retains its discretionary power to grant a stay of an arbitral award.

101. Further, the first Proviso to Section 36(3) provides that if the arbitral award was for payment of money, the court shall have “due regard” to the provisions for grant of stay of money decree under the CPC.

102. The aforesaid was, the legal position for a period of six years from 2016 to 2021. In 2021, Section 36 of the Arbitration Act was once again amended with retrospective effect from 23.10.2015, vide the Arbitration and Conciliation Amendment Act, 2021 (for short, “the 2021 Amendment”). The 2021 Amendment, inter alia, introduced a second Proviso to Section 36(3) which provided that if a prima facie case is made out that either the arbitration agreement/contract which is the basis of the award, or the making of the award was induced or effected by fraud or corruption, the Court “shall” stay the award “unconditionally” pending the disposal of the challenge.

103. As is clear from a plain reading of the second Proviso referred to above, it was provided that if, inter alia, the making of the award was induced or effected by fraud or corruption then the court was mandated to stay the award and such a stay was to be unconditional.

104. Mr. Gaurav Pachnanda, the learned Senior Counsel would argue that the courts cannot grant the benefit of unconditional stay of an award in cases other than those covered by the second Proviso to Section 36(3) of the Arbitration Act. In the same manner, according to the learned Senior Counsel, when it comes to staying a money decree unconditionally, the judgment-debtor needs to make out more than a prima facie case of fraud or corruption, or something analogous to the same, and it is just not sufficient to point out our serious infirmities in the judgment granting money decree.

105. In the aforesaid context, we must look into the decision of this Court in the *Sepco Electric* (supra). In the said decision, this Court was dealing with an appeal against a judgment of the Delhi High Court where the learned Single Judge had granted a stay of the arbitral award subject to deposit of 100% of the award amount. This order was passed in an application filed under Section 9 of the Arbitration Act which was heard together with an application under Section 36(3) of the Act in a connected petition. This decision was affirmed in appeal by this Court which held that there were no grounds made out for interfering with the judgment below.

106. This Court, while considering the contention of the appellant therein observed that a court may grant an unconditional stay if it is appropriate to do so. While so observing, this Court stated

that unconditional stays were covered by the second Proviso to Section 36(3). The relevant portions of the judgement are extracted below:

“The power under subsection (3) of Section 36 to grant stay of an award is coupled with the duty to impose conditions which could include the condition of securing the award by deposit in Court, of the amount of the Award. It may be true as argued by Mr. Vishwanathan that the Court may not impose condition for stay, if it deems appropriate not to do so. The power of Court to grant unconditional stay of an Award is not unfettered. The power of unconditional stay is subject to the condition in the second proviso that is:

The Court is satisfied that a prima facie case (sic) is made out that

- (i) the arbitration agreement or contract which is the basis of the award; or*
- (ii) the making of the award, was induced or effected by fraud or corruption” (Emphasis supplied)*

107. While this Court acknowledged that an unconditional stay could be granted in appropriate cases, it quickly followed up saying that the power to grant an unconditional stay is governed by the second Proviso to Section 36(3). This may indicate that the Court acknowledged the grant of an unconditional stay to the existence of the grounds mentioned in the second Proviso. This would indicate that the benefit of unconditional stay could be granted only in cases of fraud or corruption.

108. Notwithstanding the above, this Court in order to fortify its conclusion in the case, subsequently also noted that the appellant therein was not able to show any cogent and glaring error that went to the root of the award. This observation was repeated later where the Court stated that no cogent ground had been made out even, prima facie, for interference with the impugned award. The relevant observations are extracted below:

“26. It is settled law that grounds for interference with an award is restricted. Even before this court, the Appellant has not been able to advert to any cogent and glaring error which goes to the root of the award. The contention of the award being opposed to the public policy of India, is devoid of any particulars whatsoever...

xxx xxx xxx

35. It is not in dispute that there is an award of Rs. 142 Crores in favour of the Respondent. No cogent ground has been made out even prima facie, for interference with the impugned award.

xxx xxx xxx

37. We find no ground at all to interfere. The Appeals are dismissed.”

109. After arriving at such a finding, this Court proceeded to dismiss the appeal. Therefore, the observations referred to above formed part of this Court’s reasoning in arriving at its decision.

110. The aforesaid observations of this Court would suggest that the Court thought it fit to consider the merits of the award at a prima facie level in order to decide whether the conditional stay of the award was justified or not. In the facts of the present case, the Court felt that it was justified.

111. In light of the abovementioned observations, it is possible to legitimately argue that if the second Proviso to Section 36(3) was the sole source for granting an unconditional stay, there would have been no occasion for the Court to examine whether any prima facie cogent ground that went to the root of the award is forthcoming or not. Therefore, by relying upon this Court’s observations, it could be plausibly argued that in exceptional cases an unconditional stay can be granted even in cases not arising under the second proviso to Section 36(3). Such unconditional stay would instead be relatable to the main part of Section 36(3).

112. The above reading of Sepco Electric (supra) would also be in tune with the discretionary power of the court under the main part of Section 36(3) both with respect to the power to grant stay and the power to impose conditions if a stay is granted. After all, it is not inconceivable to contend that a power to impose conditions would also include the power not to impose conditions.

113. Be that as it may, Sepco Electric (*supra*) does not clearly answer the question whether an unconditional stay can be granted in cases not covered by the second Proviso to Section 36(3). This confusion remains because while the Court states an unconditional stay can be granted in cases covered by the second Proviso, it does not categorically exclude the possibility of an unconditional stay in cases not covered by the second proviso.

114. This Court in Pam Developments (*supra*) had occasion to consider the nature of applicability of provisions of the CPC visà-vis the proceedings under the Arbitration Act, and specifically, the interpretation of the phrase “due regard” appearing in the first Proviso. The respondent therein had preferred an application seeking an unconditional stay of the arbitral award on the strength of Order XXVII Rule 8A, CPC which inter alia exempted Government from furnishing a security while seeking stay of a decree. Aggrieved by the application being allowed by the Calcutta High Court, the appellant-award holder approached this Court.

115. This Court allowed the appeal and directed deposit of the award amount as a condition for continuing the stay. The Court reasoned that the exemption from furnishing security under Order XXVII Rule 8A that would otherwise be applicable to the ordinary civil proceedings could not be strictly applied to the arbitration proceedings. Therefore, the respondent government could not have relied upon that provision to avoid furnishing security for staying the award. The Court further held that even if the exemption from furnishing security was made applicable to the arbitration proceedings, such exemption would not extend to making deposit of the award amounts. This was based on the Court’s interpretation of the difference between Order XXVII Rule 8A which was introduced in 1937 and exempted furnishing of ‘security’ and sub-rule (5) of Rule 5 of Order XLI that was introduced in 1976 and which differentiated between ‘security’ and ‘deposit’. The Court also referred to the implications of a provision introduced during the colonial period and its continuance in the present constitutional setup.

116. This Court in Pam Developments (*supra*) held that the phrase “due regard” would only mean that the provisions of CPC are to be taken into consideration and not that they are mandatory. The relevant observations are extracted below:

“20. In our view, in the present context, the phrase used is “having regard to” the provisions of CPC and not “in accordance with” the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. The provisions of CPC are to be followed as guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.”

(Emphasis supplied)

117. On the strength of the above reasoning, this Court held that the exemption from furnishing security could not be applied to the arbitration proceedings. The Court clarified that while courts must have due regard to the CPC, they are not rigidly bound by its provisions. The CPC serves as a guiding framework rather than a strict mandate because the Arbitration Act being a self-contained Act is to be first applied by the court.

118. Although not explicitly stated by the Court as a reason for its decision, yet this Court did note the consequence of accepting the contention that Order XXVII Rule 8A was applicable. The result would be that wherever the government was the judgment debtor in the arbitration proceedings, it would be entitled to an unconditional stay on the mere filing of an application under Section 36(2).

119. While Pam Developments (*supra*) relied on the phrase “due regard” appearing in the first Proviso to decline the rigid application of an exemption from furnishing security provided under the CPC it could also be argued that insisting on a conditional stay in all cases of a money award

would be a rigid application of Order XLI Rule 5. This is because Rule 5 mandates the furnishing of security or deposit as a condition for granting stay. Relying on *Pam Developments (supra)*, it could possibly be argued that “due regard” to the provisions of CPC, especially Order XLI Rule 5, would not mean a mandatory grant of conditional stay in all cases. This is because the provisions of the Act, especially Section 36, would have to be first applied wherein a discretionary power is vested in the court.

120. If the first Proviso has to be interpreted as done in *Pam Developments (supra)* and merits of the award have to be considered on a prima facie level as done in *Sepco Electric (supra)*, it is difficult to rule out the existence of an unconditional stay in cases outside the second Proviso. A closer analysis of the decision in *Sepco Electric (supra)* and this Court’s interpretation of the first proviso in *Pam Developments (supra)* suggests that unconditional stays can be granted even in cases outside the second Proviso.

121. At this stage, we must look into one decision of the Bombay High Court in the case of *ITD Cementation India Ltd. v. Urmi Trenchless Technology Pvt. Ltd.*, reported in 2020 SCC OnLine Bom 10611, wherein the High Court after referring to and relying upon *Pam Developers (supra)* observed as under:

“11. The provision of Section 36(3) are clear, that one must have regard to the provisions of the Code of Civil Procedure 1908 (“CPC”) and specifically the provisions of Order 41 Rule 5 while addressing the question of stay. The words ‘have due regard’ have received judicial interpretation. Certainly there is no blanket prohibition barring a Court from unconditionally staying either a money award or a money decree. The three-fold requirement of Order 41 Rule 5(3) will have to be kept in mind. But, as the Supreme Court held in *Pam Developers Private Limited v. State of West Bengal (2019) 8 SCC 112* the provisions of Order 41 Rule 5 are for guidance. They do not indicate that a Section 36 Court lacks all discretion to grant an unconditional stay. That said, it is equally well settled that a strong and exceptional case must be made for unconditional stay of a money decree or a money award. The three matters to consider under Order 41 Rule 5(3) are (a) whether the Applicant will be put to a substantial loss if stay is refused; (b) whether there is a delay in making the application and (c) whether the Applicant has furnish sufficient security to satisfy any ultimate decree. There is a delay, though slight. I do not see how the question of substantial loss arises. The fact that it has suffered an Award is neither here or there. The third requirement is that the party applying for stay must show sufficient security. There is no such attempt made.”

(Emphasis supplied)

122. In such circumstances referred to above, we find it difficult to subscribe to the submission of Mr. Gaurav Pachnanda, that even for the purpose of grant of benefit of unconditional stay of money decree under Order XLI Rule 5 of the CPC, the judgmentdebtor has to make out more than a prima facie case of fraud or corruption and not solely on the basis of an extreme or egregious view on the merits of the adjudication.

123. We once again clarify that the analogy of Section 36 of the Arbitration Act sought to be applied is inappropriate. The decision of this Court in *Pam Developments (supra)* should also be understood and confined only to matters relating to arbitration, more particularly, Section 36 of the Arbitration Act.

124. We are of the view that if fraud or corruption or something analogous to the same is only to be seen for the purpose of granting benefit of unconditional stay of execution of money decree then in such circumstances, the decree holder may argue that although there may not be a valid service of summons to the defendant/judgment-debtor yet, the same by itself would not be sufficient to grant the benefit of unconditional stay of execution of money decree. This would lead to nothing but serious miscarriage of justice.”

26. In the present case, it is not even the case of the judgment-debtor, i.e., respondents before us that the making of the award was induced or effected by fraud or corruption.

Even if we have to apply the general principles of CPC in the present case, the High Court should have considered the matter asking a question whether the respondents herein (award-debtors) could be said to have made out an “exceptional case” for the purpose of granting benefit of unconditional stay of the execution of the award which is in the form of a money-decree. In *Lifestyle Equities* (supra), we said in so many words that for the purpose of granting of benefit of unconditional stay of the execution of money-decree, it has to be established more than *prima facie* that:

- (i) The decree is egregiously perverse,
- (ii) is riddled with patent illegalities,
- (iii) is facially untenable; and/or
- (iv) such other exceptional causes similar in nature.

27. We are of the considered view that the case in hand does not fall in any of the aforesaid categories so as to seek the benefit of unconditional stay of the arbitral award which is in the form of a money-decree.

28. Except the aforesaid, we do not propose to observe anything further on merits, as the same may cause prejudice to either side.

29. We have reached the conclusion that the impugned order of the High Court deserves to be set aside.

30. In view of the aforesaid, these appeals succeed and the common impugned order is, accordingly, set aside.

31. We direct the respondents to deposit the principal amount of Rs.4,00,00,000/- (Rs.Four crore only) with the Prothonotary and Senior Master, Original side, Bombay High Court within a period of eight weeks from today.

32. We clarify that the Section 34 applications preferred by the respondents shall be heard on its own merits without being influenced in any manner by the fact that we have thought fit to disturb the impugned judgment and order passed by the High Court.

33. Once the principal amount of Rs.4,00,00,000/- (Rs.Four crore only) is deposited within the stipulated period of time, the Registry of the High Court shall invest the same by way of a Fixed Deposit in an interest bearing account with any Nationalised Bank with auto renewal facility initially for a period of six months.

34. Having regard to the nature of the dispute between the parties and in the peculiar facts and circumstances of this case, we request the High Court to take up the Section 34 applications for final hearing and see to it that those are disposed of within a period of six months from today.

35. It is needless to clarify that the stay as regards execution of the Arbitral Award shall continue, subject to the deposit of the principal amount of Rs.4,00,00,000/- (Rs.Four crore only).

36. Pending application(s), if any, shall stand disposed of.