

PATENT AND LATENT AMBIGUITIES: WHEN CAN A COURT LOOK BEYOND A CONTRACT'S WORDS?

Section 92 of the Evidence Act, 1872 ("**Evidence Act**"), now Section 95 of the Bharatiya Sakshya Adhiniyam, 2023 ("**BSA**"), is often relied upon for one purpose i.e. to stop the other side from leading oral evidence that would contradict or change the terms of a written contract. However, Section 92 also contains an important exception. Where the words of a contract are clear but become meaningless when applied to the existing facts, the court may look at relevant facts and documents outside the contract, not to rewrite the contract, but to work out what it meant.

The General Rule and Exception

Section 92 of the Evidence Act (Section 95, BSA) states that once the terms of a contract have been proved in writing, no oral evidence can be given to contradict, vary, add to or subtract from those terms. The sixth proviso to Section 92 of the Evidence Act allows proof of "*any fact which shows in what manner the language of a document is related to existing facts.*" Illustration (f) of Section 92 of the Evidence Act states that if A orders goods from B under a letter silent on when payment is due, A can still show

the goods were in fact supplied on credit for a period not yet ended. The evidence does not change the terms of the letter, it only shows how its language applies to the facts.

Patent and Latent Ambiguities

Once the sixth proviso to Section 92 of the Evidence Act is in play, two other sections mark the limits. Section 94 of the Evidence Act (Section 97, BSA) states that where the words of a document are clear and on their own, apply correctly to the facts, no evidence can be given to say they were not meant to apply. Section 95 of the Evidence Act (Section 98, BSA) covers the opposite case i.e. where the words are clear in themselves but make no sense against the actual facts, evidence can be given to show they were used in a peculiar sense. In simple terms, a patent ambiguity is one that appears from the document itself while a latent ambiguity appears only when apparently clear words are applied to the existing facts. Section 93 of the Evidence Act (Section 96, BSA) deals with ambiguity apparent from the document itself. Section 94 of the Evidence Act (Section 97, BSA) deals with words that are clear and apply accurately to the existing facts. Section 95 of the Evidence Act (Section 98, BSA) on the other hand, applies where the words are clear but become unmeaning when applied to the existing facts.

Supreme Court's Stance

In *Anglo American Metallurgical Coal Pty Ltd v. MMTC Ltd.*, (2021) 3 SCC 308, the Supreme Court interpreted the meaning and scope of sixth proviso to Section 92 read with



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Sections 94 and 95 of the Evidence Act. The facts of the case were that an Australian coal producer had a long-term agreement to sell coal to MMTC. For one delivery period, MMTC was supposed to lift 466,000 tonnes at USD 300 per tonne but lifted barely 12,000 tonnes. A majority of the arbitral tribunal held MMTC responsible and awarded damages and the Single Judge upheld the award. A Division Bench then reversed this, relying almost entirely on three emails in which Anglo American had said it had no coal available for the rest of the year. The Supreme Court disagreed with this view. The three emails said nothing about price at all. The Supreme Court therefore examined them in the context of the wider correspondence and the circumstances in which they had been written. Once the wider correspondence came in, including MMTC's earlier letter asking for a price cut, an ad hoc deal under which coal had already been sold at a discounted "mixed" rate, and the global price crash of 2008-09, the emails made better sense. Anglo American was not saying it had no coal at all, only that it had none to spare at the discounted rate MMTC was now pushing for. The Supreme Court restored the arbitral award, holding that related documents "*must be read as a connected whole*"



and that picking three emails while ignoring everything before and after them was not a fair way to read a contract's history. The judgment therefore shows that where the words of a document do not clearly fit the existing facts, the court can look at the surrounding documents and circumstances to understand what those words meant.

In *West Bengal State Electricity Distribution Co. Ltd. v. Adhunik Power & Natural Resource Ltd.*, 2026 SCC OnLine SC 328, WBSEDCL bought power under a supply agreement with PTC India Ltd., which in turn had a back-to-back purchase agreement with Adhunik Power for the same 100 MW, generated using coal. Article 2.5 said that if the seller sourced coal from anywhere other than its "captive source," it could not charge extra for that, such coal would be treated as if it came from the captive source. The agreement, however, never named the captive source anywhere in its text. WBSEDCL argued that because the PPA/PSA never named a specific coal block, the later cancellation of Adhunik Power's Ganeshpur coal block could not count as a "Change in Law" event tied to this contract at all. The Supreme Court rejected this contention. It looked at the minutes of a meeting held in January 2011, before the agreement was signed, recording that Adhunik Power held a captive coal block at Ganeshpur, Jharkhand, jointly with Tata Steel and a letter WBSEDCL itself had sent in April 2012 asking about the progress of coal lifting from that very block. The Supreme Court referred to the principle that, although the terms of a written contract must ordinarily be determined from the document itself, this does not

prevent the Court from looking at facts that establish a link between the terms of the contract and existing facts, or that give meaning to a term which may otherwise be meaningless or unworkable. Applying this principle, the Court treated Ganeshpur as the "captive source" referred to in Article 2.5. The Supreme Court agreed the block's later cancellation, following its own judgment in *Manohar Lal Sharma v. Principal Secy.*, (2014) 9 SCC 516 and the subsequent Coal Mines (Special Provision) Act, 2015, was a genuine "Change in Law" event entitling Adhunik Power to compensation from August 2014 onward. The judgment therefore shows that surrounding facts can be used to understand what a contractual term refers to, without changing the terms of the contract.

In *Mangala Waman Karandikar (D) v. Prakash Damodar Ranade*, 2021 SCC OnLine SC 371, a 1963 agreement said in plain terms that a stationery business was being handed over for the respondent to run in return for a fixed monthly payment. The Bombay High Court relied on surrounding circumstances and decided that the arrangement was really a licence over the shop premises, not just a continuation of the existing business. The Supreme Court reversed this, holding that proviso (6) to Section 92 and Section 95 of the Evidence Act come into play only "where the terms of the document leave the question in doubt". If a document is straightforward and gives no real difficulty in reading it, outside evidence has no role because it cannot be used to give the contract a different meaning.

Conclusion

A conspectus of the above shows that the proviso (6) to

Section 92 of the Evidence Act (Section 95, BSA) does not let a party add to or improve a contract with outside evidence. It only lets a court look at relevant surrounding facts and documents, where necessary, to understand how the words of the contract relate to the existing facts. *Anglo American* (supra) holds that where the words of a document do not clearly fit the existing facts, Section 94 of the Evidence Act (Section 97, BSA) does not prevent the court from considering the relevant surrounding circumstances, and Section 95 of the Evidence Act (Section 98, BSA) may then permit evidence to explain the words rather than contradict them. *Adhunik Power* (supra) applies the same approach to a term left undefined and shows that surrounding facts can help identify what that term refers to. *Karandikar* (supra) marks the boundary on the other side i.e. where the words already leave no real doubt, the proviso has nothing to operate on and a court must accept the plain meaning rather than use outside evidence to give the contract a different meaning. Read together, these pronouncements leave one question to ask before reaching for outside evidence at all. Does the written document, read fairly in the light of the relevant facts, already answer the point in dispute? If it does, that is the end of the enquiry. If it does not, proviso (6) to Section 92 of the Evidence Act (Section 95, BSA), read with Sections 94 and 95 of the Evidence Act (Sections 97 and 98, BSA), permits the court to look further. The practical lesson for commercial drafting is simple i.e. clearly identifying the source, price basis and operative date can avoid the need for such an enquiry altogether.