
ADMISSIBILITY OF ADDITIONAL EVIDENCE IN INDIAN ARBITRATION AFTER CROSS-EXAMINATION: A JURISPRUDENTIAL ANALYSIS OF BOMBAY HIGH COURT JUDGEMENTS

Aditya Kumar, BBA LL.B. (Hons.), NMIMS Kirit P. Mehta School of Law, Mumbai

ABSTRACT

The Arbitration and Conciliation Act, 1996 establishes a procedural framework that prioritises party autonomy, procedural flexibility, and expeditious dispute resolution. However, these objectives frequently come into tension with the principles of natural justice when parties seek to introduce additional evidence after cross-examination has concluded and evidence stands closed. This paper examines whether Indian arbitration law permits such belated production, and if so, under what conditions. Through a doctrinal analysis of key Bombay High Court decisions, namely *Pradyuman Kumar Sharma v. Jaysagar M. Sancheti* (2013), *Montana Developers Pvt Ltd v. Aditya Developers* (2016), and *Saloni Business Park Pvt Ltd v. Trafigura Pvt Ltd* (2024), this paper argues that there exists no absolute prohibition against post-closure evidence. Instead, Indian courts have evolved a nuanced framework based on arbitral discretion, the prohibition against lacuna-filling, absence of prejudice, and minimal judicial interference. The paper further situates this framework within the statutory scheme of the Act, particularly Sections 18, 19, 23, 24, 27, and 34, and proposes a coherent doctrinal test for future application.

Introduction

The Arbitration and Conciliation Act, 1996 represents India's legislative commitment to a modern, efficient, and internationally harmonised arbitration regime. Modeled substantially on the UNCITRAL Model Law, the Act consciously departs from rigid procedural formalism and places primary control over procedure in the hands of the arbitral tribunal. This design is most evident in Sections 18 and 19, which mandate equal treatment of parties while simultaneously freeing arbitral proceedings from the strict application of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

Section 18 guarantees that parties shall be treated with equality and shall be given a full opportunity to present their case. Section 19 permits tribunals to determine their own procedure, subject only to the agreement of the parties. Section 24 contemplates oral hearings at an "appropriate stage", while Section 23 allows amendment or supplementation of pleadings unless the tribunal considers it inappropriate due to delay. Together, these provisions establish a procedural regime that is flexible but not unbounded.

A recurring and contentious issue arises when parties seek to introduce additional documents or evidence after cross-examination has concluded and the evidentiary phase stands closed, often during or even after final arguments. Such applications test the limits of arbitral discretion and raise fundamental questions: Does the principle of full opportunity entitle parties to adduce evidence at any stage? Is there an implicit procedural bar once evidence is closed? Can parties file additional documents unilaterally? What is the scope of judicial review when such requests are allowed or rejected?

This paper examines these questions through the lens of Bombay High Court jurisprudence, which offers one of the most developed bodies of law on this issue in India.

Statutory Framework: Evidence, Procedure, and Judicial Intervention

The admissibility of additional evidence in arbitration must be located within the combined reading of six key provisions of the Act.

First, Section 18 embodies the principle of natural justice by guaranteeing equal treatment and full opportunity to present one's case. However, Indian courts have consistently held that this right is not absolute and must be balanced against procedural efficiency and finality.

Second, Section 19 grants arbitral tribunals autonomy over procedural rules and expressly excludes the mandatory application of the CPC and the Evidence Act. This makes arbitration fundamentally distinct from civil trials.

Third, Section 23(3) permits amendment or supplementation of claims and defences unless the tribunal finds it inappropriate due to delay. Courts have increasingly treated additional evidence as procedurally analogous to amended pleadings, thereby importing a “delay and appropriateness” test into evidentiary applications.

Fourth, Section 24 requires hearings at an appropriate stage, implicitly recognising that procedural stages exist and that not all requests are appropriate at all times.

Fifth, Section 27 enables tribunals to seek court assistance for summoning witnesses and documents, acknowledging that arbitrators lack coercive powers.

Finally, Section 34 provides the exclusive post-award remedy, particularly under Section 34(2)(a)(iii), which permits challenge where a party was “unable to present his case”.

Together, these provisions create a system where arbitral discretion is primary, judicial intervention is minimal, and procedural fairness is evaluated through a standard of material prejudice rather than technical correctness.

The Restrictive Approach: *Pradyuman Kumar Sharma v. Jaysagar M. Sancheti* (2013)

In *Pradyuman Kumar Sharma v. Jaysagar M. Sancheti*, the Bombay High Court adopted a strict approach towards post-closure evidence. The dispute arose out of joint venture agreements for property development. Arbitration commenced in 2003. Pleadings and affidavits were completed by 2004, and cross-examination concluded in 2005. Evidence was formally closed in April 2006. In 2007, after the respondent had already commenced final arguments, the petitioner sought to summon a handwriting expert and requested referral of documents for forensic examination, alleging forgery. The arbitral tribunal rejected this application on the ground that the petitioner had already been granted over twenty adjournments and that the request was a clear attempt to fill evidentiary gaps.

The petitioner challenged the order under Sections 14 and 34, arguing denial of natural justice. The Bombay High Court rejected the challenge, holding that “full opportunity” does not mean

endless opportunity. The Court emphasised that belated evidence intended to repair weaknesses in a party's case amounts to impermissible lacuna-filling. The Court further noted that the documents were always available and that the petitioner had even admitted their genuineness in prior proceedings. This case establishes two foundational principles. First, post-cross-examination evidence is exceptional and not a matter of right. Second, the dominant judicial test is not delay per se, but whether the evidence is sought to fill lacunae.

Judicial Assistance Without Merits Review: *Montana Developers Pvt Ltd v. Aditya Developers* (2016)

In *Montana Developers Pvt Ltd v. Aditya Developers*, the issue arose under Section 27 of the Act. The claimant had closed its evidence, but during the respondent's evidence sought to summon additional witnesses and documents. The arbitral tribunal allowed the request and sought court assistance. The respondents opposed the Section 27 petition before the Bombay High Court, arguing that the request was belated and procedurally improper. The Court rejected this contention, holding that Section 27 is a machinery provision and does not permit courts to adjudicate on the merits of the tribunal's procedural decision. Once the tribunal considers the evidence necessary, the court's role is purely facilitative.

The Court further clarified that arbitrators lack coercive powers under the Act, unlike civil courts under the CPC, and therefore Section 27 must be interpreted expansively to preserve the tribunal's authority. This judgment confirms that parties cannot unilaterally file additional evidence, even if no delay in availability exists. Arbitral approval is mandatory, and courts will not second-guess the tribunal's procedural assessment prior to the award.

Permissive Approach with Safeguards: *Saloni Business Park Pvt Ltd v. Trafigura Pvt Ltd* (2024)

The most recent and doctrinally refined position emerges from *Saloni Business Park Pvt Ltd v. Trafigura Pvt Ltd*. Here, additional documents were sought to be produced at the final stage of arguments. The claimant admitted that the documents were always available but were inadvertently omitted. The arbitrator allowed the production subject to stringent safeguards: imposition of costs, grant of full opportunity for cross-examination, and liberty to the opposing party to lead rebuttal evidence. The respondent challenged this order under Articles 226 and 227.

The Bombay High Court dismissed the writ petition, holding that pre-award judicial interference is permissible only in cases of jurisdictional error, bias, or procedural perversity. Relying on *Deep Industries Ltd v. ONGC* and *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd*, the Court reiterated that arbitral discretion must not be interfered with unless it destroys equality of arms or shocks procedural conscience. This demonstrates that even post-closure evidence is permissible where the purpose is explanatory rather than curative, and where adequate safeguards neutralise prejudice.

The Indian Test for Post Closure Evidence

Bombay High Court jurisprudence reveals a coherent doctrinal framework based on five cumulative factors:

- **Stage of proceedings:** Requests after evidence closure face the highest scrutiny.
- **Purpose of evidence:** The decisive test is whether the evidence explains existing pleadings or fills lacunae.
- **Delay and availability:** While relevant, delay is not determinative. Purpose matters more than timing.
- **Prejudice:** The opposing party must suffer material and irreparable prejudice.
- **Safeguards:** Costs, cross-examination, and rebuttal rights mitigate unfairness.

Courts apply what may be described as a standard of “procedural perversity”, not correctness. The inquiry is whether the tribunal’s decision was irrational or fundamentally unfair, not whether the court would have decided differently.

Section 34 and the Standard of Judicial Review

The only meaningful statutory challenge to rejection or admission of additional evidence lies under Section 34(2)(a)(iii), which requires proof that a party was unable to present its case.

Indian courts have clarified that:

- Mere refusal of evidence is insufficient.

- The party must demonstrate material prejudice.
- The evidence must be outcome-altering.
- The denial must destroy equality of arms.

Absent these conditions, procedural decisions of the tribunal are immune from interference.

Policy Rationale: Finality versus Legitimacy

Indian arbitration law balances two systemic risks. Excessive admission of evidence converts arbitration into endless litigation. Excessive rejection risks transforming arbitration into a technical exercise divorced from substantive justice. The Bombay High Court's approach preserves finality while ensuring legitimacy. It discourages tactical delays while protecting genuine procedural fairness.

Conclusion

Indian arbitration law does not impose an absolute bar on the production of additional evidence after cross-examination. Instead, it vests arbitral tribunals with wide procedural discretion, subject to a principled framework grounded in fairness, efficiency, and minimal judicial intervention. Bombay High Court jurisprudence has successfully evolved a doctrinal equilibrium where finality is preserved without sacrificing substantive justice, which strengthens the credibility of Indian arbitration and aligns domestic practice with global arbitral standards.

References

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5. Deep Industries Ltd v. Oil and Natural Gas Corporation Ltd, (2020) 15 SCC 706.
6. Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd, (2022) 1 SCC 75.
7. SBP & Co v. Patel Engineering Ltd, (2005) 8 SCC 618.