

2026 LiveLaw (SC) 89

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

**PAMIDIGHANTAM SRI NARASIMHA; J., R. MAHADEVAN; J.
SLP (C) NO(S).10944-10945 OF 2025; JANUARY 29, 2026
JAGDEEP CHOWGULE *versus* SHEELA CHOWGULE & ORS.**

Arbitration and Conciliation Act, 1996; Section 2(1)(e), Section 11, and Section 29A — Jurisdiction to extend the mandate of an Arbitral Tribunal — Held that the expression "Court" used in Section 29A for the extension of time or substitution of arbitrators refers strictly to the Court as defined under Section 2(1)(e) of the Act - This definition encompasses the Principal Civil Court of original jurisdiction in a district and includes a High Court only if it exercises ordinary original civil jurisdiction - The Supreme Court or High Courts exercising power under Section 11 to appoint an arbitrator do not retain supervisory control and become *functus officio* once the appointment is made.

Arbitration and Conciliation Act, 1996; Section 29A vs. Section 11 — Separation of Appointment and Supervision — Held that the power of appointment under Section 11 is a "special and limited" jurisdiction - It is a misconception to assume a hierarchy where only the appointing Court can extend the mandate - The extension of a mandate or substitution under Section 29A is a measure of curial supervision, not an "appointment" under Section 11 – Held that applications for extending an arbitral tribunal's mandate under Section 29A (4) of the Arbitration & Conciliation Act, 1996 must be filed exclusively before the 'Court' as defined in Section 2(1)(e) i.e., the principal civil court of original jurisdiction, regardless of which authority appointed the arbitrators - Interpretations based on a perceived "conflict of power" or "hierarchical difficulties" between a Civil Court and a High Court are untenable and opposed to the rule of law.

Arbitration and Conciliation Act, 1996; Section 42 — Inapplicability to Section 11 — Section 42, which mandates that subsequent applications be filed in the same Court where the first application was made, does not apply to Section 11 applications - The Chief Justice or their delegate exercising power under Section 11 is not a "Court" as defined by Section 2(1)(e); therefore, a Section 11 application does not fix the jurisdiction for Section 29A applications – Appeals allowed. [Relied on *SBP and Co. v. Patel Engineering Ltd.* (2005) 8 SCC 618; *State of West Bengal v. Associated Contractors* (2015) 1 SCC 32; *State of Jharkhand v. Hindustan Construction Co. Ltd.* (2018) 2 SCC 602; *Chief Engineer (NH) PWD (Roads) v. BSC&C and C JV 2024 SCC OnLine SC 1801; Paras 15-26]*

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1. Leave granted.

I. Questions of Law Referred to the Division Bench

2. The following two questions were referred by the Single Judge of High Court of Bombay at Goa¹ to the Division Bench of the High Court for authoritative determination.

“(i) In the event an Arbitral Tribunal constituted by the High Court under Section 11(6) fails to complete the proceedings within the stipulated period/extended period, where would an application under Section 29A(4) lie in the High Court or the Civil Court having original jurisdiction in case of a domestic arbitration?

ii) In the event an Arbitral Tribunal consisting of three Arbitrators is constituted as per Section 11(2) i.e. with agreement and consent of the parties, fail to complete the proceedings within the stipulated period/extended period, where would an application under Section 29A(4) lie in before the High Court or the Civil Court having original jurisdiction in the case of domestic arbitration?”

3. The Division Bench² answered the reference in the following manner.

“(i) In the event an Arbitral Tribunal constituted by the High Court under Section 11(6) fails to complete the proceedings within the stipulated period/extended period, then an application under Section 29A(4) would lie to the High Court in case of a domestic arbitration.

ii) In answer to the second question, we opine that in the event an Arbitral Tribunal consisting of three Arbitrators is constituted as per Section 11(2) i.e. with agreement and consent of the parties, fail to complete the proceedings within the stipulated period/extended period, the application under Section 29A(4) would lie to the Principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original jurisdiction.”

4. Following reference of the Division Bench, the learned Single Judge allowed writ petition³ filed by the respondent no.1 and quashed the order passed by the Commercial Court extending the time for making the Award under Section 29A(4) of the Arbitration and Conciliation Act, 1996⁴. The decision of the Division Bench as well as the subsequent judgment and order of the Single Judge are impugned before us.

¹ Vide order dated 15.04.2024 in Writ Petition No. 88 of 2024 filed by Respondent No.1, against of order of the Commercial Court in CMA No. 20/2023/A allowing application under Section 29A by Respondent no. 2.

² Vide order dated 07.08.2024.

³ Vide order dated 21.08.2024.

⁴ Hereinafter referred to as “the Act”.

II. The simple question for our consideration

5. As we begin to examine the very same questions, ably canvassed before us by Mr. Abhay Anil Anturkar and Mr. Amit Pai, learned counsels for the appellant and the respondents respectively, we would prefer to reframe the question, which is as simple and straight forward as follows: -

If an arbitral tribunal - appointed by the High Court or by the parties concerned – does not complete proceedings within the required or extended time limit, can an application to extend time under Section 29A of the Act can be filed before the High Court or the Civil Court?

6. We are of the opinion that there was no need to split the questions into two, one for a situation when the High Court constitutes the arbitral tribunal under Section 11(6) and the other, when the parties themselves constitute it under Section 11(2). Perhaps by asking the wrong questions, the Division Bench arrived at wrong answers. It is not just this Division Bench, in fact this perceived duality in the appointment process has given rise to divergent views of different High Courts. Before we deal with the divergent views of the High Court, followed by our analysis, short and necessary facts are as follows.

III. Facts of the case

7. The present dispute arose out of Memorandum of Family Settlement (MFS) dated 11.01.2021 executed between the parties herein, who all form part of the 'Chowgule' family. Owing to further differences, arbitration was invoked under clause 24 of the MFS on 18.05.2021. On 05.08.2023, the respondent no. 2 filed application for extension under Section 29A before the Commercial Court. In the meanwhile, owing to the resignation of the presiding arbitrator, the respondent no. 2 filed application for appointment of arbitrator under Section 11 before the High Court. The application under Section 11 was allowed by the High Court vide order dated 31.10.2023. This was followed by the Commercial Court allowing the application under Section 29A, vide order dated 02.01.2024. The same came to be challenged by respondent no. 1 by filing a writ petition on 08.01.2024, on the ground that the Commercial Court did not have jurisdiction to extend duration under Section 29A on account of appointment of the arbitrator by the High Court under Section 11. The Single Judge by his order dated 15.04.2024 referred the matter to the Division Bench in view of certain conflicting judgments on the interpretation of Section 29A(4). The Division Bench, by the first order impugned before us, observed that the application under Section 29A(4) is not maintainable before the Commercial Court as the presiding arbitrator was appointed by the High Court of Bombay at Goa in exercise of power under Section 11 of the Act. Following the decision of the Division Bench, the learned Single Judge, by the second impugned order allowed the writ petition, set aside the order of the Commercial Court dated 02.01.2024, but permitted the parties to approach the High Court for extension of time. Aggrieved, the appellant is before us contending that the Commercial Court alone is the appropriate Court under Section 29A read with Section 2(1)(e) of the Act.

IV. Divergence in the opinion of the High Courts on interpretation of "Court" under Section 2(1)(e) of the Act

8. A large number of decisions of the High Courts on interpretation of Section 29A of the Act can be categorized into following two streams.

A. *Judgments taking the view that ‘Court’ in Section 29A is Court as defined in Section 2(1)(e).*

9. The first stream of High Court decisions in *Mormugao Port Trust v. Ganesh Benzoplast Ltd.*⁵, *M/s A'Xykn Capital Services Private Ltd. v. State of UP*⁶, and *Dr. VV Subbarao v. Dr. Appa Rao Mukkamala & Ors.*⁷, hold that the expression ‘Court’ in Section 29A is the Court as defined under Section 2(1)(e), irrespective of the event that the arbitral tribunal was constituted by the Supreme or High Courts under Section 11(6) or by consent of parties under Section 11(2) of the Act. They hold that, once an arbitrator has been appointed through the judicial process, the Courts become *functus officio* and applications seeking extension of mandate under Section 29A are to be filed before Court as defined in Section 2(1)(e).

9.1 Further, as per this stream of decisions, the text of the legislation is unambiguous. Neither a High Court not having original ordinary civil jurisdiction has been included with regard to entertainability of an application under Section 29A, nor a Principal Civil Court has been excluded from Section 2(1)(e) for purpose of Section 29A. Some of these decisions clarify that, when the legislature intended to delineate jurisdictions, requisite provisions have duly been made, as exemplified through Sections 47 and 57, whereby jurisdiction of Civil Courts is expressly excluded. Further, Section 29A stipulates no distinction between arbitrators appointed with the consent of parties or by Constitutional Courts under Section 11.

B. *Other stream of judgments interpreting Court in Section 29A in the ‘context’ to disapply Section 2(1)(e).*

10. The second stream of High Court decisions in *Nilesh Ramanbhai Patel v. Bhanubhai Ramanbhai Patel*⁸, *Cabra Instalaciones Y. Servicios v. Maharashtra State Electricity Distribution Co. Ltd.*⁹, *DDA v. Tara Chand Sumit Construction Co.*¹⁰, *Amit Kumar Gupta v. Dipak Prasad*¹¹, *Magnus Opus IT Consulting Pvt Ltd v. Artcad Systems*¹², *Indian Farmers Fertilizers Cooperative Limited v. Manish Engineering Enterprises*¹³, *Best Eastern Business House Pvt. Ltd. v. Mina Pradhan*¹⁴, *Ovington Finance Pvt Ltd. v. Bindiya Naga*¹⁵, *K.I.P.L. Vistacore Infra Projects J.V. v. Municipal Corporation of the city of Ichalkarnj*¹⁶, *M/S Geo Miller Company Private Limited v. UP Jal Nigam and Ors.*¹⁷, *Best Eastern Business House Pvt. Ltd. v. Mina Pradhan*¹⁸, and *M/s. Premco Rail Engineering Ltd. v. Indian Institute of Technology, Indore*¹⁹ hold that in cases where the appointment of arbitrator is by the High Court under Section 11(6), applications for extension of time under Section 29A cannot be made before Civil Courts. The primary concern in these decisions is, if the expression “Court” in Section 2(1)(e) is interpreted to mean only the Court as defined there, it will create a jurisdictional anomaly, that is, the High Court would be appointing the

⁵ WP No. 3 of 2020 (High Court of Bombay at Goa).

⁶ 2023 SCC OnLine All 2991.

⁷ 2024 SCC OnLine AP 1668.

⁸ 2018 SCC OnLine Guj 5017.

⁹ 2019 SCC Online Bom 1437.

¹⁰ 2020 SCC OnLine Del 2501.

¹¹ 2021 SCC OnLine Cal 2174.

¹² 2022 SCC OnLine Bom 2861.

¹³ 2022 SCC OnLine All 150.

¹⁴ 2025 SCC OnLine Cal 7997.

¹⁵ 2023 SCC OnLine Del 8765.

¹⁶ 2024 SCC Online Bom 327.

¹⁷ 2024 SCC OnLine All 1676.

¹⁸ 2025 SCC OnLine Cal 7997.

¹⁹ Arbitration Case No. 88 of 2025 (High Court of Madhya Pradesh).

arbitrator and the Civil Court, a Court inferior to it, could be asked to extend the arbitrator's mandate and would also have the jurisdiction to substitute the arbitrator appointed by the High Court.

10.1 It is reasoned that as the exclusive power of appointment of arbitrator under Section 11 is of the Supreme Court or the High Courts, the ancillary power of extension or substitution can only be of these Courts, or else a situation of "conflict of power" between the Civil Court and the High Court would arise in cases of domestic arbitration and a similar conflict would arise between the High Court and the Supreme Court in cases of international commercial arbitration.

10.2 To obviate the situation, these lines of decisions adopt the interpretative principle of giving "contextual" meaning to the expression 'Court' in Section 29A by referring and relying on the phrase "*in this Part, unless the context otherwise requires*" in Section 2(1) of the Act. The High Courts, for instance the High Court of Gujarat in *Nilesh Ramanbhai Patel (Supra)* followed by the Delhi High Court in *DDA v. Tara Chand (Supra)*²⁰ were troubled by the power of principal Civil Court to substitute arbitrators appointed by the High Court. To resolve this complexity, they have taken the view that "Court" under Section 29A for extension of the mandate of the arbitral tribunal in the context of the arbitral tribunal being constituted by the High Court or the Supreme Court under Section 11(6), shall not be the "Court" as defined in Section 2(1)(e), but the High Court or the Supreme Court under Section 11(6).

V. Scheme of the Act

11. As we are concerned with the jurisdiction and powers of the 'Court' under Section 29A, the said provision as well as the definition of 'Court' in Section 2(1)(e) are reproduced hereinbelow for ready reference.

"Sec. 29A. Time limit for arbitral award.—(1) *The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.*

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) *If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*

(3) *The parties may, by consent, extend the period specified in subsection (1) for making award for a further period not exceeding six months.*

(4) *If the award is not made within the period specified in subsection (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:*

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

(5) *The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.*

(6) *While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral*

²⁰ 2020 SCC OnLine Del 2501.

proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) *In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.*

(8) *It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.*

(9) *An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.*

Sec. 2. Definitions.—(1) *In this Part, unless the context otherwise requires,—*

(e) “Court” means— (i) *in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

(ii) *in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;”*

12. The Arbitration and Conciliation Act, 1996 is a complete code. While Chapter I of the Act relates to *definitions*, limits of judicial intervention and waiver. Chapter II defines the scope of an *arbitration agreement*, the obligation of a judicial authority to refer the parties to the agreement to arbitration and power of the Court to provide interim measures. Chapter III relates to the initiation and *composition of arbitral tribunal*, as also the procedure and remedies for challenging the appointments. Chapter IV relates to *jurisdiction of arbitral tribunals*, its powers to examine its own competence and also to provide interim measures. Chapter V deals with the *conduct of arbitral proceedings*. The process of making of award and termination of arbitral proceedings is dealt with in Chapter VI. Finally, Chapters VII, VIII and IX relate to judicial remedies for challenging the award, appeal, finality and enforcement.

VI. Scope of Referral Court's Jurisdiction under Section 11

13. As the statutory policy exclusively enabling the High Court or the Supreme Court to appoint arbitrators and at the same time, excluding the Civil Courts weighed heavily on the second stream of decisions in arriving at its conclusions, it is necessary to examine the ambit of this function. The Act identifies Courts of varying jurisdiction and imposes distinct obligations on them. The power and jurisdiction to constitute an arbitral tribunal and to appoint an arbitrator in case of domestic arbitrations is vested in the High Court and in case of international commercial arbitrations, in the Supreme Court. The nature of this jurisdiction has consistently been characterised by this Court as special and limited. In *SBP and Co. v. Patel Engineering Ltd.*²¹, this Court explained the purpose and object of the power of appointment. The limits of this function and obligation to constitute the arbitral tribunal is explained as follows;

“13. It is common ground that the Act has adopted the UNCITRAL Model Law on International Commercial Arbitration, but at the same time it has made some departures from the Model Law.

²¹ (2005) 8 SCC 618.

Section 11 is in the place of Article 11 of the Model Law. The Model Law provides for the making of a request under Article 11 to “the court or other authority specified in Article 6 to take the necessary measure”. The words in Section 11 of the Act are “the Chief Justice or the person or institution designated by him”. The fact that instead of the court, the powers are conferred on the Chief Justice, has to be appreciated in the context of the statute. “Court” is defined in the Act to be the Principal Civil Court of original jurisdiction of the district and includes the High Court in exercise of its ordinary original civil jurisdiction. The Principal Civil Court of original jurisdiction is normally the District Court. The High Courts in India exercising ordinary original civil jurisdiction are not too many. So in most of the States the court concerned would be the District Court. Obviously, Parliament did not want to confer the power on the District Court, to entertain a request for appointing an arbitrator or for constituting an Arbitral Tribunal under Section 11 of the Act. It has to be noted that under Section 9 of the Act, the District Court or the High Court exercising original jurisdiction, has the power to make interim orders prior to, during or even post-arbitration. It has also the power to entertain a challenge to the award that may ultimately be made. The framers of the statute must certainly be taken to have been conscious of the definition of “court” in the Act. It is easily possible to contemplate that they did not want the power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention apparently was to confer the power on the highest judicial authority in the State and in the country, on the Chief Justices of the High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process.

The argument that the power thus conferred on the Chief Justice could not even be delegated to any other Judge of the High Court or of the Supreme Court, stands negated only because of the power given to designate another. The intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act was exercised by the highest judicial authority in the State or in the country concerned. This is to ensure the utmost authority to the process of constituting the Arbitral Tribunal.”

(emphasis supplied)

14. Post *SBP and Co. (Supra)*, the legislative changes to Section 11, including introduction of the *statutory restraint* through Section 11(6A)²² coupled with the express empowerment of the arbitral tribunal to rule on its own jurisdiction under Section 16 is explained in a long line of precedents; *Duro Felguera SA v Gangavaram Port Ltd*²³, *Interplay Between Arbitration Agreement under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899 In re*²⁴, *SBI General Insurance Co Ltd v Krish Spinning Mills Pvt Ltd*²⁵, and *A.P. Power Generation Corporation Ltd. v. M/s. TECPRO Systems Ltd.*²⁶. It is now settled that the enquiry under Section 11 is confined to a *prima facie* determination of the existence of an arbitration agreement. The enquiry under Section 11 goes no further.

15. Exercise of jurisdiction under Section 11 stands exhausted upon the constitution of the arbitral tribunal. There is no residual supervisory or controlling power left with the High Court or the Supreme Court over the arbitral proceedings after appointment is made. To read Section 11 as conferring such enduring control would be to conflate appointment with supervision, a conflation which the Act as well as the precedents on the subject prohibit.²⁷ It is a misconception to assume that the Supreme Court or the High Court keeps a watch

²² Section 11(6A)- The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

²³ (2017) 9 SCC 729.

²⁴ (2024) 6 SCC 1.

²⁵ (2024) 12 SCC 1.

²⁶ 2025 SCC OnLine SC 2851.

²⁷ Kamal Gupta v. L.R. Builder, 2025 SCC OnLine SC 1691.

on the Conduct of Arbitral Proceedings or on Making of the Arbitral Award like the Orwell's "*Big Brother is watching you*". The referral Court becomes *functus officio* once appointment has been made, it has no role or function as a Subjudice Sentinel.

VII. True Text and Context of Section 29A

16. As we move away from the process of "Appointment of Arbitrators" under Section 11 and arrive at the "Conduct of Arbitral Proceedings" and "Making of Arbitral Award and Termination", which procedures are articulated in Chapters V and VI, we notice the Parliament's endeavour to introduce principles of integrity and efficiency in working of the alternative remedy by prescribing time limits. This is an important feature, introduced through Section 29A, w.e.f. 23.10.2015. The Section in its entirety has already been extracted for ready reference, but a holistic reading of the provision with other parts of the Act mandates as follows;

- (i) Sub-Section (1) of Section 29A mandates that the award shall be made within 12 months of the completion of pleadings before the Arbitral Tribunal²⁸. While sub-Section (2) incentivises expeditious making of the Award, proviso to sub-Section (4) and sub-Section (8) authorises the Court to impose penalty for delay in making the award.
- (ii) Sub-Section (3) enables parties, by consent, to extend the period of 12 months for making the award by a further period not exceeding 6 months.
- (iii) If the award is not made within the stipulated period of 12 months or the extended period of 6 months, the mandate of the arbitrator(s) shall terminate.
- (iv) This termination is subject to the power of the Court to extend the period²⁹.
- (v) The 'Court' under Section 29A shall be the Civil Court of ordinary original jurisdiction in a district and includes the High Court in exercise of its original civil jurisdiction under Section 2(1)(e), and shall not be the High Court or the Supreme Court under Section 11(6) of the Act. Equally, Section 42 of the Act relating to jurisdiction for application will not apply to Section 11 of the Act.³⁰

²⁸ Explained by this Court in *Rohan Builders (India) Pvt Ltd v. Berger Paints India Limited* 2024 SC Online SC 2494, "Prior to the enactment of Section 29A of the A & C Act did not specify a time limit for making an arbitral award. This was deliberate, given the fact that the First Schedule and Section 28 of the Arbitration Act, 1940 led to litigation and delay. Section 29A, as quoted above, was inserted by Act 3 of 2016 with retrospective effect from 23.10.2015. The Arbitration and Conciliation (Amendment) Act, 2015 aimed to ensure that arbitration proceedings are completed without unnecessary adjournments and delay."

²⁹ The Law Commission's 176th Report @ 2.21.5 explains the purpose and object of vesting of this power as follows, "One other important aspect here is that if there is a delay beyond the initial one year and the period agreed to by the parties (with an upper of another one year) and also any period of extension granted by the Court, there is (i) no point in terminating the arbitration proceedings. We propose it as they should be continued till award is passed. Such a termination may indeed result in waste of time and money for the parties after lot of evidence is led. In fact, if the proceedings were to terminate and the claimant is to file a separate suit, it will even become necessary to exclude the period spent in arbitration proceedings, if he was not at fault, by amending sec. 43(5) to cover such a situation. But the Commission is of the view that there is a better solution to the problem. The Commission, therefore, proposes to see that an arbitral award is ultimately passed even if the above said delays have taken place. In order that there is no further delay, the Commission proposes that after the period of initial one year and the further period agreed to by the parties (subject to a maximum of one year) is over, the arbitration proceedings will nearly stand suspended and will get revived as soon as any party to the proceedings files an application in the Court for extension of time. In case none of the parties files an application, even then the arbitral tribunal may seek an extension from the Court. From the moment the application is filed, the arbitration proceedings can be continued. When the Court takes up the application for extension, it shall grant extension subject to any order as to costs and it shall fix up the time schedule for the future procedure before the arbitral tribunal. It will initially pass an order granting extension of time and fixing the time frame before the arbitral tribunal and will continue to pass further orders till time the award is passed. This procedure will ensure that ultimately an award is passed."

³⁰ *State of West Bengal v. Associated Contractors*, (2015) 1 SCC 32.

(vi) There is no statutorily prescribed time limit for the Court to exercise its power under Section 29A(4) for extending the period, except for its own restraint. The Court can exercise the power before or after the expiry of the period under sub-Sections 29A(1) or (3). Further, there is no prescription of outer limit for extending time for conclusion of arbitral proceedings. Given this power, the Court will exercise it with circumspection, balancing the remedy with rights of other stake holders.

(vii) The power of the Court to extend the time under sub-Section (4) may be exercised on an application by any of the parties. Once such an application for extension of time is pending, the mandate of the arbitrator shall continue till the disposal of such application under sub-Section (9). The Court shall also endeavour to dispose of such an application within 60 days.

(viii) Under Section 29A(6), while exercising the power of extension, it shall be open to the Court to substitute one or all the arbitrators. This is a discretionary power that the Court would exercise in the facts and circumstances of the case. Upon substitution, the reconstituted tribunal shall be deemed to be in continuation of the previously appointed tribunal as per Section 29A(7) and shall continue from the stage already reached and on the basis of evidence already on record. The newly appointed arbitrators shall be deemed to have received the evidence and materials.

(ix) Vesting of the power of substitution, under Section 29A(6), is on the Court and this Court is the Court as defined in Section 2(1)(e). The text as well as the context for identifying the Court in Section 29A(6), as well as in 29A(4), is the Court in Section 2(1)(e). The expression 'Court' in other provisions must be guided by the meaning given in Section 2(1)(e).

17. Before we examine the interpretative choices of the Court to decipher the true meaning of a word on the basis of the context, it is necessary for us to consider if perceptions such as “inferior Court”, “conflict of power”, “hierarchy” or even a “*jurisdictional anomaly*”, can supply “context” for deviating from a definition supplied by the Parliament to an expression. We have no hesitation in holding that interpretation based on a perception of status or hierarchy of Courts is opposed to the fundamental conception of rule of law. It is apt to refer to the famous statement of Dicey that, ‘*however high you may be, the law is above you.*’ Law, and law alone is the source of power.

18. In *A.R. Antulay v. R.S. Nayak*³¹, this Court held an occasion to deal with this perception;

“91. It is the settled position in law that jurisdiction of courts comes solely from the law of the land and cannot be exercised otherwise. So far as the position in this country is concerned conferment of jurisdiction is possible either by the provisions of the Constitution or by specific laws enacted by the legislature. For instance, Article 129 confers all the powers of a court of record on the Supreme Court including the power to punish for contempt of itself. Articles 131, 132, 133, 134, 135, 137, 138 and 139 confer different jurisdictions on the Supreme Court while Articles 225, 226, 227, 228 and 230 deal with conferment of jurisdiction on the High Courts. Instances of conferment of jurisdiction by specific law are very common. The laws of procedure both criminal and civil confer jurisdiction on different courts. Special jurisdiction is conferred by special statute. It is thus clear that jurisdiction can be exercised only when provided lower either in the Constitution or in the laws made by the legislature. Jurisdiction is thus the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. In support of judicial opinion for this view reference may be made to the Permanent Edition of “Words and Phrases” Vol. 23-A at page 164. It would be appropriate to refer to two small passages occurring at pages 174 and

³¹ 1988 2 SCC 602.

175 of the volume. At page 174, referring to the decision in *Carlile v. National Oil & Development Co.* it has been stated.

Jurisdiction is the authority to hear and determine, and in order that it may exist the following are essential: (1) A court created by law, organized and sitting; (2) authority given to it by law to hear and determine causes of the kind in question; (3) power given to it by law to render a judgment such as it assumes to render; (4) authority over the parties to the case if the judgment is to bind them personally as a judgment in personam, which is acquired over the plaintiff by his appearance and submission of the matter to the court, and is acquired over the defendant by his voluntary appearance, or by service of process on him; (5) authority over the thing adjudicated upon its being located within the court's territory, and by actually seizing it if liable to be carried away; (6) authority to decide the question involved, which is acquired by the question being submitted to it by the parties for decision.”

(emphasis supplied)

19. In recent times, particularly in the context of ‘Court’ in arbitral proceedings, this Court in *State of Jharkhand & Ors. v. Hindustan Construction Co. Ltd.*³² held;

“66. In Guru Nanak Foundation [Guru Nanak Foundation v. Rattan Singh and Sons, (1981) 4 SCC 634], as noted earlier, the two-Judge Bench has distinguished the principle laid down in Garikapati Veeraya [Garikapati Veeraya v. N. Subbiah Choudhry, 1957 SCR 488 : AIR 1957 SC 540] by stating that the door of this Court is not closed to the appellant. In fact, as has been stated, the door is being held wide ajar for him to raise all contentions which one can raise in a proceeding in an originating summons. The aforesaid statement of law is not correct because the superior court is not expected in law to assume jurisdiction on the foundation that it is a higher court and further opining that all contentions are open. The legislature, in its wisdom, has provided an appeal under Section 39 of the Act. Solely because a superior court appoints the arbitrator or issues directions or has retained some control over the arbitrator by requiring him to file the award in this Court, it cannot be regarded as a court of first instance as that would go contrary to the definition of the term “court” as used in the dictionary clause as well as in Section 31(4). Simply put, the principle is not acceptable because this Court cannot curtail the right of a litigant to prefer an appeal by stating that the doors are open to this Court and to consider it as if it is an original court. Original jurisdiction in this Court has to be vested in law. Unless it is so vested and the Court assumes, the court really scuttles the forum that has been provided by the legislature to a litigant. That apart, as we see, the said principle is also contrary to what has been stated in Kumbha Mawji [Kumbha Mawji v. Union of India, 1953 SCR 878 : (1953) 1 SCC 700 : AIR 1953 SC 313]. It is worthy to note that this Court may make a reference to an arbitrator on consent but to hold it as a legal principle that it can also entertain objections as the original court will invite a fundamental fallacy pertaining to jurisdiction.

67. In *Surjit Singh Atwal [Union of India v. Surjeet Singh Atwal, (1969) 2 SCC 211]*, a three-Judge Bench had opined that applications under Section 8 and under Section 20, though clearly applications anterior to the reference, lead to a reference. Such applications are undoubtedly applications “in the matter of a reference” and may fall within the purview of Section 31(4) of the Act even though these applications are made before any reference has taken place. The purpose of referring to the said authority is that the principle stated in *Kumbha Mawji [Kumbha Mawji v. Union of India, 1953 SCR 878 : (1953) 1 SCC 700 : AIR 1953 SC 313]* has been elaborated in *Surjit Singh Atwal [Union of India v. Surjeet Singh Atwal, (1969) 2 SCC 211]*. It is to be borne in mind that the Court that has jurisdiction to entertain the first application is determinative by the fact as to which Court has the jurisdiction and retains the jurisdiction. In this regard, an example may be cited. When an arbitrator is not appointed under the Act and the matter is challenged before the High Court or, for that matter, the Supreme Court and, eventually, an arbitrator is appointed and some directions are issued, it will be inappropriate and inapposite to say that the superior court has the jurisdiction to deal with the objections filed under Sections 30 and 33 of the

³² 2018 2 SCC 602.

Act. The jurisdiction of a court conferred under a statute cannot be allowed to shift or become flexible because of a superior court's interference in the matter in a different manner."

(emphasis supplied)

20. For the reasons stated above, we are of the opinion that the conclusion on the ground that there will be hierarchical difficulties, conflict of power or jurisdictional anomaly if a Civil Court entertains application under Section 29A for extension of time of an arbitral tribunal if the High Court under Section 11(6) of the Act has appointed the arbitrator(s) is untenable. This approach is hereby rejected.

VIII. Interpretation of the expression "Court" in Section 2(1)(e)

21. It is a settled principle of statutory interpretation that a defined term must ordinarily bear the meaning assigned to it "unless the context otherwise requires".³³ Further, in *State of West Bengal v. Associated Contractors*³⁴, a three-judge bench held that no Court other than the one defined in Section 2(1)(e) gets qualified as 'Court' under Part I of the Act, 1996. It observed that,

"25. (a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part I of the Arbitration Act, 1996."

22. Similarly, in *Nimet Resources Inc. & Anr. v. Essar Steels Ltd.*³⁴ where this Court considered Section 2(1)(e) in the context of Section 14 observed as under:

"8. Application in terms of sub-section (2) of Section 14, thus, lies before a "court" within the meaning of the 1996 Act.

9. It is only thus the "court", within the meaning of the provisions of the said Act which can entertain such an application raised by the parties herein and determine the dispute therein on merit.

10. Unlike the 1940 Act, "court" has been defined in Section 2(1)(e) to mean:

"2. (1)(e) 'Court' means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subjectmatter of the arbitration if the same had been the subjectmatter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;"

11. As a "court" has been defined in the 1996 Act itself, an application under Section 14(2) would be maintainable only before the Principal Civil Court which may include a High Court having jurisdiction but not this Court.

*12. This Court in passing its order dated 27-9-2000, as noticed hereinbefore, did not and could not retain any jurisdiction in itself as could be done in suitable cases under the 1940 Act. It even did not determine the validity or otherwise of the arbitration agreement. It allowed the parties to take recourse to their remedies before the learned arbitrator. When the said order was passed, this Court was considered to have only an administrative power, but the same has since been held to be a judicial power in *SBP & Co. v. Patel Engg. Ltd.* [(2005) 8 SCC 618] The said jurisdiction, however, does not extend to Section 14 of the Act.*

13. The definition of "court" indisputably would be subject to the context in which it is used. It may also include the appellate courts. Once the legislature has defined a term in the interpretation

³³ KV Muthu v. Angamuthu Amman, (1997) 2 SCC 53 – "12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied." ³⁴ (2015) 1 SCC 32.

³⁴ (2009) 17 SCC 313.

clause, it is not necessary for it to use the same expression in other provisions of the Act. It is well settled that meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning.

14. It is also well settled that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words.

18. Jurisdiction under Section 11(6) of the 1996 Act is used for a different purpose. The Chief Justice or his designate exercises a limited jurisdiction. It is not as broad as sub-section (4) of Section 20 of the 1940 Act. When an arbitrator is nominated under the 1996 Act, the court does not retain any jurisdiction with it. It becomes functus officio subject of course to exercise of jurisdiction in terms of constitutional provisions or the Supreme Court Rules.

(emphasis supplied)

23. *Nimet Resources (Supra)* clarifies two propositions of enduring relevance. First, that applications concerning conduct, continuation, termination or substitution of an arbitral mandate, whether under Section 14 or otherwise, are matters of curial supervision and must be instituted before the “Court” as statutorily defined. Second, that the jurisdiction exercised under Section 11 is limited and exhausted upon the constitution of the arbitral tribunal, leading to the appointing Court becoming *functus officio* thereafter. These principles apply with equal force to Section 29A. The extension of mandate or substitution of an arbitrator under Section 29A does not partake the character of “appointment” under Section 11, but is a measure designed to ensure timely conclusion of arbitration. Absence of any contextual indicia to the contrary, the expression “Court” in Section 29A must, therefore, be accorded the meaning assigned to it under Section 2(1)(e).

24. *Chief Engineer (NH) PWD (Roads) v. BSC&C and C JV*³⁵ is a decision, directly on the point. It is distinguished on the basis that the original appointment of arbitrator was not by the Court. We have already clarified that Section 11 will have no bearing on the working of the provisions in Chapters V and VI, where Section 29A is located. This Court held;

“2. The power under sub-Section (4) of Section 29A of the Arbitration Act vests in the Court as defined in Section 2(1)(e) of the Arbitration Act. It is the principal Civil Court of original jurisdiction in a district which includes a High Court provided the High Court has ordinary original civil jurisdiction.

3. In this case, the High Court does not have the ordinary original civil jurisdiction. The power under sub-Section (6) of Section 29A is only a consequential power vesting in the Court which is empowered to extend the time. If the Court finds that the cause of delay is one or all of the arbitrators, while extending the time, the Court has power to replace and substitute the Arbitrator(s). The said power has to be exercised by the Court which is empowered to extend the time as provided in sub-Section (4) of Section 29A of the Arbitration Act.”

IX. Applicability of Section 42

25. The analysis would be incomplete without taking note of Section 42 of the Act, though reference to Section 42 has not been made before the High Court or this Court. Section 42 provides that;

“42. **Jurisdiction.**—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under

³⁵ 2024 SCC OnLine SC 1801.

this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

26. It may be argued that since application under Section 11(6) for appointment is filed before High Court, all successive applications, including the one under Section 29A(4) must be made to such High Court. We need not labour on this issue as a Constitution Bench of this Court in *State of Jharkhand v. Hindustan Construction Co.*³⁶ affirming the decision in *Associated Contracts (Supra)* has held that, solely because a superior Court appoints the arbitrator, or issues directions or has retained some control over the arbitrator, it cannot be regarded as a ‘Court’ of first instance for purposes of Section 42. In *Associated Contracts (Supra)* this Court opined:

“13. It will be noticed that whereas the earlier definition contained in the 1940 Act spoke of any civil court, the definition in the 1996 Act fixes “court” to be the Principal Civil Court of Original Jurisdiction in a district or the High Court in exercise of its ordinary original civil jurisdiction. Section 2(1)(e) further goes on to say that a court would not include any civil court of a grade inferior to such Principal Civil Court, or a Small Cause Court.

14. It will be noticed that the definition is an exhaustive one as it uses the expression “means and includes”. It is settled law that such definitions are meant to be exhaustive in nature—see P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348].

16. Similar is the position with regard to applications made under Section 11 of the Arbitration Act. In Rodemadan India Ltd. v. International Trade Expo Centre Ltd. [(2006) 11 SCC 651], a Designated Judge of this Hon'ble Court following the seven Judge Bench in SBP and Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618], held that instead of the court, the power to appoint arbitrators contained in Section 11 is conferred on the Chief Justice or his delegate....

*It is obvious that Section 11 applications are not to be moved before the “court” as defined but before the Chief Justice either of the High Court or of the Supreme Court, as the case may be, or their delegates. This is despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively. Again, Section 42 would not apply to applications made before the Chief Justice or his delegate for the simple reason that the Chief Justice or his delegate is not “court” as defined by Section 2(1)(e). The said view was reiterated somewhat differently in *Pandey & Co. Builders (P) Ltd. v. State of Bihar [(2007) 1 SCC 467].*”*

(emphasis supplied)

X. Conclusion

27. In view of the above, we allow the appeals, set aside the reference of the Division Bench in Writ Petition No. 88 of 2024 dated 07.08.2024 and the subsequent judgment and order of the Single Judge of the High Court in Writ Petition No. 88 of 2024 dated 21.08.2024 and restore the judgment of the Commercial Court in Civil Miscellaneous Application No. 20/2023/A dated 02.01.2024. Parties are at liberty to move the Commercial Court for further extension under Section 29A(5) for exercising Court’s power under Section 29A(4). The Court shall consider the application, hear the parties and pass appropriate orders.

28. There shall be no order as to costs.

³⁶ (2018) 2 SCC 602.