

[2022 LiveLaw \(SC\) 523](#)

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; B.V. NAGARATHNA, JJ.**

SPECIAL LEAVE PETITION (C) NO. 5306 OF 2022; May 19th, 2022

M/s Shree Vishnu Constructions *Versus* The Engineer in Chief, Military Engineering Service & Ors.

Arbitration and Conciliation Act 1996; Section 11(5), 11(6) - Directions issued to High Courts to dispose pending applications within 6 months - Ensure that all pending applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other applications either for substitution of arbitrator and/or change of arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from today.

Arbitration and Conciliation Act 1996; Section 11(5), 11(6) - Delay in appointment of arbitrators - If the arbitrators are not appointed at the earliest and the applications under Sections 11(5) and 11(6) of the Arbitration Act are kept pending for a number of years, it will defeat the object and purpose of the enactment of the Arbitration Act and it may lose the significance of an effective Alternative Dispute Resolution Mechanism. If the Commercial disputes are not resolved at the earliest, not only it would affect the commercial relations between the parties but it would also affect economy of the country.

(Arising out of impugned final judgment and order dated 30-06-2020 in ARBA No. 151/2016 passed by the High Court for the State of Telangana at Hyderabad)

For Petitioner(s) Mr. K. Parameshwar, AOR Ms A Sregurupriya, Adv.

For Respondent(s) Ms. Megha Karnwal, AOR Mr. Gopal Jha, AOR Mr. Nishant Verma, Adv. Mr. Sanjay Jain, ASG Mr. Anukalp Jain, Adv Mr. Padmesh Mishra, Adv. Mr. Yuvraj Sharma, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Sibor Sankar Mishra, AOR Mr. Uma Kant Misra, Adv. Mr. Rajesh Nayak, Adv. Mr. Sandeep Sudhakar Deshmukh, Adv. Mr. Nikhil Goel, Adv.

ORDER

Pursuant to our earlier orders, the respective High Courts have sent the statements regarding pending applications under Section 11(6) of the Arbitration and Conciliation Act, pending in the respective High Courts. It is seen that numbers of applications under Sections 11(5) and 11(6) of the Arbitration Act are pending since more than one year. In many High Courts, applications for appointment of the arbitrator(s) are pending for more than four to five years. Even, in the statement of High Court Rajasthan at Jodhpur, many applications are pending, which are found to be defective. Some of the defective applications are pending since 2016 onwards. Pendency of large number of applications under Section 11(5) and 11(6) of the Arbitration Act, shows a very sorry state of affairs.

The arbitration proceedings under the Arbitration and Conciliation Act are said to be a part of the Alternative Dispute Resolution System. Having found that it takes a number of years in deciding and disposing of suits by the civil courts for a variety of reasons and with a view to see that the Commercial disputes are decided and disposed of and resolved at the earliest, the Arbitration and Conciliation Act has been enacted and

hence, the Arbitration proceedings have been accepted as an effective Alternative Dispute Resolution Mechanism. Therefore, if the arbitrators are not appointed at the earliest and the applications under Sections 11(5) and 11(6) of the Arbitration Act are kept pending for a number of years, it will defeat the object and purpose of the enactment of the Arbitration Act and it may lose the significance of an effective Alternative Dispute Resolution Mechanism. If the Commercial disputes are not resolved at the earliest, not only it would affect the commercial relations between the parties but it would also affect economy of the country. It may affect the ease of doing business in the country. If the country has to compete with the global business, a confidence has to be fostered that in our country the commercial disputes are resolved at the earliest and it does not take a number of years in resolving such Commercial disputes.

Even the amended Arbitration Act as well as the Commercial Courts Act mandate that the Commercial disputes are to be decided and disposed of within a period of one year. Further, the Arbitrators are mandated to declare the award within a period of one year. Therefore, if the applications under Sections 11(5) and 11(6) of the Arbitration Act for appointment of arbitrators are kept pending for a number of years, it would defeat the object and purpose of the enactment of the Arbitration and Conciliation Act as well as the Commercial Courts Act. The litigant may lose the faith in the justice delivery system, which may ultimately affect not only rule of law but commerce and business in the country. Therefore, the applications under Sections 11(5) and 11(6) of the Arbitration Act and other applications, either for substitution and/or change of the Arbitrator have to be decided and disposed of at the earliest.

In that view of the matter, we request all the Chief Justices of the respective High Courts to ensure that all pending applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other applications either for substitution of arbitrator and/or change of arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from today. The Registrar General(s) of the respective High Courts are directed to submit the compliance report on completion of six months from today. All endeavour shall be made by the respective High Courts to decide and dispose of the applications under Sections 11(5) and 11(6) of the Arbitration Act and/or any other like application at the earliest and preferably within a period of six months from the date of filing of the applications.

A copy of this order to be circulated by the Registry of this Court to Registrar Generals of all High Courts so as to be placed before the respective Hon'ble Chief Justices for taking further action in the matter.

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