

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.181 OF 2023

K.I.P.L. Vistacore Infra Projects J.V. .. Petitioner

Versus

Municipal Corporation of the city of .. Respondent
Ichalkarnji

...

Mr.Akshay Patil with Mr.Akshay Kamble, Ms.Eesha Karnik, Ms.Devika Madekar, Ms.Neha Patil and Ms.Rina Ram i/b Viveka Partners for the Petitioner.

Mr.Girish Godbole, Senior Advocate i/b Mr.Akshay Shinde for the Respondents Nos.2 and 3.

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CORAM: BHARATI DANGRE, J.

DATED : 22nd JANUARY, 2024

JUDGMENT:-

1. The Arbitration Petition filed by the Petitioner under Section 29-A of the Arbitration and Conciliation Act, 1996 (for short, "**The Act**"), seeks extension of time for completion of the pending arbitration proceedings, by a period of six months.

The brief background facts reveal that the Urban Infrastructure Development Scheme for Small and Medium Towns Scheme (UIDSSMT) Mission was launched by the Government of India in the year 2012. Under the said scheme, the Municipal Corporation of city of Ichalkarnji, proposed construction of two decentralized Sewage Treatment Plants (STP) of 10+8 MLD capacity alongwith ancillary infrastructure such as pumping stations etc.

The funding was sanctioned by the Government of India and the State of Maharashtra on the basis of the Detailed Project Report

(DPR) submitted by the Respondents.

Pursuant to the tender floated by the Respondent on 01/03/2021, the Petitioner's bid, being the lowest one, was accepted and the Work Order was issued in its favour. By the year 2019, the Petitioner claimed to have completed 55% of work and the delay is attributed to the Respondent, as the possession of the land was handed over belatedly alongwith the drawings for STP.

2. The Petitioner was blacklisted by the Respondent and, hence, it approached this Court in a Writ Petition, which was withdrawn, as Respondent No.1 by its resolution extended the time for completion of the work, by a further period of six months. However, this resolution was stayed by the Collector and by the subsequent resolution passed by the Respondent, the contract of the Petitioner was terminated.

The Petitioner once again filed Writ Petition (St) No.4077 of 2020, challenging the said termination and it was disposed off with a liberty to make representation.

Another Writ Petition was filed vide Writ Petition (L) No. 98777 of 2020, challenging the resolution passed by the Municipal Corporation in its general body meeting on being listed before the Division Bench on 22/01/2021, the Municipal Council Ichalkaranji informed the Court that it had passed a resolution dated 19/01/2021, to resolve the disputes between the parties by arbitration to be conducted through a retired District Judge.

Upon such offer coming from the Municipal Council, the Petitioner agreed to withdraw its proceedings pending before the Urban Development Minister as well as the Petition.

The Division Bench of this Court, therefore, appointed Shri Amol V. Deshpande, retired District Judge as an Arbitrator to decide

the disputes between the parties by directing that arbitration shall be conducted at Kolhapur. The Arbitrator was also directed to make an endeavour to declare the Award within a period of six months from the date of the order.

3. The Arbitrator conducted a preliminary meeting on 08/02/2021 and the proceedings commenced before the Arbitrator. But, its progress was marred in the wake of the Covid pandemic.

By consent of the parties, the mandate of the Tribunal was extended by six months and when it expired on 31/08/2023, an application is filed under Section 29-A of the Act, seeking extension of time to conclude the proceedings.

4. Mr. Godbole, the learned senior counsel has raised a preliminary objection about maintainability of the Petition before this Court, as according to him, Section 2 of the Act has defined the term “Court” under Section (2)(1)(e) of the Act.

It is the contention of Mr. Godbole that Section 29-A, which was introduced by Act No.3 of 2016 w.e.f. 23/10/2015, has set out the time limit for passing of the Arbitral Award and by inviting my attention to sub-sections (4) to (6) of the said Section, his specific submission is, the word “Court” used in this context must be read as “Court”, as defined under Section 2(1)(e) and there is no justification in the Petition approaching this Court, seeking extension of time and in this case, since the appointment of the Arbitrator is not under Section 11 of the Act.

The learned senior counsel placed reliance upon the decision of the Apex Court in the case of *State of West Bengal & Ors. Vs. Associated Contractors*¹, where it is categorically held that the

¹ (2015) 1 SCC 32
rajshree

Court for the purposes of Section 2(1)(e) exhaustively means only Principal Civil Court of Original Jurisdiction in a district or High Court having original civil jurisdiction in the State, and if both have jurisdiction, then the provisions of the 1996 Act leave no room for any doubt that it is the superior most court exercising original jurisdiction, which has been chosen to adjudicate disputes arising out of the arbitration agreements.

In reference to Section 42 of the Act, it is held that it is not applicable to applications not made before the “Court” as defined under Section 2(1)(e). Another decision on which, he has placed reliance is of the learned single Judge of the Bombay High Court in the case of *Magnum Opus IT Consulting Private Limited Vs. Artcad Systems, through its Proprietor Vinay Digambar Shende*² and he would submit that the learned single Judge has considered the conflicting views as regards the jurisdiction of the District Court to extend the mandate or substitute the Arbitrator under Section 29-A of the Act and ultimately, derived a conclusion that when the Arbitrator is neither appointed under Section 11 of the Act nor substituted by the Court, and the question arose whether the District Court Nashik, the Principal Civil Court of original jurisdiction in the District, shall exercise the power under Section 29-A and answering the same in the affirmative, it is conclusively held that in the context of the matter interpreting the word “Court” to mean Principal Civil Court of Original Jurisdiction does not lead to an anomalous situation and do not give rise to conflict of powers and there is no scope to depart from the normal rule of giving effect to the meaning of the term “Court” as defined in the Act.

5. Per contra, the learned counsel Mr.Akshay Patil, responding to the objection raised by Mr.Godbole, has taken me through the

² 2022 SCC OnLine Bom 2861
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scheme of the statute i.e. the Arbitration and Conciliation Act, 1996 and he would urge that Section 2 of the Act of 1996, opens with the words, "In this Part, unless the context otherwise requires,-". He would thus submit that the definition of the term "Court" under Section 2(1)(e) shall be read, as provided therein, unless the context otherwise requires and he would invoke the principle of statutory interpretation, which is well settled, that interpretation must depend on the text and the context and that interpretation is best, which makes the textual interpretation match the contextual. According to him, the statute must be looked at as a whole and it must be discovered what each Section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act and in interpreting a particular provision or word used by the legislation in the legislative scheme, the definite meaning has to be assigned to the same.

Further, by inviting my attention to Section 11, which contemplate a scheme formulated by the Chief Justice of the High Court and the Supreme Court for the purposes of appointment of an Arbitrator, either in domestic arbitrations or in an international arbitrations, Mr.Patil urges that it is an inconceivable argument that an Arbitrator is appointed by the High Court, but his substitution, is by a Court subordinate to it and for that matter, even a Court contemplated under Section 2(1)(e) i.e. Principal Civil Court of original jurisdiction in a district. According to him, if Section 29-A has to be dissected, it would cover two distinct acts; the first being extension of mandate of the Arbitrator, if the Award is not made within the period specified in sub-section (1) of Section 29-A and the second part is, being the power to substitute one or all of the Arbitrators, while extending the period referred to in sub-section (4), as contemplated under sub-section (6) of Section 29-A.

He would specifically assert that it is highly unfathomable

that at the first instance the Arbitrator is appointed under the scheme contemplated under Section 11 of the Act, but when it comes to substitution, the Court as understood in Section 2(1)(e) shall substitute the Arbitrator and continue the arbitral proceedings.

6. Mr. Patil has placed reliance upon the decision of this Court in the case of *Cabra Instalaciones Y. Servicios, S.A. Vs. Maharashtra State Electricity Distribution Company Limited*³, when the learned single Judge while dealing with the very same issue in relation to an international arbitration, has propounded upon the statutory provision in form of Section 29-A and it to be a substantive and comprehensive provision, and more particularly, in view of clear provision of sub-section (6) which provides that while extending the period referred to in sub-section (4), it would be open to the Court to substitute one or all the Arbitrators, in International Arbitration and certainly the High Court exercising the power under Section 29-A cannot make an appointment of a substitute Arbitral Tribunal or any member of the Arbitral Tribunal, as it would be the exclusive power and jurisdiction of the Supreme Court, considering the provision of Section 11(5) read with Section 11(9) and also Sections 14 and 15 of the Act. Another decision which is relied upon by Mr. Patil is of the Delhi High Court in the case of *DDA Vs. Tara Chand Sumit Construction Co.*⁴, where the learned single Judge of the Delhi High Court, has arrived at a same conclusion and found fortified by the judgment of the Gujarat High Court in the case of *Nilesh Ramanbhai Patel Vs. Bhanubhai Ramanbhai Patel*⁵.

Reliance is also placed upon the decision of the Calcutta High Court in the case of *Amit Kumar Gupta Vs. Dipak Prasad*⁶, which

³ 2019 SCC OnLine Bom 1437

⁴ 2020 SCC OnLine Del 2501

⁵ Misc.Civil Application (O.J) No.1 of 18

⁶ 2021 SCC OnLine Cal 2174

has followed the decisions in *Cabra Instalaciones Y. Servicios, S.A.* (supra) of the Bombay High Court, in *Nilesh Ramanbhai Patel* (supra) of the Gujarat High Court and in *Tara Chand Sumit Construction Co.* (supra) of the Delhi High Court.

The above decisions, according to Mr.Patil, have sealed the position of law that the power under Section 29-A shall be exercised only by the High Court in case of domestic arbitration and by the Supreme Court in the international arbitration and use of the word “Court” shall be read in contextual sense rather than textual sense to mean what is defined under Section 2(1)(e).

7. The issue that falls for consideration in the light of the rival contentions advanced on behalf of the Petitioner and Respondent is the import of the word ‘Court’ used in Sub-Section(4), of Section 29A which prescribe that if the Award is not made within the period prescribed under Sub-section (1) of Section 29A or the extended period, then the mandate of the Arbitrator shall terminate unless the Court has, either prior to, or after the expiry of the period so specified, extended the period.

In the given facts of the present case the question that arises is whether it should be the High Court which shall be competent to grant the extension or by considering the term ‘Court’ as defined in Section 2(1)(e), or whether it shall be Principal Civil Court of Original Jurisdiction in Pune.

It is, therefore, necessary to consider, the meaning assigned to the term ‘Court’ for the purposes of Act of 1996 and Section 2 has defined the term ‘Court’ as under :-

(2)(1)(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.”

The reading of the aforesaid definition would clearly indicate that in case of domestic arbitration, ‘Court’ means, the Principal Civil Court of Original Jurisdiction in a district and includes the High Court which exercises its ordinary original civil jurisdiction, which has jurisdiction to decide the questions forming a subject matter of the arbitration, if the same had been the subject matter of Suit. However, in case of international commercial arbitration, the ‘Court’ is the Supreme Court in exercise of its ordinary original civil jurisdiction and in other cases a High Court having jurisdiction to hear the Appeals from the decree of that Court, being subordinate to that Court.

It is to be noted that while defining the term ‘Court’ in Section 2, it is preceded by the wording of sub-Section (1) of Section of Section 2 by the following words, “In this Part, unless the context otherwise requires,”

In the scheme of the Act of 1996 which provides for composition of the Arbitral Tribunal, Section 11 prescribe for the appointment of Arbitrators and subject to Sub-Section (6), the parties are free to agree on a procedure for appointing the Arbitrator(s). Failing an agreement between the parties as to the procedure for appointment, Sub Section (3) steps in, setting out the manner in which the Arbitral Tribunal shall be constituted.

Sub-Section 3-A of Section 11 empowers the Supreme Court and High Court to have the power to designate arbitral institutions

for the purpose of the Act and where no such institutions are available, the Chief Justice of the concerned High Court shall maintain a panel of Arbitrators and appoint an Arbitrator who shall be entitled to the fees as set out in the Fourth Schedule.

Sub-Section (4) and Sub-Section (5) of Section 11 offers a solution to a situation when there is no adherence to the procedure prescribed in Sub-Section (2) or the one contemplated under Sub-Section (3).

Sub-Section (6) is one more situation where under appointment procedure agreed upon by the parties, a party fail to act as required under that procedure or the appointed Arbitrators fail to reach an agreement expected of them under the procedure or a person including an institution fails to discharge the function entrusted to him or it under the procedure and in such a situation on an application made by the party, the appointment shall be made in case of international commercial arbitration by the arbitral institution designated by the Supreme Court or by the High Court in case of Arbitration other than International Commercial Arbitration.

8. Thus, the manner of appointment of the Arbitrator/(s) is prescribed under Section 11 and it would be anomalous to construe that once an Arbitrator is appointed by the High Court or the Supreme Court in case of International Commercial Arbitration, the extension of the mandate of the arbitral tribunal under Section 29-A shall be left to the Court in terms of Section 2(1)(e), to mean a Principal Civil Court of original jurisdiction in a district and Mr. Godbole has pitched his argument to a higher gradient, by submitting that even if the appointment of an Arbitrator is under Section 11 of the Act, the extension of time under Section 29-A is permissible by the Principal Civil Court of original jurisdiction in a district and in the present case, the Principal District Judge, Pune

as if a Suit was to be filed by the Petitioner/Claimant for the relief sought through the claim, the Suit would lie to the Court in Pune.

9. Mr. Godbole has argued that this is not a case where the appointment of the Arbitrator is by the High Court in exercise of its power under Sub-Section (6) of Section 11 and it is on the Municipal Council, Ichalkaranji, passing a resolution for resolving the disputes through arbitration, a statement to that effect was made before the High Court in a Writ Petition filed by the Petitioner/Claimant and in the wake of the said statement, the Petitioner withdrew the Petition as well as his Application which was pending before the Minister.

As a consequence of the order dated 22.01.2022, which is not strictly an appointment of an Arbitrator under Sub-Section 6 of Section 11, it is his submission that there is no reason why the term 'Court' as defined in Section 2(1)(e) shall not assign its literal meaning and be construed as the Principal Civil Court of Original Jurisdiction in Pune.

The argument of Mr. Godbole, in my considered opinion do not hold good for the simple reason that the order dated 22.01.2022 though recorded the statement advanced on behalf of the Municipal Council, Ichalkaranji, to have their disputes resolved through Arbitration, it is the High Court which stepped in and appointed an Arbitrator with a direction to file a disclosure statement and further directions being issued to the Arbitrator to make an Award within a period of six months.

The cost of the Arbitrator was also determined by the High Court and merely because the appointment was not under Sub-Section (6) of Section 11, in my opinion it is open to infer that though the appointment of the Arbitrator is by the High Court, the extension of his mandate shall be by a Court of Principal District Judge in Pune.

10. In *Cabra Instalaciones Y. Services vs. Maharashtra State Electricity Distribution Company Limited, 2019 SCC OnLine Bom 1437*, the learned Single Judge, who had an opportunity to determine the scope of Section 29-A of the Act of 1996 with reference to an international commercial arbitration where the arbitral tribunal was constituted by an order passed under Section 11(5) of the Act by the Supreme Court, specifically observed as under by concluding that the High Court exercising power under Section 29A cannot make an appointment of a substitute arbitral tribunal or any member of the arbitral tribunal as it would be the exclusive power and jurisdiction of the Supreme Court considering the provisions of Section 11(5) read with Section 11(9) and also Section 14 and 15 of the Act.

The relevant observations by Justice G.S. Kulkarni, touching the above aspect is relevant and deserve reproduction:-

“7. On a plain reading of Section 29A alongwith its sub-sections, it can be seen that for seeking extension of the mandate of an arbitral tribunal, these are substantive powers which are conferred on the Court and more particularly in view of the clear provisions of sub-section (6) which provides that while extending the period referred to in sub-section (4), it would be open to the Court to substitute one or all the arbitrators, which is in fact a power to make appointment of a new/substitute arbitrator or any member of the arbitral tribunal. Thus certainly when the arbitration in question is an international commercial arbitration as defined under Section 2(1)(f) of the Act, the High Court exercising power under Section 29A, cannot make an appointment of a substitute arbitral tribunal or any member of the arbitral tribunal as prescribed under sub-section (6) of Section 29-A, as it would be the exclusive power and jurisdiction of the Supreme Court considering the provisions of Section 11(5) read with Section 11(9) as also Sections 14 and 15 of the Act. It also cannot be overlooked that in a given case there is likelihood of an opposition to an extension application and the opposing party may pray for appointment of a substitute arbitral tribunal, requiring the Court to exercise powers under sub-section (6) of Section 29-A. In such a situation while appointing a substitute arbitral tribunal,

when the arbitration is an international commercial arbitration, Section 11(9) would certainly come into play, which confers exclusive jurisdiction on the Supreme Court to appoint an arbitral tribunal.

8. Thus, as in the present case once the arbitral tribunal was appointed by the Supreme Court exercising powers under Section 11(5) read with Section 11(9) of the Act, in my opinion, this Court lacks jurisdiction to pass any orders under Section 29-A of the Act, considering the statutory scheme of Section 29-A. It would only be the jurisdiction of the Supreme Court to pass orders on such application of any of the parties al sufficient cause and on such terms and conditions as may be impo by the Court. Sub-section (6) is of significance which provides that while extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrators so appointed under Section 29A would be deemed to have received the said evidence and material. Sub-section (7) provides that in the event of an arbitrator(s) being appointed under Section 29A, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.”

11. The aforesaid finding is followed by Delhi High Court in case of *DDA vs. Tara Chand Sumit Construction Co.* (*supra*) when a controversy arose whether the power to extend the mandate of the Arbitrator lies with the Civil Court of Original Jurisdiction in terms of the definition of ‘Court’ in Section 2(1)(e) when the Application was filed under Section 29A for extension of the mandate of the Arbitrator and the inescapable conclusion drawn, is the term ‘Court’ in Section 29A would be the High Court in case of domestic arbitration which has exclusive power to appoint an Arbitrator and not the District Court as per Section 2(1)(e) of the Act.

In the Judgment, Justice Jyoti Singh of the Delhi High Court has essentially captured the essence of Section 29A, a provision which confers the power upon the Court of substituting one or of all Arbitrators while extending the mandate of the Arbitrator under

Sub-Section (4), if the need arises, and in case, such substitution is made by the Court, then the arbitral proceedings, shall continue from the stage already reached on the basis of the evidence and material already collected.

In para 26 and 27 the relevant observations are to be found, which read to the following effect :-

“26. When one looks at the definition of the term 'Court' under Section 2(1)(e) of the Act, it is clear that in case of International Commercial Arbitration, the Court would mean 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 the sui or the High Court having jurisdiction to hear appeals of Courts subordinate to that High Court. However, in cases of arbitration other than International Commercial Arbitration, Court would be 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 questions forming subject matter of the arbitration if the same had been the subject matter of the suit. This definition has been substituted by way of the Amendment Act 3 of 2016, which came into effect from 23.10.2015.

27. If the definition of the term 'Court' is looked into, no doubt the contention of the respondent seems plausible that the power to extend the mandate of the Arbitrator would lie with the Principal Civil Court. However, on a careful analysis, in my opinion, this interpretation would lead to complications and would perhaps be in the teeth of the powers of the Courts under Section 11 of the Act. Thus, the question that poses a challenge is, whether the term 'Court' can be interpreted differently in the context of Section 29A. In my view, sub-Section (1) of Section 2 of the Act itself gives that answer, as it begins with the expression "in this part, unless the context otherwise requires".

12. Further, dealing with the term 'Court' to mean the Principal Civil Court as defined in Section 2(1)(e) which was propounded, it is specifically observed as below :-

“28. Power to extend the mandate of an Arbitrator under Section 29A (4), beyond the period of 12 months and further extended period of six months only lies with the

Court. This power can be exercised either before the period has expired or even after the period is over. Neither the Arbitrator can grant this extension and nor can the parties by their mutual consent extend the period beyond 18 months. Till this point, interpreting the term 'Court' to mean the Principal Civil Court as defined in Section 2(1)(e) would, to my mind, pose no difficulty.”

29. In case a petition under Section 29A of the Act is filed before the Principal Civil Court for extension of mandate and the occasion for substitution arises, then the Principal Civil Court will be called upon to exercise the power of substituting the Arbitrator. In a given case, the Arbitrator being substituted could be an Arbitrator who had been appointed by the Supreme Court or the High Court. This would lead to a situation where the conflict would arise between the power of superior Courts to appoint Arbitrators under Section 11 of the Act and those of the Civil Court to substitute those Arbitrators under Section 29A of the Act. This would be clearly in the teeth of provisions of Section 11 of the Act, which confers the power of appointment of Arbitrators only on the High Court or the Supreme Court, as the case may be. The only way, therefore, this conflict can be resolved or reconciled, in my opinion, will be by interpreting the term 'Court' in the context of Section 29A of the Act, to be a Court which has the power to appoint an Arbitrator under Section 11 of the Act. Accepting the contention of the respondent would lead to an inconceivable and impermissible situation where, particularly in case of Court appointed Arbitrators, where the Civil Courts would substitute and appoint Arbitrators, while extending the mandate under Section 29A of the Act.”

.. The Delhi High Court, has, therefore, considered the entire gamut of the power to be exercised under Section 29A by the 'Court', which include the power given to substitute one or all of the Arbitrators, while extending the period referred to in Sub-Section (4). Evidently, if a contingency arise that while extending the mandate of the Arbitrator, it becomes necessary to substitute an Arbitrator, then the question would arise, whether an Arbitrator appointed by the High Court, can be substituted by the Principal District Judge as the power to appoint an Arbitrator under Section

11 is the exclusive prerogative of the High Court in case of domestic arbitration and the Supreme Court in case of International Arbitration.

13. The legislature, therefore, has consciously used the word 'Court' which is empowered to extend the mandate of the Arbitrator, if it has expired as it is that 'Court' which has appointed the Arbitrator and while extending the period, if the Court finds that the proceedings have been delayed for the reasons attributable to the Arbitral Tribunal, then it is even empowered to reduce fees of the Arbitrator(s), in the manner set out in the proviso.

The term 'Court' used in Sub-Section (4) as well as in the Scheme of Section 29A, would therefore, have to be construed as a 'Court' in reference to the context. It is highly inconceivable that an Arbitrator is appointed by the High Court or Supreme Court in case of International Commercial Arbitration and the Principal Civil Court of Original Jurisdiction in a district which is subordinate to the High Court, shall exercise the power under Sub-Section (4) or that matter power under Sub-Section (6) of substituting Arbitrator while extending the period referred in Sub-Section 4.

Apart from this, Sub-Section (7) and (8) are also illustrative of the intention of the legislature that it never intended to strictly construe the term 'Court' as defined in Section 2(1) of the Act.

14. The provision contained in Form of Section 29A inserted by the Amendment Act No. 3 of 2016, which contemplated the timeline for conclusion of the arbitral proceedings with an intention to encourage arbitration as a speedy mode of resolution of disputes. Section 29-A is a scheme in itself which, in order to conclude the arbitration in an expedient manner provided for entitlement of the Tribunal to receive such amount of additional fees as the parties agree if the Award is within a period of six months after the

Tribunal enters the reference. It provides a mechanism if the Award is not made within the period specified or the extended period of six months as upon the expiry of this period, the mandate of the Arbitrator shall terminate unless the Court extend the period.

The power to be exercised in extending the mandate of Tribunal is of great significance since neither the parties themselves by consent are empowered to extend the mandate but for the period of six months when it can by consent extend the period by six months, but for further extension, it is only the Court which can be approached and upon being satisfied that the mandate of the Tribunal deserve an extension on sufficient cause being shown upon such terms and conditions as the Court may impose, the mandate can be extended.

If the power under Section 29A is to be exercised by Principal Civil Court of the District, though it may be competent to extend the mandate, but when the question of substitution arises, an anomalous situation would result as an Arbitrator appointed by the High Court or Supreme Court shall stand substituted by the Principal Civil Court, as an appointment of the Arbitrator in any case under Section 11 is the prerogative of the High Court in case of Domestic Arbitration and the Supreme Court, in case of International Arbitration.

15. This situation would pose a difficulty as it would permit the Civil Courts to substitute and appoint Arbitrators, which were appointed by the High Court under the guise of the power to be exercised under Section 29A of the Act by construing that the term 'Court' would be assigned the strict meaning as per Section 2 of the Act.

A Consistent view to the effect that the above exercise would permit the Court subordinate to High Court or the Supreme Court, to substitute an Arbitrator, is reflected though various judicial

pronouncements including the decision from Bombay High Court in case of ***Cabra Instalaciones Y. Servicios*** (supra) as well as Delhi High Court in case of Tara Chand Sumit Construction Co. (supra) .

The Delhi High Court has gainfully referred to the decision in case of ***Cabra Instalaciones Y. Servicios*** and a decision of Gujarat High Court in case of ***Nilesh Ramanbhai Patel*** (supra) which again proceed on the same logic that the powers for extending the mandate of an Arbitrator under Section 29A are coupled with the power to substitute an Arbitrator and they are concomitant and, therefore, if for valid reasons the Court find that it is a fit case for extending the mandate of the Arbitrator that by itself may not be sufficient to bring about an early end to the Arbitration Proceedings and the Court may also consider substituting the Arbitrator in the existing arbitral proceedings, but if interpretation which was sought to be canvassed that under Sub-Section (6) of Section 29A, the powers are vested in Civil Court i.e. to substitute an Arbitrator or a full panel of Arbitrators appointed by the High Court under Section 11, it would lead to irreconcilable conflict between the powers of the superior Courts to appoint an Arbitrator under Section 11 and those of the Civil Courts to substitute such Arbitrators under Section 29-A(6).

Nilesh Ramanbhai Patel (supra), therefore clearly held that this conflict can be avoided only by interpreting the term 'Court' for the purpose of Section 29A as the Court which appointed the Arbitrator in case of the Court which constituted arbitral tribunal.

16. The aforesaid view is also expressed in the decision of Calcutta High Court in case of Amit Kumar Gupta vs. Dipak Prasad , which relied upon ***Cabra Instalaciones Y. Servicios*** (supra), as well as Nilesh Patel and Tarachand Construction Company (supra) and on elaboration of the Scheme contemplated under Section 29A being juxtaposed against the definition of the term 'Court' as defined in Section 2(1)(e), the following conclusion is drawn :-

“The meaning of the word “court” as ascribed in Section 2(1)(e) of the Act of 1996 is subject to the requirement of the context. In the context of Section 29A of the Act of 1996 which has prescribed a substantive provision for completion of the arbitral award and the time to do so, the meaning of the word “court” as used therein has to be understood. Under sub-section (6) of Section 29A of the Act of 1996, the Court has been empowered to substitute the arbitrator or the arbitrators in reconstituting the arbitral tribunal if so required. The power of appointment of an arbitral tribunal has been prescribed in Section 11 of the Act of 1996. Section 11 of the Act of 1996 has prescribed two appointing authorities given the nature of the arbitration. In the case of an international commercial arbitration, the authority to appoint an arbitrator, has been prescribed under Section 11 of 1996 to be the Supreme Court. In the case of a domestic arbitration, Section 11 of the Act of 1996 has prescribed that the appointing authority shall be the High Court.

In my view, the word “court” used in Section 29A of the Act of 1996 partakes the character of the appointing authority as has been prescribed in Section 11 of the Act of 1996 as, the Court exercising jurisdiction under Section 29A of the Act of 1996 may be required to substitute the arbitrator in a given case. Such right of substituting can be exercised by a Court which has the power to appoint. The power to appoint has been prescribed in Section 11. Therefore, the power to substitute should be read in the context of the power of appointment under Section 11.”

17. The learned counsel Mr. Godbole has relied upon the decision of a learned single Judge (Justice Anuja Prabhudesai) in case of ***Magnum Opus IT consulting Private Limited vs. Artcad Systems, Through its Proprietor Vinay Digambar Shende, 2022 SCC OnLine Bom 2861***, in support of his submission that the District Court of the Original Jurisdiction is competent to exercise the power.

When the facts on which the decision in ***Magnum Opus IT Consulting Private Limited (supra)*** is delivered, are carefully perused, it can be discerned that the Petitioner Company engaged in the business of e-governance had entered into an arrangement with the Respondent, an MSME, under the Act of 2006 and it claimed certain amounts. Reference was made to the Facilitation Council

under Section 18 of the MSME Act, in respect of the amount and the conciliation between the parties was not successful and stood terminated, but the Council took up the dispute for arbitration. The Petitioner failed to appear before the Council and the matter was closed.

Thereafter, in an Arbitration Petition being filed by the Respondent, the High Court reviewed the Arbitration proceedings which were ongoing before the Council and directions were issued to decide the further course of action. There was no progress in the proceedings for almost three years and since the period of one year as contemplated under Section 29-A had expired, the Respondent filed an Application before the District Court at Nashik, praying for extension of mandate and also for substitution of Arbitrator, in terms of Sub-Section 6 of Section 29A of the Act of 1996.

On hearing the respective counsel who placed reliance upon the the precedence in form of *Cabra Instalaciones Y. Servicios (supra)* and *Nilesh Ramanbhai Patel (supra)*, reference was made to Section 18 of the MSME Act, which provides a special forum for adjudication of disputes involving a Supply and on taking note of the object of Section 18 being to provide an expeditious and efficacious dispute resolution mechanism, with regard to any amount due under Section 17 of the Act to the Supplier, the question for determination was formulated, as whether the District Court had jurisdiction to substitute an Arbitrator. Referring to the existing precedent on the said point, it came to be held that the District Court, Nashik is Principal Civil Court of Original Jurisdiction in the District having jurisdiction to decide the questions forming a subject matter of the Arbitrator, if the same had been the subject matter of the Suit. Noting that in the case in hand, the arbitration proceedings commenced under Section 18 of the MSME Act and an Arbitrator was neither appointed under Section 11 of the Arbitration and Conciliation Act, 1996, nor substituted by the High

Court and what was done by the High Court was only revival of the arbitration proceedings, which were closed by the Council and, therefore, the conclusion was drawn to the following effect :-

“27..... Hence, in the context of the present matter, interpreting the word ‘court’ to mean Principal Civil Court of Original Jurisdiction does not lead to an anomalies situation and does not give rise to conflict of powers. On factual aspects the decision in case *Cabra Instalaciones Y. Servicios (supra)*, as well as *Nilesh Patel (supra)* and *Tarachand Construction Company (supra)* are distinguishable. Hence, there is no scope to depart from the normal rule of giving effect to the meaning of the term ‘court’ as defined under the Act.”

18. Evidently, the said decision is premised on the fact being that there was no appointment of the Arbitrator by the High Court.

It is also worth to note that another learned Single Judge of this Court in case of *Indicus Software Pvt. Ltd. Through Authorized Signatory Mr. Shridhar Kulkarni vs. Infinite Uptime India Pvt. Ltd.* in Arbitration Petition No.179/2022, on 13.04.2023, expressed concurrence with the line of decision taking a view that when the Arbitrator/Arbitral Tribunal is appointed by the order of the High Court under Section 11 of the Act, an Application seeking extension of mandate under Section 29 can be filed only before the High Court so as to avoid an anomalous situation of the mandate of the Arbitrator/ Arbitral Tribunal being extended or extension of mandate being refused by the District court under Section 29A of the Act.

By referring to *Magnum Opus IT consulting Private Limited (supra)*, an exception is carved to the effect that, if only the appointment of the Arbitrator or Arbitral Tribunal is without intervention of the High Court or Supreme Court, as the case may be under Section 11 of the Act, the Principal Civil Court of Original Jurisdiction will have the power to entertain an application under Section 29A for extension of mandate.

19. In the present case, it is evident that though the appointment of the Arbitrator, by the Division Bench of this Court, may not be in the circumstances contemplated either under Sub-Section (4) or Sub-Section (6) of Section 11, but it was in a Petition, when the Municipal Council agreed to the disputes being taken to Arbitrator, and for which the consent was accorded by the Petitioner, this Court exercised the power of appointing the Arbitrator.

Nonetheless, the appointment of Arbitrator is by the High Court by assuming the power under Section 11 (6) of the Act though the preceding events justifying the exercise of power under 11(6) of the Act are not made out, reading of the order of Division Bench make it very apparent that upon the consensus being arrived between the parties that the dispute has to be taken for arbitration, the High Court appointed the Sole Arbitrator with the terms and conditions of his appointment being stipulated in the order and most important condition being it requested the Arbitrator to expeditiously conclude the proceedings within a period of one year i.e. the timeline for the arbitration proceedings was stipulated by the High Court while appointing him.

In such a scenario, it would be anomalous to consider that though the High Court has appointed the Arbitrator and defined the time line within which, he shall decide the proceedings, the application for extension of time under Section 29A shall be decided by the Principal District Court of Pune.

20. Another aspect which persuades me to accept the submission of Mr. Patil is the words in Section 2 sub section (1), "Unless the context otherwise requires".

It is the basic rule of interpretation of statute that the textual interpretation should be matched with the contextual one as the interpretation must depend upon the text and the context as if

the text is the texture, context is gives it the colour and neither of it can be ignored.

The statute when enacted can be best interpreted when the object for which it is enacted is kept in mind. If the statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the words may take colour and appear different than when the statute is looked at without the glasses provided by the context.

21. In the recent decision, the Apex Court, in case of ***Renaissance Holdings Inc. vs. B. Vijaya Sai & Ors., (2022) 5 SCC 1*** has succinctly set out the rule of interpretation with reference to the contextual one in the following words :

“66. It is thus trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

Hence, I am persuaded to accept the submission of Mr. Patil that the words used by the Statute in Sub Section (1) or (2) are not otiose when it permits the definitions to be read in the manner provided, unless the context otherwise requires and if the meaning assigned to term ‘court’ in Section 2(1)(e) is introduced in Section 29A, it would run contrary to the intention of legislation and defeat the purpose of the provision by permitting a ‘court’ as defined under Section 2(1)(e) to partake the power vested in the High Court to extend the mandate of the Arbitrator and substitute the Arbitrator or Arbitral Tribunal itself.

The above interpretation would hamper the intention and object of the legislature in introducing Section 29A and for the aforesaid reason, the Arbitration Petition is allowed by extending the mandate of the Arbitral Tribunal by further period of six months.

Arbitration Petition is made absolute in above terms.

(SMT. BHARATI DANGRE, J.)