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NEWSLETTER
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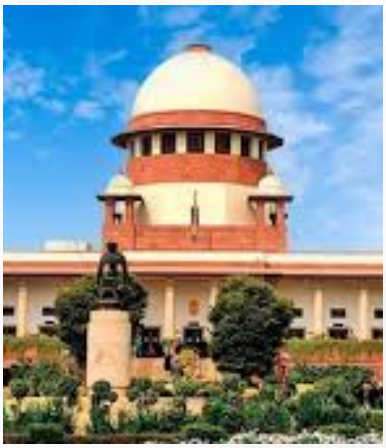
Section 29A Applications Must Be Filed Before Principal Civil Court, Not Referring Court

JAGDEEP CHOWGULE V. SHEELA CHOWGULE & ORS.

The Supreme Court held that **applications under Section 29A(4) for extension of an arbitral tribunal's mandate lie only before the "Court" defined under Section 2(1)(e), i.e., the principal civil court of original jurisdiction, irrespective of which court appointed the arbitrator under Section 11.** The referral court becomes functus officio after appointment and has no supervisory role over the arbitration.



The dispute arose from a Memorandum of Family Settlement, pursuant to which arbitration was initiated. During the proceedings, the appellant sought an extension of time under Section 29A(4) before the Commercial Court. The application was pending, the arbitrator resigned and Respondent No.2 approached the High Court for substitution under Section 11. Respondent No.1 then challenged the Commercial Court's jurisdiction, contending that only the High Court which appointed the arbitrator could extend the mandate. Accepting this view, the Bombay High Court set aside the Commercial Court's order, leading to the appeal before the Supreme Court.

The Supreme Court disagreed with the High Court and held that powers under Section 11 are confined to appointing arbitrators and come to an end once the tribunal is constituted. It clarified that the "Court" under Section 29A means only the court defined in Section 2(1)(e), and not the referral court that appointed the arbitrator. The Court rejected concerns of jurisdictional or hierarchical conflict, noting that referral courts have no supervisory role over arbitral proceedings after appointment. It further held that Section 42 is inapplicable, as a High Court acting under Section 11 is not a "Court" under the Act, relying on State of Jharkhand v. Hindustan Construction Co. (2018).

Therefore, the Supreme Court set aside the Bombay High Court's decision and restored the Commercial Court's order extending the arbitral timeline.

Disputes Involving Alleged Forged Arbitration Agreements Are Not Arbitrable

RAJIA BEGUM V. BARNALI MUKHERJEE (WITH CONNECTED APPEAL)

The Supreme Court held that **parties cannot be compelled to arbitrate where the very existence or authenticity of the contract containing the arbitration clause is disputed on grounds of forgery.** The Court ruled that allegations of fraud going to the root of the arbitration agreement render the dispute non-arbitrable, and a civil court must first adjudicate such issues. Where the arbitration agreement itself is alleged to be forged or fabricated, arbitral jurisdiction, which is founded on consent, cannot be presumed.

The dispute arose from a family-run jewellery firm, M/S RDDHI Gold, which originally comprised three partners. The appellant claimed that a Deed of Admission and Retirement dated 2007 inducted her as a partner, retired the existing partners, and contained an arbitration clause. The respondent denied the existence of this deed, alleging that it was forged. The business was subsequently acquired by a private company in 2011, and the dispute surfaced in 2016 when the appellant relied on the alleged deed. Conflicting orders were passed by the High Court, one referring the dispute to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, and another refusing to appoint an arbitrator under Section 11(6). This led to a batch of appeals before the Supreme Court.

The Court observed that when fraud is alleged in relation to the arbitration agreement itself, the dispute transcends a mere contractual disagreement and strikes at the foundation of arbitral jurisdiction. Since the appellant failed to produce the original deed or a certified copy as mandated under Section 8(2), the Court found that the existence of the arbitration agreement was seriously disputed, rendering it illusory. The Court reiterated that serious allegations of fraud affecting the arbitration agreement make the dispute non-arbitrable.

Therefore, the Court set aside the High Court's order referring the matter to arbitration under Section 8 and upheld the refusal to appoint an arbitrator under Section 11.

Award Not Void If Mandate Is Extended by the Court

C. VELUSAMY V. K INDHERA

The Supreme Court held that **an arbitral award passed after expiry of the tribunal's mandate under Section 29A of the Arbitration and Conciliation Act, 1996 is not void merely on that ground.** The Court ruled that an application under Section 29A(5) seeking extension of the arbitrator's mandate is maintainable even after the statutory period has expired and even after the award has been rendered. If the court grants an extension, the award becomes effective and enforceable, and does not require to be set aside under Section 34.

The dispute arose from three sale agreements, pursuant to which a sole arbitrator was appointed by the Madras High Court on April 19, 2022. Pleadings were completed on August 20, 2022, triggering the twelve-month period under Section 29A, which was further extended by six months with the parties' consent, fixing February 20, 2024 as the deadline. Although the matter was reserved for award in September 2023, it was reopened for settlement discussions which failed. The arbitrator ultimately delivered the award on May 11, 2024, after expiry of the mandate. The respondent challenged the award under Section 34 as non est, while the appellant sought extension of the mandate under Section 29A(5). The High Court dismissed the extension application and set aside the award, leading to the appeal before the Supreme Court.

The Supreme Court disagreed with the High Court and held that termination of mandate under Section 29A(4) is not absolute and is expressly subject to the court's power to extend time either before or after expiry. Relying on Rohan Builders v. Berger Paints (2024) and comparative foreign jurisprudence, the Court held that an award passed after expiry is ineffective but not a nullity. Such technical delay does not bar the court from extending the mandate to revive the arbitral process. Accordingly, the appeal was allowed and the appellant's application for extension of mandate was restored for consideration.

Party Accepting Section 11 Appointment Cannot Later Challenge Arbitration Clause (Pre-2015)

M/S EMINENT COLONIZERS PRIVATE LIMITED V. RAJASTHAN HOUSING BOARD AND ORS

The Supreme Court held that under the pre-2015 amendment regime of the Arbitration and Conciliation Act, 1996, **once a party accepts a court order passed under Section 11 appointing an arbitrator, it cannot later challenge the existence or validity of the arbitration agreement before the arbitral tribunal or in proceedings under Section 34.** The Court reaffirmed that such a Section 11 order, being a judicial determination, is final and binding under Section 11(7).

The dispute arose from construction contracts where the contractor claimed unpaid escalation costs against the Rajasthan Housing Board. Clause 23 provided for dispute resolution through an empowered Standing Committee, which the Board failed to constitute properly. The contractor approached the Rajasthan High Court under Section 11, and in 2014 a sole arbitrator was appointed under the pre-2015 regime. The Board accepted this order. After the arbitrator passed an award in favour of the contractor, the Board challenged it under Section 34, arguing that Clause 23 was not an arbitration agreement. The Commercial Court and High Court accepted this plea, leading to the appeal before the Supreme Court.

Relying on SBP & Co. v. Patel Engineering Ltd. (2005), the Supreme Court held that under the pre-2015 regime, the Chief Justice or designated judge under Section 11 exercised a judicial function and conclusively determined issues relating to the existence and validity of the arbitration agreement. Since the Section 11 order had attained finality and was accepted by the Housing Board, it was impermissible to reopen those issues at the Section 34 stage. The Court held that both the Commercial Court and the High Court erred in examining the validity of Clause 23.

Accordingly, the Supreme Court allowed the appeal and set aside the impugned orders.

A Section 37 Court Cannot Reassess Damages Fixed by a Section 34 Court Absent Arbitrariness or Perversity

M/S SAISUDHIR ENERGY LTD. V. M/S NTPC VIDYUT VYAPAR NIGAM LTD. WITH M/S NTPC VIDYUT VYAPAR NIGAM LTD. V. M/S SAISUDHIR ENERGY LTD.

The Supreme Court held that **an appellate court exercising jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996 cannot rework or reassess the quantum of damages once a Section 34 court has determined reasonable compensation within the framework of the contract.** The Court restored the Delhi High Court single judge's award of ₹27.06 crore as liquidated damages in favour of NTPC Vidyut Vyapar Nigam Limited (NVVNL) for delay by Saisudhir Energy Limited in commissioning a 20 MW solar power project.

The Court set aside the 2018 judgment of the Delhi High Court Division Bench, which had reduced the compensation to ₹20.70 crore, holding that the appellate court had exceeded its jurisdiction by substituting its own assessment for a plausible view taken by the Section 34 court. The Supreme Court observed that interference under Section 37 is permissible only where the Section 34 court's determination is shown to be arbitrary, perverse, or contrary to the contract, none of which was established in the present case. The dispute arose from a 2012 power purchase agreement under the Jawaharlal Nehru National Solar Mission, under which Saisudhir Energy was required to commission the project by February 2013.

Due to delays, NVVNL invoked the liquidated damages clause. While the arbitral tribunal awarded a lesser amount, the Section 34 court enhanced compensation by granting 50% of the damages stipulated under the contract.

Upholding this approach, the Supreme Court reiterated that proof of actual loss is not mandatory where reasonable compensation is awarded under Section 74 of the Contract Act, particularly in projects involving public interest.

Accordingly, the Court allowed NVVNL's appeals, dismissed those filed by Saisudhir Energy, and restored the award of ₹27.06 crore.

Delhi High Court rejects Japanese firm's plea to patent cancer detection method through worms

HIROTSU BIO SCIENCE INC V ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

The Delhi High Court held that the invention claimed by Hirotsu Bio Science Inc., relating to an **in-vitro method for detecting cancer using the response of worms to human biological samples, is not patentable under Section 3(i) of the Indian Patents Act, 1970**. Upholding the Patent Office's decision, the Court ruled that the claimed process amounts to a diagnostic method and is therefore expressly excluded from patent protection.

Hirotsu Bio Science Inc., a Japanese company, filed a patent application for an invention titled an "in vitro method for detecting cancer," which relied on the behavioural response of the nematode Caenorhabditis elegans to odours emitted from human biological samples such as urine. The company claimed that the worms are attracted to cancer-specific odours, enabling early detection of various cancers. In August 2023, the Assistant Controller of Patents and Designs rejected the application on the ground that it fell within the exclusion under Section 3(i) of the Patents Act. Aggrieved by this rejection, Hirotsu Bio Science approached the Delhi High Court, arguing that its invention was only a preliminary screening tool and not a diagnostic method practiced by medical professionals.

The Court rejected the petitioner's contention and clarified that Section 3(i) is not limited to methods practiced by doctors or involving clinical judgment. The Court held that the decisive factor is the nature of the invention, not who performs it. Since the claimed process enables detection and diagnosis of cancer, it squarely falls within the scope of "diagnostic methods" excluded from patentability. The Court observed that allowing such inventions merely because they operate autonomously or outside the human body would defeat the legislative intent of Section 3(i).

Therefore, the High Court dismissed the appeal and upheld the Patent Office's order rejecting the patent application.

Are Employers Entitled to Income Tax Deduction for Delayed PF–ESI Contributions?

WOODLAND (AERO CLUB) PRIVATE LIMITED DIRECTOR V. ASSISTANT COMMISSIONER OF INCOME TAX

The Supreme Court agreed to examine **the question of whether an employer can claim income tax deductions for employees' Provident Fund (PF) and Employees' State Insurance (ESI) contributions that are deposited after the statutory due dates prescribed under the respective welfare legislations.** While issuing notice in an appeal challenging a judgment of the Delhi High Court, the Court signalled its intent to resolve the long-standing and widely debated conflict surrounding the interpretation of Sections 2(24)(x), 36(1)(va), and 43B of the Income Tax Act, 1961.

The appeal arose from a decision of the Delhi High Court which held that employees' PF and ESI contributions deposited by the employer after the due dates prescribed under the PF and ESI laws are not allowable as deductions, even if such payments are made before filing the income tax return. The employer challenged this view before the Supreme Court. The controversy revolves around the interpretation of Sections 2(24)(x), 36(1)(va), and 43B of the Income Tax Act. While the High Court adopted a strict view disallowing deductions for delayed deposits beyond statutory due dates, other High Courts have taken a more liberal approach.

The Supreme Court noted that there is a clear divergence of judicial opinion across High Courts on whether delayed deposits of employees' PF and ESI contributions can still qualify for deduction if paid before the return filing date. Section 2(24)(x) treats such contributions as income of the employer, while Section 36(1)(va) permits deduction only if deposits are made within the statutory due dates. In contrast, Section 43B allows deductions for certain statutory payments if made before filing the income tax return. Acknowledging this interpretational conflict and its significant implications for employers nationwide, the Bench issued notice, returnable within four weeks, and agreed to authoritatively decide the issue.

State Cannot Refuse Regularisation of Long-Serving Contract Employees Appointed to Sanctioned Posts Through Due Process

BHOLA NATH V. THE STATE OF JHARKHAND & ORS. (WITH CONNECTED MATTERS)

The Supreme Court held that **the State cannot deny regularisation to long-serving contractual employees merely because their appointments were labelled as contractual**. Where such employees are appointed through a due process of selection against sanctioned posts and continued for years with repeated extensions and satisfactory performance, they acquire a legitimate expectation of regularisation. Abrupt termination or refusal to regularise in such circumstances is arbitrary and violates Article 14 of the Constitution. The Court directed the State of Jharkhand to regularise the services of the appellants and grant them consequential service benefits.

The appellants were appointed in 2012 as Junior Engineers (Agriculture) against 22 sanctioned posts in the Land Conservation Directorate of the State of Jharkhand. Their appointments followed a public advertisement and a proper selection process but were termed "temporary and contractual" for an initial period of one year. Despite this label, the appellants were granted repeated yearly extensions for over ten years, with their work consistently found satisfactory, and they discharged duties identical to those of regular employees. In 2023, the State declared their extension as final and discontinued their services.

The Jharkhand High Court dismissed their challenge, holding that contractual employees have no right to regularisation, prompting the appeal before the Supreme Court.

The Court held that the State cannot indefinitely continue employees on contractual terms after appointing them through due process on sanctioned posts. It clarified that Uma Devi bars regularisation only in cases of irregular appointments, not lawful selections, and that contractual terms cannot waive fundamental rights or justify arbitrary action. Applying the doctrine of legitimate expectation, the Court allowed the appeal, set aside the High Court's decision, directed regularisation of the appellants, and granted consequential service benefits from the date of judgment.

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OUR OFFICES

HEAD OFFICE
B1/E-9 First Floor,
Mohan Co-operative
Industrial Estate
New Delhi - 110044
+91-9899990381
+91-9810967857
delhi@sabharwalindia.com

DELHI HIGH COURT
DELHI COURT CHAMBER 347,
Lawyers' Chambers,
Delhi High Court
New Delhi – 110003
delhi@sabharwalindia.com

JANGPURA
42-B, Jangpura B,
New Delhi - 11001D-106,
Jangpura Extension,
New Delhi – 110014
delhi@sabharwalindia.com

MUMBAI OFFICE
43 Hanuman Building,
2nd Floor, 308,
Perin Nariman, Street Fort,
Mumbai-400001,
+91-22-66106525-26
mumbai@sabharwalindia.com

BANGALORE OFFICE
Unit No. 1, 2nd Floor, No. 11,
Jeevan Buildings(New Block)
Kumara Park,
East Bangalore - 560001
+91-080-41138502
bangalore@sabharwalindia.com

KOLKATA OFFICE
22 Lake Place,
2ndFloor,
Kolkata –700029.
+91-033-40625165
kolkata@sabharwalindia.com

CHENNAI OFFICE
No.157/323,
3 RD floor, Lingi Chetty Street,
(Near Punjab National Bank)
Chennai - 600001
chennai@sabharwalindia.com

HYDERABAD OFFICE
401, H.No.3-6-181-B-1, SALVA
RESIDENCY, Hyderguda, St No. 17,
Himayath Nagar,
Hyderabad - 500029
hyderabad@sabharwalindia.com

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