

05.12.2025
SL No.3
Court No.6
(gc)

CO 4029 of 2025

**Cosmic MAPL JV
Vs.
Al-Amin Garments Haat Private Limited**

Ms. Arati Agarwal,
Mr. Udit Agarwal,
Ms. Rosy Banerjee
...for the Petitioner.
Mr. Jishnu Chowdhury, Sr. Adv.,
Mr. Abdul Murshid,
Mr. Gaurav Dutta,
Mr. Abhidipto Tarafdar
...for the Opposite Party.

1. This revisional application arises out of an order dated September 25, 2025, by which an application under Section 29A(4) read with Section 29A(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “said Act”) passed in Misc. Arb (Com) 44 of 2025, was rejected.
2. It appears that both the parties approached the learned Judge, Commercial Court at Rajarhat for extension of the mandate of the learned Arbitrator. The opposite party did not challenge the order of rejection, but approached the High Court.
3. Thereafter the application was withdrawn with liberty to approach the appropriate forum. The petitioner submits that the learned Judge, Commercial Court at Rajarhat had rejected the

application relying on a decision of this Court in ***Best Eastern Business House Pvt. Ltd. Vs. Mina Pradhan*** reported at **2025 SCC OnLine Cal 7997**. The learned Court was of the view that the High Court being the referral Court, had the jurisdictional Court to extend the mandate. The learned Judge, Commercial Court at Rajarhat was not vested with the jurisdiction to entertain the application for extension of the mandate of the learned Arbitrator.

4. Ms. Arati Agarwal, learned Advocate for the petitioner submits that the application was filed before the learned Commercial Court prior to the decision of this Court in ***Best Eastern Business House Pvt. Ltd.*** (supra). The petitioner had not committed any error in approaching the Commercial Court at Rajarhat, which was the “Court” having jurisdiction as per the definition under Section 2(1)(e) of the said Act, on the understanding of the decision of the Hon’ble Apex Court in ***Chief Engineer (NH) PWD (Roads) Vs. BSC & C and CJV*** reported at **2024 SCC OnLine SC 1801**. The Hon’ble Apex Court had clearly stated that, the principal Civil Court having jurisdiction will not only be empowered to extend the mandate of the learned Arbitrator, but also substitute the arbitrator in appropriate cases. It is further submitted by Ms. Agarwal that, at the

fag end of the proceedings, a situation has arisen which will abort the entire arbitral proceeding.

5. Mr. Jishnu Chowdhury, learned Senior Advocate appearing for the opposite party submits that the learned Judge, Commercial Court at Rajarhat had committed an error in not appreciating the decision of the Hon'ble Supreme Court in its correct perspective and had erroneously placed reliance on the decision of the High Court. Moreover the opposite party had approached the High Court under Section 29 A of the said Act, but the application was withdrawn.
6. This application is limited to the adjudication of the grievance of the petitioner, who is the respondent in the arbitral proceeding and who had not approached the High Court earlier, but is aggrieved by the rejection of the application for extension.
7. The Commercial Court clearly held that the High Court would be the jurisdictional Court and the Commercial Court at Rajarhat would not have the jurisdiction to entertain the application in view of the ratio in the decision in **Best Eastern Business House Pvt. Ltd.** (supra).
8. This is not a situation that the petitioner is left without a forum. The learned Judge, Commercial Court at Rajarhat had rejected the application on the ground of lack of jurisdiction. The learned

court observed that the High Court is the jurisdictional court. The petitioner is not remediless. Nothing prevents the petitioner from approaching the High Court by filing an appropriate application under Section 29A of the Arbitration and Conciliation Act.

9. Dealing with applicability of the order of the Hon'ble Apex Court, the decision of this court is being discussed. In paragraphs 41 to 45 of ***Best Eastern Business House Pvt. Ltd.*** (supra), this Court dealt with the ratio of the decision of the Hon'ble Apex Court and has given reasons as to why in cases where the referral Court is the High Court at Calcutta, the application under Section 29A would also be decided by the said High Court. This court held that the decision of the Hon'ble Apex Court was rendered in a different fact scenario. Paragraphs 41 to 45 are quoted below:-

“41. The decision takes the colour from the facts. Therefore, the context which led to the decision of the Meghalaya High Court and affirmation by the Hon'ble Apex Court, assumes significance. The question before the Meghalaya High Court was, whether the Commercial Court East Khasi Hills, Shillong had the jurisdiction to entertain the application under Section 29A. Relevant portions of the said decision of the Meghalaya High Court are quoted below:-

“1. The brief facts necessary are that, on the inability of an Arbitral Tribunal which was constituted on 13.03.2019, to render an award within the stipulated time and subsequent extension thereof, the respondent herein, had preferred an application for extension of the mandate under Section 29A of the Arbitration

and Conciliation Act, 1996 (hereinafter referred to as A&C Act) before the Commercial Court, East Khasi Hills. The petitioner then filed an application under Section 11 of the Commercial Courts Act, read with Order 7 Rule 11 CPC, challenging the jurisdiction of the Commercial Court to entertain an application under Section 29A of the A&C Act, 1996.

2. The learned District Judge, Commercial Court, East Khasi Hills, Shillong then by Judgment and Order dated 16.02.2024, passed in Commercial Misc. Case No. 1 of 2024, held that the said Court had the jurisdiction to entertain an application for extension of the mandate of the Arbitral Tribunal under Section 29A of the Arbitration and Conciliation Act, 1996. Being aggrieved thereby, the petitioner has preferred the instant revision application before this Court.

3. The main issue in this Revision Application is with regard to the interpretation of the expression 'Court' as given in Sub-sections (4), (5) & (6) of Section 29A of the A&C Act. Essentially, the interpretation revolves around whether the expression 'Court' used in Section 29A would mean the High Court, or the Principal Civil Court in a District.

It has been contended by the petitioner that the learned Commercial Court had committed an error in holding that the expression 'Court' would mean the Principal Civil Court in accordance with Section 2(1)(e) of the A&C Act, inasmuch as, the power of extension of the mandate is concomitant with the power of appointment of arbitrator. The further contention is that Section 29A (6) of the A&C Act, provides that the Court while extending the mandate can substitute one or all the arbitrators, thus such power of substitution being part and parcel of the power of appointment of arbitrator, which is only available with the High Court under Section 11(6), the expression 'Court' used in Section 29A cannot mean the Principal Civil Court in the District under Section 2(1)(e).

* * *

15. However, on another important aspect, the judgment of the Bombay High Court in *Cabra Instalaciones Y Servicios vs. Maharashtra State Electricity Distribution Co. Ltd* (supra), has a bearing on the instant case. This judgment, has touched upon the purport of Section 29A(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 of the

arbitrators; and has held it to be in fact, a power to make appointment of a new/substitute arbitrator, or any member of the arbitral tribunal, and as the arbitral tribunal was appointed by the Supreme Court, the High Court was found to lack jurisdiction to pass any orders under Section 29A of the Act. This finding has been followed by the Delhi High Court in the case of DDA v. Tara Chand Sumit Construction Co.(supra), wherein it has been held at Para-29 thereof as follows:-

"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."

16. Thus, it is seen that the term 'Court' used in Section 29A(4), as the definitive clause has provided in Section 2(1), is to be interpreted by making use of the expression "unless the context otherwise requires". The phrase "unless the context otherwise requires" in the view of this Court, is a provision in Section 2, intended by the legislature to allow for flexibility in interpretation and indicates that the definitions given therein, should be understood in accordance with the surrounding context, or specific circumstances, rather than strictly adhering to a literal interpretation. This provision hence, enables courts to consider the broader context, including the intent of the legislature, in determining the applicable

meaning of the provisions at hand. In essence, it grants discretion to interpret the provision in a manner that best aligns with the overall purpose and objectives of the statute.

17. Though it is correct that the power under Section 11(6) of the Act, specifically vests the powers of appointment of arbitrator in the case of domestic arbitration upon the High Court, this jurisdiction also is limited, as once an arbitrator is nominated, the High Court does not retain jurisdiction. However, as noted in various judgments, if the power under Section 29A is to be exercised by the Principal Civil Court, though it may be competent to extend the mandate, an anomalous situation would arise, if there is a question of substitution, as it may result in an arbitrator appointed by the High Court being substituted by the Principal Civil Court, which would then militate against the stipulation of Section 11(6) of the Act.

18. A contextual interpretation of the term 'Court' as given in the Act, will therefore involve analyzing the facts of the case, the legislative intent to understand its purpose and its application, whereas textual interpretation on the other hand, focuses solely on the language of the provision itself. Balancing both approaches therefore, will ensure the comprehensive application of the provisions' meaning and intent, taking into account both its context and textual structure to apply it effectively, to fit into the scheme of the Act. As such, in the considered view of this Court, Section 2(1)(e) allows the interpretation of the term 'Court' to be read, keeping the object of the statute intact, and the same should not result in defeating the purpose, for which the provision i.e. Section 29A was inserted.

19. In the backdrop of the discussions herein above, coming to the case in hand, the decision rendered in Magnum Opus IT consulting Private Limited vs. Artcad Systems, Through its Proprietor Vinay Digambar Shende (2022) SCC OnLine Bom 2861; (2023) 1 Arb LR 441, which has been relied upon by the respondents, however comes to their aid, as the arbitrators in the present case were not appointed under Section 11 by the High Court. As such, by applying this judgment, a distinction can be drawn to hold that, if the appointment of the arbitrator is not by the High Court under Section 11, the Principal Civil Court of original jurisdiction in this case, the Commercial Court at Shillong, East Khasi Hills will have the power to entertain an application under Section 29A for extension of the term, as

no anomalous situation would arise therefrom. As such, by making use of the expression of Section 2 of the Act "unless the context otherwise requires" the textual interpretation will be in tune with the contextual one.

20. Accordingly, keeping in mind the fact that, the High Court of Meghalaya does not possess original Civil Jurisdiction, coupled with the fact that, Section 11 nor Section 29A(6) do not come into play in the present case, as the arbitrators were not appointed by the High Court, the Commercial Court, East Khasi Hills, Shillong being the Principal Court of original jurisdiction will have the jurisdiction to extend the mandate as prescribed under Section 29A of the Act."

42. The Meghalaya High Court relied on the ratio of ***Magnum Opus IT Consulting (supra)***. In ***Magnum Opus IT Consulting (supra)***, the Bombay High Court held as follows:-

"24. In a recent judgment in *Past Wind Solutions Pvt. Ltd. v. Ge Power Conversion India*, 2021 SCC OnLine SC 331 a three Judge Bench of the Hon'ble Supreme Court has reiterated that "normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from if there be something in the context to show that the definition should not be applied..."

25. It is pertinent to note that Section 29-A authorizes the 'Court' not only to extend the mandate of the Arbitrator but also to substitute the Arbitrator. The meaning of the word 'Court' as defined in Section 2(1)(e) of the Arbitration and Conciliation Act is subject to the requirement of the context. Hence, when the High Court or the Supreme Court, as the case may be, appoints the Arbitrator in exercise of jurisdiction under Section 11, the term 'Court' would require contextual interpretation, which is permissible in view of the rider contained in Sub Section 1 of Section 2 of the Arbitration and Conciliation Act. Any other interpretation would create anomalous situation and irreconcilable conflict between the power of the superior court to appoint an Arbitrator and the power of the District Court to substitute such Arbitrator in exercise of powers under Section 29-A. Such conflict can be avoided only by purposive interpretation."

43. The said decision was appealed from and the Hon'ble Apex Court in the given context

and in those set of facts which were before the Meghalaya High Court, held as follows:-

“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.”

44. The decision of the Hon’ble Apex Court thus, is not a binding precedent in the present factual context.

45. It may have so happened that, the application for extension of the mandate is filed before the Commercial Court at Siliguri and while considering such application, the court was of the opinion that, the delay was attributable to the Arbitrator and that the learned Arbitrator was not acting in a manner which would be beneficial for disposal of a time-bound proceeding, hence fees should be reduced, and/or substitution should be made. In such a situation, a court inferior to the court appointing the arbitrator would substitute and reduce fees, thereby, interfering with order passed by the High Court. This cannot be the legislative intent.”

10. The reasons assigned by this Court in support of the conclusions arrived, are at paragraphs 24 to 27 of the said decision, which are quoted below:-

“24. In the above cases, it was held that an application under section 29A(4) of the Act of 1996, would lie only before the court which had the power to appoint an Arbitrator under Section 11 of the Act. In the context of section

29A, meaning of the word 'Court', as used therein, must be understood.

25. The power of substitution is a concomitant to the power of appointment. In exercising power under section 29A of the Act, the court partakes the character of the appointing authority, when the role of substitution comes in, when directions are issued as to the stage from which the proceeding would commence before the substituted Arbitrator(s) and when orders of imposition of conditions as to how the parties should conduct themselves in the proceeding etc. are passed. Thus, the textual interpretation of the expression 'Court' will vest the principal civil court of the district with the powers which are to be exercised by the High Court under section 11(6) of the Act.

26. In ***Renaissance Hotel Holdings Inc. v. B. Vijaya Sai and Ors.*** reported in **(2022) 5 SCC 1**, it was held that while interpreting the provisions of a statute, it was necessary that the textual interpretation should match with the contextual one. The statute must be looked into as a whole and it must be deciphered what each section or each clause or each phrase or each word meant, so as to fit into the scheme of the Act. No part of the statute or no term in the statute could be construed in isolation. Thus, the High Court's exclusive power to extend the mandate of the arbitrator appointed by it, arises from a harmonious statutory interpretation of sections 2(1)(e), 11 and 29A. In the interpretation of this court, the appointing court retains the residual supervisory jurisdiction over the arbitration for the purpose of extension of the mandate.

27. The provisions of section 2(1)(e) in the context of Section 29A, cannot be interpreted to allow an inferior court to overrule or undo an order of the High Court. The Parliament could not have ever intended the district court to substitute an Arbitrator appointed by the High Court. In this context the decisions of the different high courts are quoted below.”

11. Under such circumstances, the revisional application is dismissed. The Court did not commit any jurisdictional error in dismissing the application for extension of the mandate. The doors of the petitioner are not closed.

12. The petitioner is at liberty to approach the High Court in accordance with law.
13. There shall be no order as to costs.
14. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)