

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO**

CIVIL REVISION PETITION No.739 of 2025

Mr. V. Prasad Rao, learned counsel appearing for the petitioner.

Mr. M.Satyanarayana, learned counsel appearing for the respondent No.1.

Mr. Rusheek Reddy, learned counsel for the respondent Nos.2 and 3.

ORDER: (Per Hon'ble. Justice Moushumi Bhattacharya)

1. The present Civil Revision Petition is filed against an order dated 05.02.2025 passed by the Commercial Court at Hyderabad in Commercial Original Petition No.131 of 2024.

2. By the impugned order dated 05.02.2025, the Commercial Court allowed the petition filed by the respondent No.1 under section 29A of The Arbitration and Conciliation Act, 1996, for extending the mandate of the learned Arbitrator for 6 months in an ongoing arbitration proceedings between the petitioner, the respondent No.1 and others. The Commercial Court extended the mandate of the Arbitrator from 24.09.2024 till 23.03.2025.

3. The matter was first taken up on 07.03.2025 and continued for a few days thereafter. The Court was informed on 25.03.2025 that the mandate of the Arbitrator had come to an

end on 23.03.2025. This fact was recorded in the proceeding sheet dated 25.03.2025.

4. Therefore, the adjudication of whether the Commercial Court had the jurisdiction to extend the mandate of the Arbitrator became academic and has remained so since 23.03.2025.

5. Learned counsel appearing for the petitioner, however, insisted for the Court to express its opinion on the question of law involved in the matter, i.e., whether the Commercial Court was the “Court” as defined under section 2(1)(e) of the 1996 Act and whether it was authorised to grant an extension of the mandate.

6. The cornerstones of the discussion are section 2(1)(e) and section 29A(4) of the Act.

7. Section 2(1) of the Act defines several terms and expressions used in the Act, making the definitions specific to Part I of the Act and also specific to the context.

Section 2(1) of the Act begins with the following words:

“In this Part, unless the context otherwise requires”

Section 2(1)(e) of the Act defines the term ‘Court’ as under:

“(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;”

8. Section 2(1)(e)(ii) of the Act contemplates international commercial arbitrations. Since the present arbitration falls under Part I of the Act, the definition of “Court” in the context of international commercial arbitration is not relevant and is hence not set out above. To clarify, Part I applies to arbitrations where the place of arbitration is in India: section 2(2) of the Act.

9. It is evident from section 2(1)(e)(i) of the Act that the “Court” would be the Principal Civil Court of original jurisdiction in a district and would include the jurisdictional High Court. Section 2(1)(e)(i) does not contain any language which specifically excludes the High Court from arbitrations under Part I of the Act, i.e., those that are not international commercial arbitrations.

10. “International commercial arbitration” is defined under section 2(1)(f) of the Act as an arbitration relating to disputes arising out of commercial legal relationships under Indian law, where one of the parties resides or is incorporated outside India. As stated above, section 2(1) of the Act declares that the definitions thereunder shall be determined by the context in which the definitions are used. In the present case, it is undisputed that the Arbitrator was appointed by the High Court in an application made by the petitioner herein under section 11(6) of the Act. Therefore, the High Court, exercising its special powers of appointment under Section 11(6) of the Act, was the appointing authority of the Arbitrator in a case involving an arbitration other than international commercial arbitration.

11. Admittedly, in the instant case, the Arbitrator commenced the arbitration and continued it until the petition was filed by the respondent No.1 for extension of the mandate of the Arbitrator.

12. Extension of the mandate of an Arbitrator is provided under section 29A of the Act which limits the time for making an arbitral award within specified windows. The time frame for non-international commercial arbitration is twelve months from the date of completion of pleadings as provided under section 23(4) of the Act. Section 29A(3) of the Act permits the parties to extend the period beyond twelve months by consent - but with a cap of an additional six months from the expiry of the twelve months, as specified under section 29A(1) of the Act.

13. Section 29A(4) of the Act contemplates a scenario where the arbitral Award is not made within twelve months + six months. In such situations, the Court can step in and extend the mandate of the Arbitrator upon an application filed by either of the parties under section 29A(5) of the Act. The Court may extend the mandate only for sufficient cause and on any condition which may be imposed by the Court. The Court also has the power to substitute the Arbitrator under section 29A(6)

of the Act, within the overall scheme and object of the Act, to ensure efficient and expeditious arbitrations with minimal judicial supervision.

14. Sections 2(1)(e)(ii) and 29A of the Act have been discussed only to clarify the issue before us: that is whether the Commercial Court could have extended the mandate of the Arbitrator.

15. Section 2(1)(e) read with section 11(6) of the Act is hierarchy-sensitive for the purpose of determining the order of Courts for deciding issues of appointment, termination of Arbitrators and extension of their mandate. The High Court forms the focal point in both section 2(1)(e) and section 11(6) of the Act in non-international commercial arbitrations. This means that while section 11(6) of the Act confers exclusive powers on the High Court for appointment of an Arbitrator, section 2(1)(e)(i) operates in tandem in the same scenario i.e., domestic arbitrations where the High Court, as the Principal Civil Court of original jurisdiction in a district, retains the exclusive power to extend and terminate the mandate of the Arbitrator.

16. The facts of the present case place the focus firmly on the High Court since the Arbitrator was appointed by the High Court in an application under section 11(6) of the Act. Thus, the High Court, as the appointing authority, also becomes the exclusive deciding authority in matters concerning the extension of the Arbitrator's mandate. Our view is based on a conjoint reading of section 11(6) and section 2(1)(e)(ii) of the Act within the specific factual context of the case.

17. In our view, section 42 of the Act, which directs all subsequent applications arising out of an Arbitration Agreement or arbitral proceedings to the Court which received the first application under Part I, falls under a different category and is applicable to applications other than appointment of an Arbitrator under section 11(6) of the Act.

18. Although counsel for the petitioner has taken recourse to section 42 of the Act, we are of the opinion that section 42 applies to any dispute concerning the arbitration agreement or situations arising after the commencement of the arbitration proceedings. The appointment of an Arbitrator under section 11 of the Act occupies a distinct space, where the appointing Court is specifically designated i.e., the High Court for domestic

arbitrations and the Supreme Court for International Commercial Arbitrations. In contrast, section 42 of the Act simply refers to the “Court” without any specific nomenclature.

19. It is also important to highlight the potential for anomalous situations if any Court other than the High Court assumes the power to extend the Arbitrator’s mandate. For instance, the Arbitrator may be appointed by the High Court (as in the present case) and the mandate of the Arbitrator thereafter extended in an application under section 29A(4) or (5) of the Act or substituted under section 29A(6) by the Principal Civil Court in a district. The parties may subsequently resort to a fresh appointment under section 11(6). The new appointment would necessarily have to be filed before the High Court under section 11 (6) of the Act. Therefore, knocking the doors of different Courts at different stages of the arbitration process would be contrary to the hierarchy envisaged under the Act and also in violation of maintaining the continuity of that hierarchy. The Act contemplates unifying the procedures by requiring all subsequent applications for extension, termination, or substitution to be made only to the High Court where the High Court was the appointing authority in the first instance. While the Principal Civil Court having original jurisdiction in a district

is authorized to make such decisions in consensual appointments between the parties, the situation entirely changes when the appointment is made by the High Court on an application under section 11(6) of the Act.

20. We find judicial support for this view in several decisions.

21. A Division Bench of the High Court of Bombay at Goa in *Sheela Chowgule Vs. Vijay V. Chowgule and others*¹ decided a reference to the question of whether an application under section 29A(4) of the Act would lie before the High Court or the Civil Court having jurisdiction in the case of a domestic arbitration. The Bombay High Court opined that 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. Single Bench decisions of the Delhi High Court in *Ovington Finance Pvt. Ltd. Vs. Bindiya Nagar*² and the Calcutta High Court in *Amit Kumar Gupta Vs. Dipak Prasad*³ also support our view. None of the decisions cited on behalf of the

¹ W.P.No.88 of 2024 dated 07.08.2024

² 2024 DHC 9276

³ (2021) 1 CAL LT 278 (HC)

respondent No.1 bear any relevance to the issue at hand i.e., whether the power to extend the mandate of an arbitrator is conferred on a Court inferior to the High Court where the Arbitrator was appointed by the High Court in an application under section 11(6) of the 1996 Act.

22. We thus have no doubt that the extension of the Arbitrator's mandate in the present case was erroneously permitted by the Commercial Court. We wish to reiterate that the issue has become academic in light of the expiry of the mandate on 23.03.2025. We also clarify that we have not expressed any opinion on the petitioner's prayer for substitution of the Arbitrator or the reasons for seeking such substitution.

23. C.R.P.No.739 of 2025, along with all connected applications, is accordingly disposed of in terms of the above. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

Date: 10. 04.2025
va