



2025:CHC-OS:190

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL Division
ORIGINAL SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP-COM - 296 of 2025

Best Eastern Business House Pvt Ltd.
vs.
Mina Pradhan

For the Applicant/Award holder : Mr.Ayan Banerjee, Adv.
Mr. Arijit Bhowmick, Adv.
Ms. Debasree Mukherjee, Adv.
Mr. Soumyadeep Dasgupta, Adv

For the Respondent : Mr. Subham Ghosh, Adv.
Mr. Dhananjay Nayak, Adv.
Ms. Tanwishree Mukherjee, Adv.

Judgment Reserved on : 17.09.2025

Judgment Delivered on : 23.09.2025

Shampa Sarkar, J.

1. This is an application under section 29A(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act'). The dispute arose out of a partnership deed dated October 16, 2015. The petitioner invoked the arbitration clause. An application for appointment of an arbitrator was filed before this Court vide A.P. 481 of 2021. A learned Advocate, Bar Library Club, was appointed as the



sole Arbitrator. The proceedings continued before the learned Arbitrator. The period of 12 months from the date of completion of pleadings expired on October 5, 2024. Thereafter, the parties consented to an extension of six months. The mandate of the learned Arbitrator stood extended till April 4, 2025. Such extension by consent of the parties had been recorded in the minutes of the 11th meeting dated December 7, 2024. This application was filed before the court on April 9, 2025, for extension of the mandate.

2. Mr. Ayan Banerjee, learned Advocate for the petitioner submitted that this Court had the jurisdiction to entertain this application and pass necessary orders. According to Mr. Banerjee, as the High Court at Calcutta was the appointing Court, it could exercise such power of extension under its ordinary original civil jurisdiction. Distinguishing the decision of the Hon'ble Apex Court in the matter of **Chief Engineer(NH) PWD (Roads) vs. BSC&C JV** reported in **2024 SCC Online SC 1801**, Mr. Banerjee submitted that the judgment should be read in the context it was delivered. The order of the Meghalaya High Court, which was upheld by the Hon'ble Apex Court, was distinguishable on facts. In the matter before the Meghalaya High Court, the prayer for extension of the mandate of the learned Arbitrator was rejected as the arbitrator was appointed by the parties and not by the Court. In such circumstance, the Meghalaya High Court held that "Court" would mean the principal civil court of original jurisdiction in the district and did not include the High Court. The High Court of Meghalaya, did not exercise ordinary original civil



jurisdiction. Thus, the definition of the term “Court” under section 2(1)(e) of the said Act should mean only the principal civil court of the district, and the said court alone, had the jurisdiction to entertain the application for extension of mandate.

3. It was submitted that the legislative intent was to include a High Court exercising ordinary original civil jurisdiction within the definition of court. According to Mr Banerjee, although the said Act had undergone many amendments, no such amendment had been incorporated in section 2(1)(e), to exclude the jurisdiction of the High Court. The Meghalaya High Court, on the other hand, could never be treated as the court exercising original jurisdiction. The term “Court” used in section 29A(4) should be so interpreted, by applying the expression “unless the context otherwise requires”. The term “Court” should be given a definite meaning, in accordance with the surrounding context or circumstances. In this case, a literal meaning of the expression ‘Court’, would be contrary to the intention of the legislature. Mr. Banerjee submitted that, the Meghalaya High Court gave a contextual interpretation of the term “Court”, keeping the object of the statute intact, so that, the interpretation did not result in defeating the purpose for which section 29A was inserted by an amendment. As the arbitrator in the case before the Meghalaya High Court was not appointed by the High Court, as per the ratio in ***Magnum Opus IT Consulting Private Limited vs Artcad Systems, Through its Proprietor Vinay Digambar Shende***, reported in **2022 SCC Online Bom 2861**, the principal civil court in the said case



would be the Commercial Court at East Kashi Hills, Shillong. The said Commercial Court would have the jurisdiction to entertain an application under section 29A (4), for the extension of the mandate. No anomalous situation would arise therefrom, inasmuch as, the Arbitrator was not appointed by High Court and the High Court did not exercise ordinary original civil jurisdiction. In the said case, the textual and contextual interpretation of the expression “Court” were in sync.

4. According to Mr. Banerjee, on the above findings arrived at by the Meghalaya High Court, the decision was rendered by the Hon’ble Apex Court on May 13, 2024 in **Chief Engineer(NH) PWD Road** (supra). The issue before the Hon’ble Apex Court was the validity of the decision of the Meghalaya High Court in holding that the said High Court was not the principal civil court having original jurisdiction. ‘Court’ as defined under section 2(1)(e) of the said Act would have the jurisdiction to extend the mandate under section 29A(4) of the said Act. It was also held that the situation would be different had the Arbitrator been appointed by the Meghalaya High Court, as in such case, a contextual interpretation of the term “Court” would have to be made. It was further observed by the Meghalaya High Court that, an anomalous situation would arise if the High Court appointed an Arbitrator, but the application for extension was filed before the principal civil court in the district and a prayer was made for substitution of the Arbitrator. In such a situation, the expression “Court” would require a contextual interpretation. Otherwise, an



Arbitrator appointed by the High Court would stand removed by the principal civil court, being the subordinate court. This would militate against the provision of section 11(6) of the said Act.

5. Mr. Banerjee urged that, while considering the above decision of the Meghalaya High Court, the Hon'ble Apex Court also held that, 'Court' as defined in section 2(1)(e) of the said Act was the principal civil court of original jurisdiction in a district, and included a High Court, provided the High Court could exercise ordinary original civil jurisdiction. The reasoning was that, neither did the Meghalaya High Court exercise ordinary original civil jurisdiction nor did the High Court appoint the Arbitrator. In such backdrop, the decision of the Meghalaya High Court was upheld. The observations in paragraph 3 of the said judgment were an analysis of the law, but the Hon'ble Apex Court did not disagree with the decision of the Meghalaya High Court, that, appointment of the Arbitrator by the High Court would entail extension by the High Court. In cases where the High Court did not appoint the Arbitrator, the parties were required to extend the mandate by approaching the principal civil court of the district. Mr. Banerjee submitted that, section 29A was the substantive and comprehensive provision for completion of the arbitral proceeding within the time limit prescribed. In such context, the meaning of the expression "Court" should be understood. Under sub-section 6 of section 29A of the Act of 1996, the Court had the power to substitute the Arbitrator or Arbitrators by re-constituting the arbitral tribunal, if so required. When the power of appointment of an Arbitrator had been



prescribed in section 11 of the Act, the power of extension of the mandate and/or constitution of a new tribunal, upon substituting the Arbitrator appointed by the High Court, would be an exercise of power akin to section 11 and / or incidental to section 11. The Court under section 29A of the Act of 1996, would partake the character of an appointing authority as prescribed under section 11 of the Act.

6. It was submitted that a judgment was an authority for what was decided, every observation or discussion would not be a binding precedent. The Hon'ble Apex Court did not decide the issue whether, a High Court having ordinary original civil jurisdiction and being the appointing court, could extend the mandate of the Arbitrator or not, in exercise of power under section 29A(4) of the said Act, if the subject matter of arbitration was outside its territorial jurisdiction.
7. According to Mr. Banerjee, if the textual interpretation of the term "Court" was matched with the contextual one, it would militate in favour of this 'Court' entertaining an application under section 29A(4). If the meaning assigned to the term "Court" under section 2(1)(e) was restricted to the principal civil court having territorial jurisdiction over the subject matter, such interpretation would run contrary to the intention of legislature and defeat the purpose behind qualifying the definition clause with "unless the context otherwise requires". Permitting the Commercial Court at Siliguri, to assume the power vested in the High Court at Calcutta, could never be the legislative intent. Accordingly, this Court being the appointing court of the Arbitrator, would not only have jurisdiction to extend the mandate,



but also substitute the Arbitrator, reduce his fees, issue directions etc., as and when the situation required. In the present case, as the Arbitrator was appointed by the High Court, the application under section 29A(4) of the Act would be maintainable before the High Court. Mr. Banerjee urged that, the expression “unless the context otherwise requires” in section 2 of the said Act, demonstrated the intention of the legislature to give the expression “Court” a wider import, by providing a contextual application and not a textual one. Depending on the circumstance of each case, the definition of “Court” would vary. Section 11(6) of the Act, empowered the High Court to appoint an Arbitrator if the parties failed to appoint under the agreed procedure within 30 days of receipt of request by one party from the other party. This Court had been approached for appointment of an Arbitrator. This court alone, could exercise jurisdiction under section 29A(4) and also pass necessary order under the other sub-sections. No other interpretation would be permissible in this context. Any other contrary interpretation would be *dehors* the legislative intent, i.e. the court which appointed an Arbitrator, could alone extend, remove or substitute.

8. Mr. Subham Ghosh, learned Advocate for the respondent submitted that the decision of the Hon’ble Apex Court in **Chief Engineer(NH) PWD Road** (supra) had laid down the law. The principal civil court of original jurisdiction in a district, should be the appropriate court to extend the mandate, in exercise of power under section 29A(4). Although, the High Court at Calcutta exercised ordinary original civil



jurisdiction, but in this case, it was not the principal civil court in the district. The High Court at Calcutta did not have the jurisdiction under section 20 of the Civil Procedure Code. The parties were situated beyond the ordinary original civil jurisdiction of this Court. The cause of action arose beyond the jurisdiction of this Court. The subject matter of arbitration was also outside the jurisdiction of the Court. Mr. Ghosh, submitted that the said Act had undergone several amendments, but the legislature did not intend to amend the definition of “Court”. Under such circumstances, the expression “Court” should be given a textual interpretation. The expression “Court” used in section 29A carried the same meaning as in the definition clause. Relying on the decision of the Hon’ble Apex Court in ***Commissioner of Sales Tax, Gujarat vs Union Medical Agency*** reported **(1981) 1 SCC 51**, Mr. Ghosh submitted that the definition of the expression “Court” under the definition clause of the said Act, should be applied whenever and wherever the same appeared in the statute. Only if the definition gave rise to a meaning which was otherwise ambiguous or contrary to the intention of the statute or led to absurdity, could the expression “Court” be given a contextual interpretation instead of a textual one. The definition could only be departed from, if the textual interpretation of the definition resulted in injustice. In this case, no injustice would be caused to the petitioner, if the petitioner approached the Commercial Court at Siliguri. As there was no repugnancy in the subject or context, the primacy and supremacy of the definition clause would prevail. Referring to the



decision in ***Nimet Resources Inc. vs Essar Steel Ltd.*** reported in **(2009) 17 SCC 313**, Mr. Ghosh submitted that once the legislature defined a term in the interpretation clause, such definition should ordinarily be accepted as the statutory interpretation, unless the context otherwise required. In this context, interpretation of “Court” as the Commercial Court at Siliguri, would not result either in repugnancy or inconsistency. The ratio of the decision of the Hon’ble Apex Court in ***Chief Engineer(NH) PWD(supra)*** was in favour of a textual interpretation of the expression ‘Court’, in the context of exercise of jurisdiction to extend the mandate under section 29A(4) of the said Act.

9. According to Mr. Ghosh, Section 11(6) only empowered the High Court to intervene for the purpose of appointing an Arbitrator, when the mechanism contractually agreed upon by the parties had failed. The section did not vest the High Court with any supervisory power. The High Court did not have any procedural control over the arbitration. Once the Tribunal was constituted under the said section, the High Court became *functus officio*. Moreover, the Hon’ble Apex Court had held that, the Court which could extend the mandate could also substitute the Arbitrator. Mr. Ghosh urged before this Court that, upon appointment of an Arbitrator under section 11, the High Court ceased to exercise any further jurisdiction over the proceeding. The Commercial Court at Siliguri being the principal civil court of the district in this context, could exercise jurisdiction over the arbitral proceeding as provided under the various sections of the statute and



could also substitute an Arbitrator. The literal meaning of the expression 'Court' in section 2(1)(e) read with the expression 'Court' in section 29A – would be the court which could extend the mandate. Such court could also substitute the Arbitrator as per the decision of the Hon'ble Apex Court. The submissions of Mr. Banerjee that, exercise of power under section 29A(6), insofar as, substituting the learned Arbitrator was concerned, was akin to exercise of power under section 11(6), was contrary to the legislative intent. The expression "necessary measure" under section 11(6) must be understood only to mean the act of appointing the Arbitrator and nothing more. The doctrine of "*functus officio*" propagated that, once a Court or authority had discharged its functions in a proceeding and rendered a decision or had taken a definitive measure, it could neither revisit nor extend its control over the same matter, save, where the statute specifically authorised. Reference was made to ***Nimet Resources Inc***(supra). It was further contended that the judgment of the Meghalaya High Court merged with that of the Hon'ble Apex Court in ***Chief Engineer (NH) PWD Road*** (supra) and the distinguishing facts as mentioned in the Meghalaya High Court, would no longer be germane for consideration, inasmuch as, the Hon'ble Apex Court had categorically held that, "Court" as defined under Section 2(1)(e), would only mean the principal civil court of the district, and the Court which extended the mandate could also substitute the Arbitrator. Only when the High Court exercised ordinary original civil jurisdiction, could the High Court be approached. Here, the High Court would not have the



jurisdiction to entertain the matter as it was not the court having ordinary original jurisdiction over the subject matter. Reliance was placed on the decision of the Andhra Pradesh High Court in **Dr. V.V. Subbarao vs Dr. APPA Rao Mukkamala & Ors. reported in (2024) 1 SCC (AP) 94** in support of the contention that, the use of the expression “Court” under section 29A, should not be construed otherwise, than as defined under section 2(1)(e). Ordinarily, the normal definition clause should prevail. The meaning as per the definition clause could be deviated from, only if the context required. Here, the prayer for extension of the mandate of a learned Arbitrator could be filed before the principal civil court of the district, inasmuch as, the context did not require any other interpretation.

10. Considered the submissions made by the learned Advocates for the respective parties. The relevant sections, which require an understanding in the given context, are discussed hereinbelow.
11. The Section 2 (1)(e) of the said Act is quoted below: -

“2. Definitions.—(1) In this Part, unless the context otherwise requires,—

(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;”



12. The definition clause stipulates that, unless the context otherwise requires, 'court' in case of domestic arbitration would mean the principal civil court of original jurisdiction in a district, and would include the High Court in exercise of its ordinary original 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.

13. Section 29A, is quoted below:-

“29A. Time limit for arbitral award.—(1)The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23: Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.]

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the **Court has, either prior to or after the expiry of the period so specified, extended the period: Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.**

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only



for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of 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 arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

14. Section 29A was inserted by the Amending Act 3 of 2016, which came into effect from October 23, 2015. Initially, the provision dealt with the time limit for an arbitral award, i.e., the period within which the award should be made, upon completion of the arbitral proceeding. Subsection (1) of section 29A was substituted in 2019, with effect from August 30, 2019. Prior to the substitution, the award was to be made within a period of 12 months, from the date the arbitral tribunal entered upon reference. The explanation provided that, a tribunal would be deemed to have entered upon reference on the date when the Arbitrator or the Arbitrators received notice in writing of their appointment. By the amendment, the law required the award to be made by the arbitral tribunal within a period of 12 months from the date of completion of pleadings under subsection 4 of Section 23.
15. Subsection 4 of section 29A provides that, if an arbitral award is not made within the stipulated time, the mandate of the arbitrator



terminates unless extended by court. Sub-section 6 expressly vests jurisdiction in the court to substitute one or all arbitrators, while extending the time. The powers of the court under section 29A, can be divided into several categories.

- (a) Extension of time under subsection 4 and 5.
- (b) Power of substitution under subsection 6. This provision allows the court to substitute the Arbitrator(s) while extending the mandate. This is significant as the substitution effectively removes the previous tribunal and allows reconstitution.
- (c) Passing of consequential order, under subsection 7, that is, if the substitution is ordered, the tribunal shall continue from the stage already reached, unless the court directs otherwise. This allows the court, which extends the mandate, to protect the parties from unnecessary repetition of the proceeding.
- (d) Proviso to subsection 4 of Section 29A, gives the power to the court to direct reduction of the fees of the arbitrator(s) upon giving a hearing to the Arbitrator(s), by not exceeding 5 percent for each month's delay, if the court finds that the proceedings had been delayed for reasons attributable to the arbitral tribunal. The reconstituted tribunal, is deemed to be a continuation of the previously appointed arbitral tribunal as per section 7 of the said Act.
- (e) The continuation of the previously appointed tribunal, even after reconstitution would mean that the power of substitution and or reconstitution of the tribunal is an extension of the power of appointment of the tribunal under Section 11(6) by the High Court or



by the Supreme Court as the case may be. The newly constituted tribunal under subsection 6, is an extension of the tribunal previously constituted under section 11(6) by the High Court.

16. Thus, in cases where the appointment of the Arbitrator is by the High Court, there may be a jurisdictional overlap between the court having territorial jurisdiction over the subject matter and the court that actually appointed the arbitrator under Section 11. If the principle of consistency in jurisdiction is followed, in cases where the High Court appoints the arbitrator under Section 11, the High Court shall retain the supervisory jurisdiction over the arbitral proceeding to such limited extent. If the newly reconstituted tribunal is deemed to be a continuation of the tribunal appointed by the High Court, prayer for extension before the principal civil court of original jurisdiction will create a jurisdictional anomaly, that is, the High Court would appoint the Arbitrator and the inferior court would be asked to extend the Arbitrator's mandate or even substitute the Arbitrator appointed by the High Court. This will be inconsistent with the hierarchical judicial structure and also be contrary to the legislative intent that, the appointing court should have control over extension and substitution.
17. Upon reading section 29A, section 11 and section 2 (1)(e), harmoniously, "Court" for the purpose of extension under Section 29A(4) in this case, should necessarily mean the same High Court which appointed the Arbitrator. Otherwise, a district court or in this case, the Commercial Court at Siliguri, being an inferior court will also



be empowered to exercise the power to alter or replace the mandate of an Arbitrator appointed by a superior court. This will result in disharmony. Moreover, the caveat in Section 2(1) “unless the context otherwise requires”, clearly indicates that the definition of “Court” under Section 2(1)(e)(i) is not in absolute terms, but should be read in the context of the matter and not isolated therefrom. In this case, a textual interpretation of the term will result in an anomalous situation, as discussed herein above.

18. It is both logical and legally consistent to hold that the High Court retains jurisdiction for the purpose of extension under Section 29A and the principal civil court (Commercial Court at Siliguri) will not have jurisdiction to extend the mandate in this case. Such contextual construction of the term ‘Court’ avoids jurisdictional conflict, ensures judicial hierarchy and upholds the integrity of the arbitral process.
19. Arbitral proceedings, upon appointment of an Arbitrator, can be triggered in a number of ways. The parties can agree to the appointment of Arbitrator(s) outside court, the Arbitrator(s) can be appointed by a civil court in terms of section 89 of the Code of Civil Procedure if the parties agree, or the appointment can be made by the High Court or the Supreme Court in terms of subsections 4, 5 and 6 of Section 11 of the said act.
20. Section 29A(4) and in particular subsection (1) thereof, will apply to arbitral proceedings of all kinds, without any distinction. Thus, the mandate of an arbitrator, irrespective of the nature of his appointment and the manner in which the arbitral tribunal is constituted, will



come to an end within 12 months from the date of completion of the pleadings, unless such period is extended by consent of parties. Such extension by parties will not exceed six months. Thereafter, only the Court can extend the mandate.

21. It is inconceivable that, the legislature would vest the power with the Commercial Court at Siliguri, to substitute an Arbitrator who has been appointed by the High Court. Even otherwise, it will be wholly impermissible, since the power of appointment of an arbitrator, when the situation so arises, vests in the High Court or the Supreme Court, as the case may be, in terms of subsections 4, 5, 6 of Section 11. The power of substitution is of considerable significance as the arbitral tribunal is a continuation of the tribunal appointed by the High Court.
22. The power of granting an extension and the power of substitution is coextensive. If the court finds that the Arbitrator was not fit to continue with the proceeding, the court has the power to change the Arbitrator and reconstitute the tribunal and such reconstituted tribunal is deemed to be in continuation of the previously appointed tribunal. If I accept the contentions of Mr. Ghosh, it will lead to an irreconcilable conflict between the power of a superior court to appoint Arbitrator(s) under Section 11 of the said Act and that of the principal civil court of the district to substitute such Arbitrator(s) under section 29A(6). This conflict can be avoided only by understanding the term 'court', for the purpose of section 29A (contextual interpretation), as the court which appointed the Arbitrator and or constituted the arbitral tribunal.



23. Reference is made to the decisions of ***Cabra Instalaciones Y Servicios vs Maharashtra State Electricity Distribution Co. Ltd.*** Reported in ***MANU/MH/2097/2019, Nilesch Ramanbhai patel vs Bhanubhai Ramanbhai Patel*** reported in ***2018 SCC Online Guj 5017*** and ***DDA vs Tara Chand Sumit Construction Co.*** reported in ***2020 SCC Online Del 2501***, in support of the contention that, the High court which appointed the Arbitrator shall retain the jurisdiction to extend the mandate and dispose of the application under section 29A (4), filed by the petitioner.
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.

28. In the matter of ***Nilesh Ramanbhai Patel v. Bhanubhai Ramanbhai Patel***, reported in **2018 SCC OnLine Guj 5017**, it was held as follows:-

“13. Ordinarily therefore I would have accepted the contention of learned advocate Shri Mehta that the term ‘Court’ defined in Section 2(1)(e) in the context of the power to extend the mandate of the arbitrator under sub-section (4) of Section 29A would be with the principal Civil Court. However, this plain application of



the definition of term 'Court' to Section 29A of the Act poses certain challenges. In this context one may recall that the definition clause of subsection (1) of Section 2 begins with the expression "in this part, unless the context otherwise requires". Despite the definition of term 'Court' contained in Section 2(1)(e) as explained by the Supreme Court in above noted judgments, if the context otherwise requires that the said term should be understood differently, so much joint in the play by the statute is not taken away.

14. As is well-known, the arbitration proceedings by appointment of an arbitrator can be triggered in number of ways. It could be an agreed arbitrator appointed by the parties outside the Court, it could be a case of reference to the arbitration by Civil Court in terms of agreement between the parties, it may even be the case of appointment of an arbitrator by the High Court or the Supreme Court in terms of subsection (4), (5) and (6) of Section 11 of the Act. The provisions of Section 29A and in particular sub-section (1) thereof would apply to arbitral proceedings of all kinds, without any distinction. Thus the mandate of an arbitrator irrespective of the nature of his appointment and the manner in which the arbitral Tribunal is constituted, would come to an end within twelve months from the date of Tribunal enters upon the reference, unless such period is extended by consent of the parties in term of sub-section (3) of Section 29A which could be for a period not exceeding six months. Sub-section (4) of Section 29A, as noted, specifically provides that, if the award is not made within such period, as mentioned in sub-section (1) or within the extended period, if so done, under subsection (3) the mandate of the arbitrator shall terminate. This is however with the caveat that unless such period either before or after the expiry has been extended by the Court. In terms of sub-section (6) while doing so it would be open for the Court to substitute one or all the arbitrators who would carry on the proceedings from the stage they had reached previously.

15. This provision thus make a few things clear. Firstly, the power to extend the mandate of an arbitrator under sub-section (4) of Section 29A beyond the period of twelve months or such further period it may have been extended in terms of sub-section (3) of Section 29A rests with the Court. Neither the arbitrator nor parties even by joint consent can extend such period. The Court on the other hand has vast powers for extension of the period even after such period is over. While doing so the Court could also choose to substitute one or all of the arbitrators and this is where the definition of term 'Court' contained in Section 2(1)(e) does not fit. It is inconceivable that the legislature would vest the power in the Principal Civil Judge to substitute an arbitrator who may have been appointed by the High Court or Supreme Court. Even otherwise, it would be wholly impermissible since



the powers for appointment of an arbitrator when the situation so arises, vest in the High Court or the Supreme Court as the case may be in terms of sub-section (4), (5) and (6) of Section 11 of the Act. If therefore there is a case for extension of the term of an arbitrator who has been appointed by the High Court or Supreme Court and if the contention of Shri Mehta that such an application would lie only before the Principal Civil Court is upheld, powers under sub-section (6) of Section 29A would be non-operatable. In such a situation sub-section (6) of Section 29A would be rendered otiose. The powers under sub-section (6) of Section 29A are of considerable significance. The powers for extending the mandate of an arbitrator are coupled with the power to substitute an arbitrator. These powers of substitution of an arbitrator are thus concomitant to the principal powers for granting an extension. If for valid reasons the Court finds that it is a fit case for extending the mandate of the arbitrator but that by itself may not be sufficient to bring about an early end to the arbitral proceedings, the Court may also consider substituting the existing arbitrator. It would be wholly incumbent to hold that under sub-section (6) of Section 29A the legislature has vested powers in the Civil Court to make appointment of arbitrators by substituting an arbitrator or the whole panel of arbitrators appointed by the High Court under Section 11 of the Act. If we therefore accept this contention of Shri Mehta, it would lead to irreconcilable conflict between the power of the superior Courts to appoint arbitrators under section 11 of the Act and those of the Civil Court to substitute such arbitrators under Section 29A(6). This conflict can be avoided only by understanding the term "court" for the purpose of Section 29A as the Court which appointed the arbitrator in case of Court constituted arbitral Tribunal.

16. Very similar situation would arise in case of an international commercial arbitration, where the power to make an appointment of an arbitrator in terms of Section 11 vests exclusively with the Supreme Court. In terms of Section 2(1)(e) the Court in such a case would be the High Court either exercising original jurisdiction or appellate jurisdiction. Even in such a case if the High Court were to exercise power of substitution of an arbitrator, it would be transgressing its jurisdiction since the power to appoint an arbitrator in an international commercial arbitrator rests exclusively with the Supreme Court."

29. In the matter of **DDA v. Tara Chand Sumit Construction Co.**, reported in **2020 SCC OnLine Del 2501**, it was held as follows:-



“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. The complexity, however, arises by virtue of the power of the Court to substitute the Arbitrator while extending the mandate and this complication is of a higher degree if the earlier Arbitrator has been appointed by the High Court or the Supreme Court. Coupled with this, one cannot lose sight of the fact that the Legislature in its wisdom has conferred the powers of appointment of an Arbitrator only on the High Court or the Supreme Court, depending on the nature of arbitration and as and when the power is invoked by either of the parties. There may be many cases in which while extending the mandate of the Arbitrators, the Court may be of the view that for some valid reasons the Arbitrators are required to be substituted, in which case the Court may exercise the power and appoint a substituted Arbitrator and extend the mandate.

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.”



30. In the decision of ***Cabra Instalaciones Y. Servicios v. Maharashtra***

State Electricity Distribution Co. Ltd., reported in **2019 SCC**

OnLine Bom 1437, it was held as follows:-

“6. A perusal of Section 29-A would show that it is a substantive and a comprehensive provision inter alia dealing with the time limits for making of an arbitral award and extension of such time limits. Sub-section (1) provides that the award “shall” be made by the arbitral tribunal within a period of twelve months from the date the arbitral tribunal enters upon the reference. As to what is the deemed date for the tribunal to have entered the reference is provided in the ‘Explanation’ to sub-section (1). Sub-section (2) provides that if an award is made within a period of six months, from the date the arbitral tribunal enters upon the reference, then the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree. Sub-section (3) provides that the parties may by consent extend the period of twelve months specified in subsection (1) for making an award for a further period not exceeding six months. Sub-section (4) provides that when an award is not pronounced within the time specified in sub-section (1) which is within twelve months or the extended period i.e. six months specified in sub-section (3), the mandate of the arbitral tribunal would stand terminated, unless the Court has, either prior to or after the expiry of the period so specified, extended the period. As per the provisions of sub-section (5), extension of period referred to in sub-section (4) may be granted on an application of any of the parties and which may be granted only for sufficient cause and on such terms and conditions as may be imposed 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.

7. On a plain reading of Section 29A along with 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 under Section 29-A of the Act when the arbitration is an international commercial arbitration. The insistence on the part of the petitioner that considering the provisions of sub-section (4), the High Court would be the appropriate Court to extend the mandate of the arbitral tribunal under Section 29-A, would not be a correct reading of Section 29A as the provision is required to be read in its entirety and in conjunction with Section 11(9) of the Act.”

31. In the matter of ***Amit Kumar Gupta v. Dipak Prasad*** reported in ***2021 SCC OnLine Cal 2174***, the Calcutta High Court held as follows:-

“**15.** Section 2(1)(e) of the Act of 1996 has defined “court” as used in Part I of the Act of 1996. Section 2(1) of the Act of 1996 has stipulated that, the meaning ascribed to the words under sub-sections (a) to (f) therein shall apply unless the context otherwise requires. Therefore, the meaning of the words as has been ascribed in Section 2(1) can have a different meaning when used in a section in Part I of the Act of 1996, if the context requires such word to have a different meaning than that



ascribed in Section 2(1). Section 9 of the Act of 1996 has used the word “court”. Section 11 has specified the Courts which have been empowered to appoint an arbitrator or constitute the arbitral tribunal. The word “court” has also been used in Section 29A and Section 42 of the Act of 1996.

17. 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 limit 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 the Act 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.

18. 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.”

32. I respectfully adopt the conclusions arrived at by the different High Courts in this regard and I do not agree with the decision of the Andhra Pradesh High Court in **Dr. V.V. Subbarao vs Dr. APPA Rao Mukkamala & Ors.** It is difficult to comprehend how the power to substitute an arbitrator would lie with a court other than the court empowered to appoint the Arbitrator(s) under Section 11(6). For this



reason, the definition of 'Court' cannot be taken in a strictly textual sense as the context requires otherwise.

33. No doubt that, once the arbitrator is appointed under Section 11(6) of the Act, the court appointing the arbitrator becomes *functus officio* for the purpose of the arbitration proceeding before the arbitrator. However, that can never take away the power of the court which appointed the arbitrator under section 11(6) to extend the mandate and such power of extension is not an empty formality. Several consequences may flow from the exercise of that power, including the power to reduce the fees of the arbitrator if the arbitrator is found responsible for the delay, substitute the arbitrator, direct the stage from which the proceeding should continue and also impose conditions and costs on the parties.
34. The decision of the Hon'ble Apex Court in ***Chief Engineer (NH) PWD (supra)*** has to be understood in the context it was rendered. Such decision was pronounced in the appeal from the decision of the Meghalaya High Court. As the Meghalaya High Court did not appoint the Arbitrator under Section 11, the Hon'ble Judge was of the view that the principal civil court of the district having jurisdiction over the subject matter, would be empowered to extend the mandate. As the parties mutually agreed to appoint an arbitrator, substitution by the Commercial Court, East Khasi Hills at Shillong, would not cause any anomaly. The High Court held that, if the High Court had appointed the arbitrator, in that event, the application for extension would be maintainable before the said court.



35. If the interpretation in **Dr. V.V. Subbarao (supra)** is accepted, in that event it will vest the civil court, which is subordinate to the High Court with the power to substitute Arbitrator(s) appointed by the superior court, by partaking the role of the appointing court. This would be completely contrary to the legislative intent and lead to an absurdity. The observation of the Andhra Pradesh High Court that, exercise of power under Section 11 and Section 29A were distinct and separate and the sections operated at different stages of an arbitral proceeding, will lead to an anomalous situation and respectfully cannot be treated to be the correct interpretation.
36. The Hon'ble Apex court was of the clear opinion that as the Meghalaya High Court did not exercise ordinary original jurisdiction, it could never be the principal civil court in the district, insofar as, the extension of mandate of a mutually appointed Arbitrator by the parties was concerned and in such context and fact scenario, the parties were directed to approach the Commercial Court at Shillong, which was the principal civil court of the district under Section 2(1)(e). The said court would also have the power to substitute the Arbitrator in the given context. This interpretation does not pose any difficulty, as any exercise of power by the Commercial Court at Shillong under Section 29A, including the power to substitute, would not result in the removal of an Arbitrator appointed by the High Court in exercise of power under section 11(6) of the Act. The powers which flow from Section 29A did not overlap or come in conflict, as the appointment was not by the High Court. The hierarchical balance was not



disturbed. The decision must be understood in the context it was delivered and on the facts which were before the Hon'ble Apex Court.

37. In the decision of ***Bhavnagar University v. Palitana Sugar Mill (P) Ltd.***, reported in **(2003) 2 SCC 111**, the Hon'ble Apex Court held as follows:-

“59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi v. Union of India* [AIR 2002 Del 458 (FB)] , *Delhi Admn. (NCT of Delhi) v. Manohar Lal* [(2002) 7 SCC 222 : 2002 SCC (Cri) 1670 : AIR 2002 SC 3088] , *Haryana Financial Corpn. v. Jagdamba Oil Mills* [(2002) 3 SCC 496 : JT (2002) 1 SC 482] and *Nalini Mahajan (Dr) v. Director of Income Tax (Investigation)* [(2002) 257 ITR 123 (Del)] ”

38. In the decision of ***State of Haryana v. AGM Management Services Ltd.*** reported in **(2006) 5 SCC 520**, the Hon'ble Apex Court held as follows:-

“7. [Ed. : *Union of India v. Major Bahadur Singh*, (2006) 1 SCC 368, pp. 373-74, paras 9 to 12.] “9. The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D)

The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight



to be given to the language actually used by that most distinguished Judge....’

10. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said : (All ER p. 297g-h) ‘Lord Atkin’s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.’ Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267 (ChD)] observed : (All ER p. 1274d-e) ‘One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament’; and, in *British Rlys. Board v. Herrington* [(1972) 2 WLR 537 : 1972 AC 877 : (1972) 1 All ER 749 (HL)] Lord Morris said : (All ER p. 761c)

‘There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.’

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (*Abdul Kayoom v. CIT* [AIR 1962 SC 680] , AIR p. 688, para 19)

‘19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo [**Ed.** : *The Nature of the Judicial Process*, p. 20.]) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.’

39. ***

‘Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.’ ”

40. The ratio of the decision of the Meghalaya High Court and the Hon’ble Apex Court, must be deduced from the facts involved. A single variation in the facts may cause a world of difference. What is binding therefore, is the ratio of the decision, which must be discerned from



the facts involved before the Meghalaya High Court and the reasons supplied by the High Court in holding that the said court did not have the jurisdiction to entertain the application.

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 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.

46. The issue of merger, as raised by Mr. Ghosh, is not required to be dealt with in view of the observations made herein above.
47. Thus, the application is allowed. The mandate of the learned Arbitrator is extended by a further period of one year. The court does not find any intentional delay or laches either on the part of the learned arbitrator or on the part of the parties. The proceedings have reached an advanced stage.
48. Under such circumstances, AP-COM - 296 of 2025 is disposed of.
49. No order is passed as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)