

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.3 OF 2020**

Mormugao Port Trust

... Petitioner

Versus

Ganesh Benzoplast Ltd.

... Respondent

Shri S.G. Desai, Senior Advocate with Ms. Shalaka Shelke, Advocate for the Petitioner.

Shri E.O. Mendes, Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 15th January 2020

ORAL ORDER:**Introduction:**

Two people contract, disagree, and then call for arbitration. The arbitration overshoots the time frame of 12 months. So, first, the parties, as mutually agreed, extend the time by six months. Later, for further extension, they together apply under section 29A of the Arbitration and Conciliation Act, 1996, to the District Court. But the District Court holds that it has no jurisdiction and directs the parties to approach this Court. So the question is, Does the District Court, as the Principal Civil Court of original jurisdiction, lack the power to extend the arbitral period under section 29A of the Act?

Facts:

2. The petitioner is the Port Trust, administered by the Ministry of

Shipping, Government of India. The respondent is a company. In 2000, through a Lease Deed, the Port Trust allotted certain port area to the respondent Company. The Company was permitted to construct liquid storage tanks, for storing non-hazardous liquids. In July 2006, the Port Trust terminated the lease. This termination led to much litigation.

3. In May 2018, the Port Trust and the Company signed a supplementary agreement, and that agreement provides for arbitration as a means of dispute resolution. Accordingly, in the same month, the Company invoked the arbitration clause and notified the Port Trust. Eventually, in the next month, the Port Trust and the company have jointly appointed a retired learned justice of Delhi High Court as the sole Arbitrator. Having entered the arbitration on 19th June 2018, the sole Arbitrator could not complete the arbitral proceedings in one year—that is, by 19th June 2019—as stipulated under section 29A of the Arbitration and Conciliation Act, 1996 (“the Act”). With both parties’ consent, the period stood extended by six more months.

4. As the extended period was to end on 18th December 2019, two days prior, both parties jointly applied to the Principal District Judge for further extension of time. In fact, both the parties wanted the time extended by one more year.

5. Eventually, through order, dated 17th December 2019, the Principal District Judge rejected the parties' joint application. The learned Judge has held that the jurisdiction under section 29A of the Act to

extend the arbitral period lies with the High Court. Aggrieved, the Mormugao Port Trust filed this Writ Petition. Though the Company is shown as the respondent, it has, in fact, supported the Port Trust's contention: The District Judge has the jurisdiction to extend the time under section 29A of the Act.

6. In the above factual background, I have heard Shri S.G. Desai, the learned Senior Counsel, instructed by Ms. S. Shelke, Advocate for the petitioner; and Shri E.O. Mendes, the learned counsel for the respondent.

7. Shri Desai, the learned Senior Counsel, has argued that section 29A refers to the "Court." According to him, the "Court" stands comprehensively defined by section 2(e) of the Act. After taking me through the statutory provisions, Shri Desai submits that the High Court of Bombay at Goa has no original jurisdiction for the arbitration is domestic. Then, it is only the Principal Civil Court of original jurisdiction in the district that should decide. And the District Court, South Goa, is the principal Civil Court of the District.

8. The learned Senior Counsel has also taken me through the impugned order and has contended that the learned District Judge has misdirected himself in concluding that it is the High Court that has jurisdiction. To elaborate, Shri Desai has submitted that the learned District Judge has relied on *Cabra Instalaciones Y. Servicios, S.A. v. Maharashtra State Electricity Distribution Company Limited*^[1], but that

decision has dealt with, first, international arbitration and, second, the High Court of Bombay at its principal seat has original jurisdiction.

9. Shri Desai has also drawn my attention to *State of West Bengal v. Associated Contractors*^[2], a decision rendered by a three-Judge Bench of the Supreme Court. Referring to that decision, he stresses that the Supreme Court has pronounced that for all purposes under the 1996 Act, the distinction as contained in section 2(e) regarding “Court” should be applied. That interpretation accepted as it ought to be, Shri Desai asserts, the conclusion is inescapable: Only the District Judge has the jurisdiction, as it happens to be the Principal Civil Court of original jurisdiction in the District.

10. Shri E.O. Mendes for the respondent has adopted the arguments and elaborated on the points raised by Shri Desai, the learned Senior Counsel.

Discussion:

11. The dispute concerns the extension of time for the arbitrator to proceed further and to conclude the arbitration. Both parties to the dispute agree for the time extension, and they did extend the time once. For a second extension, they need a judicial imprimatur. But the question is, Who should extend the time if at all the dispute deserves an extended time-frame?

² Manu/MH/2097/2019

12. Let us examine the statutory scheme. To begin with, we may first look at the lexical import of the expression “Court”. Section 2(e) defines it thus:

(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;

(italics supplied)

13. From the above definition, first, we gather that the *Court* must be the High Court if it exercises “ordinary original civil jurisdiction.” Here, the High Court of Bombay at Goa does not exercise original jurisdiction. The arbitration, second, must not concern an international dispute. Here, the dispute is domestic. Thus, the twin criteria excluded, what remains is “the principal Civil Court of original jurisdiction in a district.” Here, the District Court, North Goa, is that principal Civil Court of original jurisdiction. But the District Court refuses to extend the time on the premise it lacks the jurisdiction. It reckons that section 29A of the Act also empowers the Court “to substitute one or all of the arbitrators.” The District Court hypothesises that if the High Court appointed an arbitrator, it would be inappropriate for the District Court to substitute that arbitrator if the need arose. To support this line of reasoning, the District Court relies on *Cabra Instalaciones*, a judgment of

this Court.

14. Before we examine section 29A, we may also consider section 42, which prescribes the jurisdictional bounds of the Court. It begins with a *non obstante* clause and holds that under an arbitration agreement if any application has been made in a Court, “that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.” This provision refers to “any application under this Part.” And the expression “this Part” covers sections 1 to 43 of the Act, thus taking in its sweep all material provisions such as sections 11 to 29A.

15. Now, let us examine section 29A of the Act. It pays to quote it to the extent relevant:

29A. Time limit for arbitral award—(1) The award shall be made within a period of *twelve months* from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) . . .

(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:*

...

(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) ...

(8) ...

(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.

(italics supplied)

16. As section 29A mandates, the arbitral tribunal shall render the award in *twelve months* after its entering upon the reference. To be explicit, it enters upon the reference when it is notified about its appointment or constitution. If the arbitral tribunal has not rendered the award in twelve months, the parties may, by consent, extend the period by six more months.

17. If the arbitral tribunal has not concluded the proceedings even in the extended period, the Court has these options: (a) terminate the arbitral tribunal's mandate or (b) extend the period. This extension can be before or after the initially extended period has ended. Indeed, for this extension, any party to the arbitration may apply. Then, the Court "may" extend the time "only for sufficient

cause” and on “such terms and conditions” as the Court may impose.

18. Here comes the stumbling block or what the District Court thought to be so. Subsection (6) confers sweeping powers on the Court. While extending the period under subsection (4), the Court may substitute one or all the arbitrators. The expression employed is, “it shall be open to the court.” This substitution, however, does not disrupt the proceedings, for they continue “from the stage already reached and on the basis of the evidence and material already on record.” Of course, subsection (9) requires the Court to dispose of the application under subsection (5) expeditiously—preferably in sixty days.

19. We may, before proceeding further, briefly touch upon sections 11, 12, 13, 14, and 15 of the Act. Section 11 concerns the appointment of arbitrators; section 12 and 13 deal with revocation of the arbitrator’s authority or his removal. Section 14 enumerates the instances when an arbitrator fails to or cannot arbitrate: (a) if he fails or is unable to perform his functions and act without undue delay; (b) if he withdraws from his office; or (c) if the parties agree to terminate his mandate.

20. Section 15 deals with “termination of mandate and substitution of an arbitrator. This provision takes care of the consequences flowing from sections 12 to 14 of the Act. Besides the statutory mandate under sections 13 and 14, an arbitrator’s mandate gets terminated if he withdraws from office for any reason or if the parties agree to withdraw

the dispute from the arbitrator. In this eventuality, another arbitrator—a substituted one—gets appointed “according to the rules” under which the previous arbitrator—the replaced one—was appointed.

The Law Applied to the Facts:

21. Both parties to the dispute have no dispute on one issue: the extension of time. First, they mutually agreed for a time extension by six months. Later, they agreed for further extension, too. But that needed the Court’s approval. Which Court? The District Court relies on *Cabra Instalaciones* and says it should be the High Court.

(a) Cabra Instalaciones:

22. *Cabra Instalaciones* involved an international commercial arbitration. There, it is the Supreme Court that appointed the arbitral tribunal under section 11(5) of the Act. As the arbitral tribunal could not conclude the arbitral proceedings within the time limit, the parties approached this Court, seeking an extension of the arbitral tribunal’s mandate by six months. The time was extended, but the proceedings could not be concluded in that extended time. So the petitioner again applied to this Court for further extension.

23. A learned Single Judge of this Court has held that, under section 29A the Court has had substantive powers conferred on it for extending the mandate of an arbitral tribunal. It also notes that under subsection (6), the Court can 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 substitute an arbitrator as prescribed under subsection (6) of section 29-A. *Cabra Instalaciones*, thus, holds that the substitution of an arbitrator or the whole arbitral tribunal lies in the Supreme Court’s “exclusive power and jurisdiction” if we consider section 11(5) read with section 11(9) as also sections 14 and 15 of the Act.

24. On the same premise, *Cabra Instalaciones* concludes that “once the arbitral tribunal was appointed by the Supreme Court exercising powers under section 11(5) read with section 11(9) of the Act . . . [the High Court] lacks jurisdiction to pass any orders under section 29-A of the Act.”

(b) Can *Cabra Instalaciones* be distinguished?

25. First, in *Cabra Instalaciones* the dispute involves an international arbitration. Second, the petitioner in that case applied for an extension before the principal seat of this Court (Bombay High Court). Third, this Court once extended the time, but then the issue about its jurisdiction went *sub silentio*. Finally, on the second application, the respondent seems to have objected. And that objection was sustained.

26. That said, *Cabra Instalaciones* can be distinguished on more than

one ground. The “Court” under section 2 (1) (e) of the Act excludes international arbitrations from its purview. Besides, unlike the High Court of Bombay “at Goa”, its principal seat at Mumbai has original jurisdiction. Therefore, whether a District Court is the principal civil court of original jurisdiction in a district for extending the arbitral tribunal’s mandate under section 29A of the Act has not been considered. To that extent, *Cabra Instalaciones* cannot be treated as a binding precedent. It is trite to observe that a decision becomes a precedent not based on the result, not even based on the principle of law. For the principle of law cannot be viewed in isolation. It should be viewed in the context of the facts the case has given rise to. It is the case holding—the happy combination of the facts and the law—rather than the case conclusion that amounts to a precedent.

27. That said, there is a plethora of precedents on this issue, but with a decisional divergence. The Supreme Court in *State of West Bengal v. Associated Contractors*^[3] has subjected section 2 (1) (e)—the definitional dynamics of “Court”—to a threadbare analysis.

(c) Associated Contractors:

28. In *Associated Contractors*, one of the questions is whether the Supreme Court is a court within the meaning of section 2(1)(e) of the Act. A three-Judge Bench of the Supreme Court, on reference, has found

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[3] (2015) 1 SCC 32

the definition of Court under section 2(1)(e) exhaustive for it uses the expression "means and includes". It has acknowledged the earlier judicial view that if the Supreme Court appointed an arbitrator and retained seisin over the arbitration proceedings, it would be "court" under section 2(c) of the 1940 Act.

29. Then, *Associated Contractors* has observed that the definition of "court" in section 2(1)(e) is materially different from its predecessor in section 2(c) of the 1940 Act. "There are a variety of reasons as to why the Supreme Court cannot possibly be considered to be 'court' within the meaning of section 2(1)(e) even if it retains seisin over the arbitral proceedings." To elaborate on why the Supreme Court may not be "court" under section 2(1)(e) of the Act, *Associated Contractors* has held that the definition is exhaustive and "recognizes only one of two possible courts that could be 'court' for the purpose of section 2(1)(e)."

30. *Associated Contractors* acknowledges the limiting expression in section 2(1)(e)—"in this Part, unless the context otherwise requires"—and says that all definition sections are subject to context to the contrary. That said, it rules that the context of section 42, dealing with jurisdiction, does not in any manner lead to a conclusion that the word "court" in section 42 should be construed otherwise than as defined.

31. The context of section 42, according to *Associated Contractors*, is merely to see that one court alone shall have jurisdiction over all

applications regarding arbitration agreements. And this processual convenience “does not in any manner enable the Supreme Court to become” a court within the meaning of section 42. It quotes with approval its earlier pronouncements for the premise that the rule of *forum conveniens* is expressly excluded by section 42. Pertinently, *Associated Contractors* notices the marked difference between section 42 of the 1996 Act and section 31(4) of the 1940 Act; it holds that the expression "has been made in a court competent to entertain it" in section 31(4) of the 1940 Act does not find place in section 42. This is because “under section 2(1)(e), the competent Court is fixed as the Principal Civil Court exercising original jurisdiction or a High Court exercising original civil jurisdiction, and no other court.”

32. *Associated Contractors* tellingly observes that it is the Principal Civil Court of original jurisdiction in a district or a High Court exercising original jurisdiction that decides all questions arising out of arbitration. It pays to quote what *Associated Contractors* has observed:

24. If an application were to be preferred to a Court which is not a Principal Civil Court of original jurisdiction in a district, or a High Court exercising original jurisdiction to decide questions forming the subject matter of an arbitration if the same had been the subject matter of a suit, then obviously such application would be outside the four corners of Section 42. *If, for example, an application were to be filed in a court inferior to a Principal Civil Court, or to a High Court which has no original jurisdiction, or if an application were to be made to a court which has no subject matter jurisdiction, such application would be outside Section 42 and would not debar subsequent applications from being filed in a court other than such court.*

(italics supplied)

33. Finally, *Associated Contractors* has answered the reference by enlisting its conclusions on the interplay between sections 2(1)(e) and 42 of the Act:

(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, *and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.*

(b) The expression "with respect to an arbitration agreement" makes it clear that *Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.*

(c) *However, Section 42 only applies to applications made under Part-I if they are made to a court as defined.* Since applications made Under Section 8 are made to judicial authorities and since applications Under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, *applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.*

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If the first application is made to a court which is neither a Principal Court of original jurisdiction in a district nor a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42.

34. From the above conclusions of *Associate Contractors*, it emerges

that no other court than the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State is "court" for the purpose of Part-I of the Arbitration Act, 1996. And the application under section 29A falls within Part-I of the Act. Besides, the application under section 29A is an application "with respect to an arbitration agreement."

35. The jurisdictional bounds of section 42 apply to applications made under Part-I to a "Court." Though within Part-I, section 8 refers to "judicial authority," so does section 11, which refers to the Supreme Court, the High Court, and the Chief Justice—but not to "Court" *per se*.

36. But, for instance, applications under section 9—for interim measures—and section 34—for setting aside arbitral awards—are within section 42. Both provisions employ the expression "Court." So does section 29A of the Act. In fact, section 29A all though, including in subsections (4) and (6), refers to "court."

(c) Nimet Resources Inc. v. Essar Steels Ltd.[⁴]

37. In this case, the Chief Justice of India's nominee appointed a sole arbitrator. Later, the applicant applied to the Supreme Court under section 14 of the Act for having the sole arbitrator's mandate terminated and for having a substitute arbitrator appointed. The Supreme Court has noticed that section 14(2) of the Act refers to a "court": "a party may

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□ (2009) 17 SCC 313

apply to the court to decide on the termination of the mandate." Application in terms of subsection (2) of section 14, thus, lies before a 'Court' within the meaning of the 1996 Act. It is, therefore, only the 'Court', within the meaning of the provisions of the Act that can entertain an application under section 14 of the Act.

38. On facts, in *Nimet Resources*, the Supreme Court has retained complete control over the arbitration proceedings. In this context, the Court has observed that jurisdiction under section 11(6) of the 1996 Act is used for a different purpose. The Chief Justice or his designate exercises a limited jurisdiction. It is not as broad as subsection (4) of section 20 of the 1940 Act. When an arbitrator is nominated under the 1996 Act, the court retains no jurisdiction with it. It becomes *functus officio* subject, of course, to exercise of jurisdiction in terms of constitutional provisions or Supreme Court Rules. Thus, it has eventually held that, as the term "Court" has been defined in 1996 Act itself, an application under section 14(2) would be maintainable only before the Principal Civil Court which may include a High Court having jurisdiction but not this Court. Here, too, incidentally, the arbitrator was appointed by the CJI's nominee.

(c) Frank Airways Pvt. Ltd:

39. Here, the High Court of Madhya Pradesh appointed a retired High Court Judge as the sole arbitrator. Under "sections 14/15 read with

section 11(6)" of the Act, the applicant wanted the High Court to terminate the mandate of the sole arbitrator and appoint another arbitrator. The respondent's counsel objected to the High Court's jurisdiction. He argued that it should be the District Court, being the Principal Court of original jurisdiction, that should deal with the application.

40. In *Frank Airways*, a learned Single Judge of Madhya Pradesh High Court has followed, among other decisions, the Supreme Court decision in *Nimet Resources*, to rule that as the "Court" has been defined in 1996 Act itself, an application under section 14(2) would be maintainable only before the Principal Civil Court which may include a High Court having original jurisdiction.

41. *Frank Airways* has also quoted Madhya Pradesh High Court's earlier consistent view on termination of the arbitrator's mandate and appointment of substitute arbitrator:

"Under Section 29A(4) the "Court" has power to extend the time and under Section 29A(6) the "Court" has power to appoint substitute arbitrator. "Court" has been defined under Section 2(e) of the Act to mean the principal Civil Court of original jurisdiction in a district including the High Court in exercise of its ordinary original civil jurisdiction. [Madhya Pradesh High Court] does not exercise the ordinary original civil jurisdiction, hence the applicant is required to approach the principal Civil Court having original jurisdiction in the subject matter in issue.

42. Thus, *Frank Airways* dismissed the application for terminating the mandate of the sole arbitrator and for appointing another arbitrator and left it open for the applicant to approach the

court of competent jurisdiction: the Principal Court of original jurisdiction, that is the District Court.

Jurisdiction, how conferred?

43. In *Jharkhand v. Hindustan Construction Co. Ltd.*^[5], one of the contentions was that the Supreme Court appointed the arbitrator and continued to issue further directions. So it has retained *seisin* over the arbitration proceedings. Then, the Supreme Court alone is the court under section 2(c) of the Act. The Constitution Bench has repelled this contention. On the issue of the Supreme Court's assuming original jurisdiction, *Hindustan Construction* counts it as difficult to accept that the Supreme Court can assume original jurisdiction solely because it retains control over the proceedings. Then, it quotes with approval the judicial dictum of *A.R. Antulay v. R.S. Nayak*^[6], that jurisdiction of courts comes solely from the law of the land and cannot be exercised otherwise. That is, conferment of jurisdiction is possible either by the Constitution or by specific laws enacted by the Legislature.

44. Eventually, disagreeing with *Guru Nanak Foundation v. Rattan Singh and Sons*^[7], *Hindustan Construction* holds that the superior court is not expected in law to assume jurisdiction on the foundation that it is a higher court. It has, in that context, observed:

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□ (2018) 2 SCC 602

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□ (1988) 2 SCC 602

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□ (1981) 4 SCC 634

“Solely because a superior court appoints the arbitrator or issues directions or has retained some control over the arbitrator by requiring him to file the award in this Court, it cannot be regarded as a court of first instance as that would go contrary to the definition of the term “court” as used in the dictionary clause as well as in Section 31(4). . . Original jurisdiction in this Court has to be vested in law. Unless it is so vested and the Court assumes, the court really scuttles the forum that has been provided by the legislature to a litigant. . . It is worthy to note that this Court may make a reference to an arbitrator on consent but to hold it as a legal principle that it can also entertain objections as the original court will invite a fundamental fallacy pertaining to jurisdiction.”

(f) Unless the Context Otherwise Requires:

45. True, section 2 of the Act hedges the definitions with a cautionary legislative caveat: “In this Part, unless the context otherwise requires . . .” First, the definition employs the expression “means”, indicating its comprehensiveness. Second, the contextual consideration for applying a different meaning is no promiscuous permission to mutilate a plain meaning. The context and the circumstances for the court to disregard a comprehensive definition must be compelling.

46. We may examine to what extent this legislative hedging affects section 2(1)(e) of the Act in the factual context of this case. For Lord Dunedin^[8], it is “a novel and unheard-of idea” that an interpretation clause covers certain sections and leaves out certain others, letting those left out sections to take their meaning from the context.

47. But where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body

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^[8] As quote in *Indian Immigration Trust Board of Natal v. Govindaswamy*, AIR 1920 PC 114

of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are therefore normally enacted subject to the qualification – 'unless there is anything repugnant in the subject or context', or 'unless the context otherwise requires'^[9].

48. In *K.V. Muthu v. Angamuthu Ammal*^[10], the Supreme Court cautions that while interpreting a definition, we must remember that the interpretation placed on it “should not only be not repugnant to the context, it should also be such as would aid” the purpose the Act seeks to serve. A construction which will defeat or is likely to defeat the purpose of the Act must not be accepted. To elaborate, *K.V. Muthu* holds that usually the definition set out in the section is to be applied and given effect to. But the courts may depart from the normal if there is something in the context to show that the definition could not be applied, as the statute itself couches the definition in cautionary terms: "unless the context otherwise requires."

49. Thus, indisputably, as held in *Centrotrade Minerals & Metals Inc. v. Hindustan Copper*^[11], a definition clause does not necessarily apply in all possible contexts of a statute. Similarly, in *Pandey & Co. Builders (P) Ltd.*

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[9] Justice G. P. Singh's Principles of Statutory Interpretation, LexisNexis, 14th Ed., p.211

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[10] (1997) 2 SCC 53

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[11] (2006) 11 SCC 245

v. State of Bihar^[12], the Supreme Court has acknowledged that the interpretation clause provides for "unless the context otherwise requires". But this exception applies only if the "application of the interpretation clause contained in section 2 of the 1996 Act shall lead to anomalous and absurd results." Pithily put, in a case the context should not permit us to apply the meaning the Legislature has given to an expression. That is, if applied, that meaning should lead to absurd or unintended results.

(d) Does the context of this case require "otherwise"?

50. According to *Nilesh Ramanbhai Patel*, a judgement rendered by Gujarat High Court, ordinarily the term 'Court' defined in Sec. 2(1)(e) in the context of the power to extend the arbitrator's mandate under sub-section (4) of Sec. 29A would be with the principal Civil Court. But this plain application of the term 'Court' under section 29A of the Act, according to it, poses certain challenges. Then, *Nilesh Ramanbhai Patel* enlists those challenges. For it, the incongruity emerges under these circumstances. First, the arbitrator gets appointed in several ways. One of those ways is through the intervention of the High Court or the Supreme Court, in terms of sub-sections (4), (5) and (6) of Sec. 11 of the Act. But Section 29A, and in particular its sub-sec. (1), would apply to arbitral proceedings of all kinds, with no distinction, and the Court has vast powers for extending the period. While doing so, the Court could also

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□ (2007) 1 SCC 467

substitute one or all the arbitrators. According to *Nilesh Ramanbhai Patel*, “this is where the definition of the term 'Court' contained in Sec. 2(1)(e) does not fit.

51. It is inconceivable, stresses *Nilesh Ramanbhai Patel*, 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 the Supreme Court.

52. Second, *Nilesh Ramanbhai Patel* also reasons that “it would be wholly incumbent [incongruent?] to hold that under subsection (6) of Sec. 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 Sec. 11 of the Act. This approach, *Nilesh Ramanbhai Patel* concludes, 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, according to it, can be avoided only by understanding the term "Court" for section 29A as the Court which appointed the arbitrator in case of Court constituted Arbitral Tribunal. We will revisit this decision a little later.

Other High Courts:

53. In *Vinod Baid v. Chadalavada Krishnamurthy*^[13], the High Court

of Telangana and Andhra Pradesh has endorsed the view taken in *Frank Airways Pvt., Ltd.*, by the Madhya Pradesh High Court. So does the Kerala High Court in *URC Construction (Private) Ltd., v. Bembl Ltd*^[14]. In fact, it is the first in a series of judgments, holding that it is the Civil Court of the original jurisdiction that should entertain an application under section 29A of the Act. The High Court of Orissa, too, holds the same view in *KCS Private Ltd., v. Rosy Enterprises*^[15].

Judicial Decorum and Legislative Imperative:

54. I am afraid *Nilesh Ramanbhai Patel's* apprehensions about judicial impropriety and legislative incongruity may not have firm judicial foundation. The judicial dicta of *Associated Contractors, Nimet Resources*, and *Hindustan Construction Co. Ltd.*, squarely dispel those apprehensions. If we begin with *Associated Contractors*, a three-Judge Bench of the Supreme Court has emphatically declared that no other court than "the Principal Civil Court of original jurisdiction in the district or a High Court exercising original civil jurisdiction" gets qualified as "court" under Part-I of the Arbitration Act, 1996. The expression "with respect to an arbitration agreement" clarifies that section 42, speaking of jurisdiction, will apply to all applications made whether before or during arbitral

^[14] 2018 (3) ALD 669

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^[15] 2017 (5) KHC 865

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^[16] 2018(II) ILR-CUT 234

proceedings or after an Award is pronounced under Part-I of the 1996 Act. Indeed, section 42 applies only to applications made under Part-I if they are made to a court as defined. And section 29A does speak of “court”. That is, like section 9 and 34, section 29A, too, refers to “court” and court alone.

55. In *Nimet Resources*, the Supreme Court has held that when an arbitrator is nominated under the 1996 Act, the court retains no jurisdiction with it. It becomes *functus officio*. So, an application under section 14(2) would be maintainable only before the Principal Civil Court, which may include a High Court having jurisdiction. And section 14(2) deals with the termination of the arbitrator’s mandate. We may appreciate that in *Nimet Resources*, the applicant applied for having the arbitrator’s mandate terminated and for have a substitute arbitrator appointed. There, it is the Supreme Court that appointed the arbitrator. Despite that, *Nimet Resources* has held that the removal of an arbitrator and the appointment of a new arbitrator must be by the Civil Court of original jurisdiction. Thus, *Nimet Resources* allays *Nilesh Ramanbhai Patel’s* fears.

56. In *Hindustan Construction Co. Ltd.*, the Constitution Bench of the Supreme Court has held that solely because a superior court appoints the arbitrator or issues directions or has retained some control over the arbitrator, it cannot be regarded as a court of the first instance.

57. Judicial invalidation of legislation is an extreme step. Extreme

as the step maybe, but when the Constitution compels, the superior Courts do not shy away from taking that extreme step. Reading down a provision, on the other hand, is an intermediate step. It is a judicial palliative to make a legislative mandate workable and to save it from the perdition of total annihilation. Another device to avoid legislative incongruity is the contextual reading of the provision. To take any of these steps, the courts must have a compelling reason.

58. Of all hurdles a court faces to give life to a legislative mandate, the least—in fact, non-existent—is the indecorous impact of that provision on the judicial hierarchy. Breaching judicial propriety or upsetting the assumed judicial hierarchy in adjudication is no limitation the legislation suffers from. Without causing offence, I may note that the pecking order, the judicial hierarchy, or reverential regard are all matters, perhaps, of judicial propriety or etiquette, but they cannot be held against a statutory mandate if it is unmistakable and unambiguous. In the same breath, I further note that the judicial power of even the lowest court is not subject to the administrative power of the highest court. If we stretch *Nilesh Ramanbhai Patel* reasoning to its logical end, it affects even section 34 of the Act, for the District Court sits in appeal over the award passed by the arbitrators appointed by the High Court or the Supreme Court, and those arbitrators themselves may have once occupied the highest judicial positions.

59. First, it is not the High Court or the Supreme Court *per se* that appoints an arbitrator; it is the Chief Justice or the nominee. Even if it were the Court, as held in *Nimet Resources*, jurisdiction under Section 11(6) of the 1996 Act is used for a different purpose. The Chief Justice or the designate exercises a limited jurisdiction. When an arbitrator is nominated under the 1996 Act, the court retains no jurisdiction with it; it becomes *functus officio*. So, with humility, I reckon *Nilesh Ramanbhai Patel* does not accord with the statutory scheme of the Act. And its reason of incongruity or impermissibility of letting a District Court remove or replace the arbitrator appointed either by the High Court or the Supreme Court is founded on shaky, extra-legal grounds. So I beg to differ, erudite as the exposition in *Nilesh Ramanbhai Patel* is.

Result:

Under these circumstances, I set aside the impugned judgment, dated 17.12.2019, and remand the matter to the District Court, South Goa, for deciding the parties' joint application on the merits. The parties will appear before the Trial Court in the succeeding Friday after this judgment is uploaded.

DAMA SESHADRI NAIDU, J.

NH