MANU/UP/1568/2023

Equivalent/Neutral Citation: 2023:AHC-LKO:37194, 2023 (159) ALR 525, 2023 4 AWC3662All, (2023)ILR 6All5

IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)

Civil Misc. Arbitration Application Nos. 13 of 2023, 15 of 2023 and 16 of 2023

Decided On: 23.05.2023

A'Xykno Capital Services Private Ltd. **Vs.** State of U.P.

and

Himanshu Rastogi **Vs.** Lucknow Development Authority

and

Sudhanshu Rastogi **Vs.** Lucknow Development Authority

Hon'ble Judges/Coram:
Manish Mathur, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Prashast Puri, Paavan Awasthi, Pritish Kumar and Amal Rastogi

For Respondents/Defendant: Samir Om, Mukund Tewari and Bhanu Bajpai

Case Category:
ARBITRATION MATTERS

Case Note:
Arbitration and Conciliation Act, 1996 - Sections 29A (4) and 2 (1) (e)--Concept of 'Court'--As envisaged under Section 29A read with Section 2 (1)(e) of Act, 1996--Whether include a High Court not having original civil jurisdiction as in the case of Allahabad High Court?--Question was answered as follows--Concept of 'court as envisaged under Section 29A read with Section 2 (1) (e) of Act of 1996 does not include a High Court not having original civil jurisdiction as in the case of Allahabad High Court--And an application as such under Section 29A of Act 1996 would be maintainable only in the principal civil court of original jurisdiction in a district--In light of aforesaid applications under Section 29A of Act of 1996 being not maintainable before this High Court dismissed.

[69] and [70]

ORDER

Manish Mathur, J.

1. Heard Mr. Pritish Kumar, Mr. Amal Rastogi and Mr. Prashasht Puri, learned counsels for applicant(s) and Mr. Sandeep Dixit, Senior Advocate assisted by Ms. Radhika Verma, Mr. Samir Om, Mr. Bhanu Bajpai as well as Mr. Mukund Tewari, learned counsel for opposite parties.

2. Issue under consideration is with regard to extension of time under Section 29A(4) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) with the question involved being :--

> Whether the concept of 'Court' as envisaged under Section 29A read with Section 2(1)(e) of the Act of 1996 would include a High Court not having original civil jurisdiction as in the case of Allahabad High Court?

3 . A preliminary objection with regard to maintainability of this Application for extension of mandate under Section 29A of the Act of 1996 has been taken by opposite parties to the effect that such an application would be maintainable only before the principal Civil Court of original jurisdiction in a district or to a High Court which exercises ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration as if the same had been the subject-matter of a suit but since the Allahabad High Court does not exercise such original civil jurisdiction, the application would be cognizable only before commercial court and not the Allahabad High Court.

4. Mr. Sandeep Dixit, Senior Advocate expounding the aforesaid proposition has raised the following arguments:-

> (i) Section 2(1)(e) of the Act of 1996 clearly indicates the definition of 'Court' to be the principal Civil Court of original jurisdiction in a district, and would include the High Court only in case such a High Court is exercising ordinary original civil jurisdiction also having jurisdiction to decide questions forming subject-matter of arbitration if the same had been the subject-matter of a suit. It is submitted that as such in view of clear definition of the term 'Court', the said term indicated in Section 29A of the Act of 1996 would be referable to such a definition whereby an application preferred under Section 29A of the Act in the State of U.P. would be maintainable only before principal Civil Court of original jurisdiction, which in this case would be the commercial court and not the High Court.
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> (ii) There being no ambiguity in the definition of term 'Court' as indicated in Section 2(1)(e) of the Act of 1996, no original jurisdiction can be ascribed to Allahabad High Court and as such it is only the principal Civil Court where such an application would be maintainable.
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> (iii) That definition of 'Court' as per Section 2(1)(e) of the Act of 1996 has to be maintained with regard to provisions of the Act of 1996 and cannot keep changing with each Section.
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> (iv) Once an appointment of Arbitrator has been made under Section 11(6) of the Act, High Court would become functus officio whereby the proceedings would come to an end and cannot be carried further to include extension of mandate under Section 29A of the Act.
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> (v) That there is no provision for bifurcation under Section 29A of the Act with regard to arbitrators being appointed mutually or by intervention of Court under Section 11(6) of the Act of 1996.
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> (vi) Analogy has been drawn where arbitrator is appointed under Section 11(6) of the Act of 1996 and an award is passed, the same is challengeable only before the principal Civil Court of original jurisdiction under Section 34 of the

Act and for such purpose, the High Court cannot be considered to be 'Court' having original jurisdiction.

(vii) That even in case of termination of mandate where an application is required to be filed under Section 14 of the Act, the same is also maintainable only with the commercial court and not the High Court and same analogy would be applicable in case of extension of mandate under Section 29A of the Act.

(viii) Distinction under Section 10(2) and Section 10(3) of the Commercial Courts Act, 2015 has been adverted to whereby such procedure is required to be followed by filing an application only before the principal Civil Court having original jurisdiction.

(ix) A specific time frame under Section 29A(9) of the Act of 1996 has been indicated in the statute, which cannot bind a Constitutional court in exercise of its powers for extension of mandate and therefore such a provision can only refer to the principal Civil Court and not to High Court.

5 . Mr. Mukund Tiwari, learned counsel appearing on behalf of the Lucknow Development Authority has made the following submissions:-

(i) As per the Arbitration and Conciliation Act, 1940, definition of Court had been provided under Section 2(c) which pertained only to a Civil Court having original jurisdiction and did not include a High Court. It is further submitted that under Section 28 of the Act, Powers of extension of mandate of arbitrator were provided to Civil Court having original jurisdiction with time limit being indicated in clause (3) of Schedule 1 of the Act of 1940.

(ii) It is submitted that Section 29A of the Act has been added subsequent to notification of the Act and it is not a self contained provision but has to be seen in conjunction with other provisions of the Act as well.

(iii) Attention has been drawn to Sections 47 & 56 of the Act of 1996 to submit that earlier provision including Civil Court of original jurisdiction has now been omitted by means of an amendment and it is now only the High Court which can take cognizance under the aforesaid Sections. Argument has been raised that High Court has been included as having jurisdiction in particular matters only, in the wisdom of Legislature and such deliberate intention of legislature cannot be over-ridden.

(iv) That the word 'means' used in the definition of term 'Court' under Section 2(1)(e) of the Act of 1996 is exclusionary in nature and not inclusionary particularly since the word 'means' is not followed immediately with the words 'and includes'.

(v) That under the Act of 1996, a departure has been made in the definition of term 'Court' from the earlier definition in the Act of 1940 but only to include a High Court in a case only where High Court exercises original jurisdiction.

(vi) It has been further submitted that in the present case since there is no ambiguity in the definition of term 'Court' under Section 2(1)(e) of the Act of 1996, no purposive interpretation can be resorted to.

(vii) The words 'unless the context otherwise requires' would be applicable only

in case there is ambiguity in the definition or its applicability and where the strict interpretation would lead to absurd results.

(viii) It is also submitted that where the words 'means' and 'includes' are not used conjointly, the meaning/definition has to be given a confined definition.

Learned counsel has also adverted to various judgments to indicate the purpose and intent of the Act of 1996 with attention being drawn to various provisions to submit that a High Court not having original jurisdiction cannot be included in the definition of term 'Court' as envisaged under Section 29A.

6 . Per contra, Mr. Pritish Kumar, learned counsel for applicant has submitted the following:-

(i) The definition as given under Section 2(1)(e) of the Act of 1996 is required to be given a purposive construction in order to achieve the ends for which it was inserted and for that purpose it has to be read along with provisions of Section 11(6) of the Act of 1996.

(ii) As per the purpose and intent of the Act of 1996, powers of appointment and therefore substitution or extension of mandate is required to be exercised by the highest judicial authority/Court in order to instill confidence in the proceedings and also not to prolong such arbitration proceedings which are required to be concluded expeditiously.

(iii) Power for extension of mandate under Section 29A of the Act of 1996 is required to be exercised by the High Court even though it does not have original civil jurisdiction to obviate an anomalous situation where an arbitrator is appointed by High Court and could very well be substituted by a subordinate court such as the commercial court.

(iv) That the words 'unless the context otherwise requires' itself indicates that the definition is not conclusive and is in fact required to be molded to be in accordance with the purpose and intent of different Sections of the Act of 1996.

(v) Learned counsel has also adverted to various judgments to submit that even though the court once having exercised powers under Section 11(6) of the Act of 1996 becomes functus officio but still retains power of review and as such finality cannot be attached to the term 'functus officio'.

(vi) The power to substitute an Arbitrator as envisaged under Section 29A of the Act of 1996 automatically is referable to the power to appoint the arbitrator, which in turn would be referable to powers exercised under Section 11(6) of the Act.

(vii) That even in case of appointment of arbitrator under Section 11 with intervention of Court, a time limit has been prescribed under Section 11(13) of the Act of 1996 and as such the argument raised by learned counsel for opposite party that a time frame cannot be made applicable to Constitutional Courts such as the High Court is not correct.

7 . Mr. Prashasth Puri, learned counsel for petitioner appearing in CIVIL MISC. ARBITRATION APPLICATION No. -13 of 2023 while adopting most of the argument raised by Mr. Pritish Kumar, has adverted also to the fact that the power to substitute an

arbitrator under Section 29A of the Act of 1996 would be referable to the power to appoint arbitrator under Section 11(6) of the Act as also to the aspect of anomaly in case an arbitrator appointed by a High Court is substituted by a Court subordinate thereto such as the commercial court.

8. For proper appreciation of question at hand, it would be apposite to consider the relevant provisions of Section 2 and Section 29 of the Act of 1996, which are as follows:-

"Section 2 in THE ARBITRATION AND CONCILIATION ACT, 1996

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

(a)"arbitration" means any arbitration whether or not administered by permanent arbitral institution;

(b)"arbitration agreement" means an agreement referred to in section 7;

(c)"arbitral award" includes an interim award;

(d)"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

2[(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;]

[2][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) 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 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.

(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 be 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.

9. Since the present dispute pertains to jurisdiction of the Court concerned regarding extension of mandate of arbitrator, a brief legislative history of the said provision would also be required to be seen in order to achieve a better perspective of the dispute.

10. Prior to advent of the Act of 1996, the Arbitration Act, 1940 held the field in which definition of the word 'Court' was given under Section 2(c) which was as follows:

> '(c) "Court" means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court;'

11. Section 28 of the Act provided for extension of time to the Court in its discretion to enlarge from time to time, the time for making award. Schedule I clause 3 enjoined the Arbitrators to make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration or within such extended time as the Court may allow.

12. The aforesaid provisions of the Act of 1940 seen in the context of definition of the word 'Court' as defined under Section 2(c) of the said Act clearly meant a Civil Court having civil jurisdiction to decide the question forming the subject matter of reference. Exception pertained to small cause court. It is noticeable that the High Court as such did not enter into the picture with regard to said question under the Act of 1940.

13. With the advent of the Act of 1996, Section 29A pertaining to extension of mandate of arbitrator was included for the first time by means of Act no.3 of 2016 with effect from 23.10.2015.

14. It is also a relevant fact that at the time of enactment of the Act of 1996, the definition of 'Court' defined under section 2(1)(e) was as follows:

> "2 Definitions. -(1) In this Part, unless the context otherwise requires,-
>
> > 2[(e)"Court" means 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;."

15. The current definition of 'Court' has also been inserted by means of Act No. 3 of 2016 with effect from 23.10.2015 whereby a distinction has been incorporated in case of an arbitration other than international commercial arbitration viz-a-viz in the case of international commercial arbitration. It is noticeable that after amendment in the year 2016, the distinction as indicated in Section 2(i)(e) is that in case of an arbitration other than international commercial arbitration, the meaning of 'Court' includes the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction. In the case of international commercial arbitration, it is only the High Court in exercise of its ordinary original jurisdiction which comes under the definition of 'Court' with the principal Civil Court of original jurisdiction being excluded.

16. The distinction in the meaning of word 'Court' under Section 2 of the Act of 1996 pertaining to domestic and international arbitrations as such is quite glaring and requires to be given proper importance. It cannot be said that the legislature in its wisdom has inadvertently omitted or included words 'principal Civil Court' of original jurisdiction in one part while excluding it from the other part. It is settled law that words as inserted in statute have to be given the literal interpretation unless it results in absurdity or is in contradiction to another part thereof or statute.

17. In the considered opinion of this Court, the omission of a Civil Court of original jurisdiction in a district with regard to international arbitrations is therefore quite important and would mean that such a principal Civil Court of Original Jurisdiction would exercise powers with regard to domestic arbitrations and would be excluded only in case such powers are also required to be exercised by a High Court having simultaneous jurisdiction but only in case such a High Court exercises not only original

civil jurisdiction but also having jurisdiction to decide questions forming subject matter of the arbitration in case the same had been the subject matter of a suit.

18. In the context of Section 29A of the Act as such, the powers of a Civil Court of a district having original jurisdiction can be readily inferred to the exclusion of the High Court only when such High Court exercises power as indicated in Section 2(1)(e)(i) of the Act.

19. It has been contended by learned counsel for applicants that the words 'unless the context otherwise requires' appearing at the start of Section 2 of the Act of 1996 are material and indicates flexibility in the definition clause. However the aforesaid words have clearly been explained by Hon'ble the Supreme Court in the case of Nimet Resources INC & Anr. versus Essar Steels Limited reported in (2009) 17 SCC 313 in the following terms:

> "13. The definition of "court" indisputably would be subject to the context in which it is used. It may also include the appellate courts. Once the legislature has defined a term in the interpretation clause, it is not necessary for it to use the same expression in other provisions of the Act. It is well settled that meaning assigned to a term as defined in the interpretation clause unless the context otherwise requires should be given the same meaning.
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> **14.** It is also well settled that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words. (See Lennon v. Gibson & Howes Ltd. [1919 AC 709 (PC)] , AC at p. 711, Craies on Statute Law, 7th Edn., p. 141 and G.P. Singh's Principles of Statutory Interpretation, 10th Edn., p. 278.)"

20. The aforesaid judgment was rendered explaining the definition of 'Court' with regard to an application under Section 14 of the Act of 1996 and clearly is a proposition that words or expression used in statute are to be given the same meaning in the absence of any context indicating a contrary intention. The said words have also been explained by Hon'ble the Supreme Court in the case of Pandey and Co. Builders Pvt. Ltd. versus State of Bihar and Ors. reported in MANU/SC/8643/2006 : (2007)1 SCC 467 and S.K. Gupta & Anr. versus K.P. Jain & Anr reported in MANU/SC/0043/1979 : (1979) 3 SCC 54 in which it has been held that even when a definition clause is preceded by the words unless the context otherwise requires, normally the definition given in the section should be applied and given effect to and that the frame of any definition more often then not is capable of being made flexible but precision and certainty in law requires that it should not be made loose but kept tight as far as possible.

21. Learned counsel for applicants themselves have adverted to judgment rendered by Hon'ble the Supreme Court in the case of K.V. Muthu v. Angamuthu Ammal reported in MANU/SC/0158/1997 : AIR 1997 Supreme Court 628 is in the following terms;

> "12.Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show

that the definition could not be applied."

22. Upon applicability of aforesaid judgment, it is evident that it is the consistent law enunciated by Hon'ble the Supreme Court that even where a definition clause is preceded by words, 'unless context otherwise requires', the definition as given in the statute is required to be adhered to until and unless it is unworkable and leads to absurdity.

23. It is also relevant to consider the words 'means' 'and includes' as occurring in the definition clause. It is also relevant to indicate that both the terms are occurring in separate places of the definition clause and not together. It is settled law that wherever the word 'means' occurs in a definition, it is exclusionary whereas the words 'and includes' is expansive in nature. In this context, it is a relevant fact that while defining the word Court, the word 'means' has been inserted without the concomitant wordings 'and includes' with the later occurring only subsequently to include a High Court alongwith a Principal Civil Court of Original Jurisdiction.

24. The aforesaid terms have been defined and explained by Hon'ble the Supreme Court in the case of P. Kasilingam & Ors. versus P.S.G. College of Technology reported in MANU/SC/0265/1995 : 1995 Supp(2) SCC 348 in the following terms:

> **19.** ..... It has been urged that in Rule 2(b) the expression "means and includes" has been used which indicates that the definition is inclusive in nature and also covers categories which are not expressly mentioned therein. We are unable to agree. A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See :Gough v. Gough[(1891) 2 QB 665 : 60 LJ QB 726]; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court [MANU/SC/0479/1990 : (1990) 3 SCC 682, 717 : 1991 SCC (L&S) 71].) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See :Dilworth v. Commissioner of Stamps [1899 AC 99, 105-106 : (1895-9) All ER Rep Ext 1576] (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. [MANU/SC/0314/1988 : (1989) 1 SCC 164, 169 : 1989 SCC (Tax) 56]. .....

25. Upon applicability of aforesaid judgment in the present scenario and particularly the aspect that the words 'means' and 'and includes' having not been used conjointly in Section 2 would clearly indicate that the definition of Court is to be given a restrictive meaning and it is only the jurisdictional aspect of a Civil Court viz-a-viz a High Court which requires to be given an expansive meaning. Even then the expansive definition would be curtailed to the extent of power of High Court as indicated in the definition clause and cannot travel beyond that.

26. Hon'ble the Supreme Court in a number of decisions has clearly propounded the law that when the language of statutory provision is plain and unambiguous, it is determinative of legislative intent and as such has to be given the meaning attached to

such wordings. It has also been held that while interpreting a provision, Courts cannot legislate particularly when the language of statute is plain and unambiguous, whereafter the concept of casus omissus cannot be supplied by judicial interpretative process.

27. The said enunciation of law would be evident from judgment rendered by Hon'ble the Supreme Court in the case of Union of India & Ors versus Priyankan Sharan & Anr. reported in MANU/SC/4010/2008 : AIR 2009 SC (Supp) 972 in the following terms:

> "19. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.
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> **20.** Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (MANU/SC/1233/1997 : AIR 1998 SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (MANU/PR/0007/1846 : 1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (MANU/SC/0989/1998 : JT1998 (2) SC 253)). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (MANU/UKHL/0010/1978 : 1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors. (MANU/SC/0397/1962 : AIR 1962 SC 847).
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> **22.** In Dr. R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (MANU/SC/0327/1976 : AIR 1977 SC 842), it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
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> **23.** While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (MANU/SC/0381/2000 : 2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process."

28. From a consideration of aforesaid judgments, it is evident that statutory provisions are not to be interpreted at the whims and fancies or personal interpretation/views but are required to be given their literal meaning, which have been included in the wisdom

of the legislature, particularly when the plain and simple language employed in a provision of statute is clear, unambiguous and does not lead to any absurd result. The principles of casus omissus are required to be supplied sparingly and in exceptional circumstances as indicated in the judgments referred to hereinabove.

29. In the present case, it is evident that the definition of word 'Court' as envisaged under section 2(1)(e) of the Act of 1996 is clear and unambiguous particularly when seen in the context of distinction indicated in international and domestic arbitrations. The intention of legislature in including a High Court only in case where it has original jurisdiction is clearly discernible.

30. The aspect can also be examined from another perspective i.e. incorporating the doctrine of pith and substance which includes examination of statutory provision to deduce its true nature and character. Although the aforesaid doctrine is generally used for the purpose of determining whether a legislation is with regard to a particular list as per VIIth Schedule of the Constitution of India but since it is used to determine the true nature and character of a statutory provision, in the considered opinion of this Court, the same can be made applicable in the present facts and circumstances which have been explained in the recent judgment of Hon'ble the Supreme Court in the case of Jayant Verma and Ors. versus Union of India & Ors. reported in MANU/SC/0133/2018 : (2018) 4 SCC 743 in the following manner:

> "..... 35. Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted to the several legislatures will never overlap. As Sir Maurice Gwyer, C.J. said in Subrahmanyan Chettiar v. Muthuswami Goundan, MANU/FE/0004/1940 : (1940) 2 FCR 188 : AIR 1941 FC 47] : (FCR p. 201 : SCC OnLine FC)
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> > 'It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one List, touches also on a subject in another List, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its "pith and substance" or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this List or in that:"
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> **36.** Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to provincial as well as to dominion legislation. No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provisions should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two or even by arranging for a hierarchy of jurisdictions.
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> **37.** Subjects must still overlap and where they do the question must be asked

> what in pith and substance is the effect of the enactment of which complaint is made and in what List is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with. ....."

31. Even upon applicability of aforesaid doctrine, the true nature and character of the definition of Court under section 2 of the Act of 1996 clearly indicates inclusion of a High Court as a 'Court' only when it exercises not only original civil jurisdiction but also has the jurisdiction to decide questions forming subject matter of arbitration if the same had been the subject matter of a suit. Therefore, these twin conditions are sine qua non for inclusion of a High Court as a Court defined under Section 2 of the Act of 1996.

32. Learned counsel for applicants have placed heavy reliance upon judgment rendered by a coordinate Bench of this Court in Indian Farmers Fertilizers Cooperative Ltd. v. M/s Manish Engineering Enterprises reported in MANU/UP/0515/2022 : 2022 (4) ADJ 162. Aforesaid judgment rendered by coordinate Bench of this Court has specifically gone into the aspect of definition of 'court' as envisaged under Section 29A of the Act of 1996 and has held that an application for extension of time for arbitral award filed under Section 29A would be maintainable before the High Court even though not having original jurisdiction.

33. A perusal of aforesaid judgment makes it evident that the proposition of law followed in the said judgment has been indicated in following paragraphs:-

> "35. Once the appointment of arbitrator or arbitral Tribunal has been made by the High Court or the Supreme Court exercising power under sub-sections (4), (5) and (6) of Section 11 then the power to substitute the arbitrator or the Arbitral Tribunal only vest with the said appointing authority i.e. High Court or Supreme Court, as the case may be.
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> **36.** The argument raised from the side opposite that the word 'Court' occurring in Section 2(1)(e) means the principal Civil Court and not the High Court cannot be accepted, as once the appointment was made by the High Court exercising power under Section 11, the power to substitute an arbitrator cannot vest under sub-section (6) of Section 29A with the principal Civil Court.
>
> **43.** Here, we are concerned with the extension of time limit for the arbitral award under Section 29A, wherein an arbitrator has been appointed by the High Court exercising power under Section 11 of the Act. Section 42 will not be attracted and it is only the High Court which has the power to grant extension to the Arbitral Tribunal for making award."

34. As per the judgment, the primary aspect of holding the High Court to have jurisdiction for extension of mandate under Section 29A of the Act of 1996 is that once the appointment of Arbitrator has been made by the High Court or the Supreme Court exercising powers under Sub-Sections (4), (5) & (6) of Section 11 then the power to substitute the arbitrator can rest only with the appointing authority which would be the High Court or the Supreme Court, as the case may be and therefore the definition of the word 'Court' occurring in Section 2(1)(e) cannot be accepted to be that of the principal Civil Court and not the High Court.

35. The entire analogy of including a High Court not vested with original civil jurisdiction appears to be the fact that the power to substitute an arbitrator would be

co-terminus with the power to appoint an Arbitrator. The said coordinate Bench has referred to judgments rendered by various High Court as well as judgments rendered by another coordinate Bench of this Court in M/S Lucknow Agencies and Another v. U.P. Avas Vikas Parishad and others reported in MANU/UP/0885/2019. However, the aforesaid judgment has been distinguished on fact that the dispute therein pertained to appointment of Arbitrator without intervention of Court whereas in Indian Farmers Fertilizers Cooperative Ltd. (supra), appointment of Arbitrator was made by intervention of Court under Section 11(6) of the Act of 1996.

36. However from a perusal of the aforesaid judgment in Indian Farmers Fertilizers Cooperative Ltd.(supra), it is discernible that relevant judgments rendered by Hon'ble the Supreme Court though noticed have escaped consideration or appreciation in the context of its ratio decidendi. The judgment seeks to include even a High Court not having original jurisdiction under the terminology of 'Court' on the twin grounds that power to substitute as indicated in Section 29A of the Act of 1996 is akin to the power to appoint under Section 11(6) of the Act and secondly that the once power to appoint an arbitrator is exercisable by a High Court or the Supreme Court, substitution of such arbitrators by the Civil Court would lead to anomalous situation.

37. With all due respect, with regard to such findings, learned Judge although noticing judgment rendered in the case of Nimet Resources (supra) has failed to consider the aspect enunciated therein that the Chief Justice or his designate exercises a limited Jurisdiction under Section 11(6) of the Act of 1996 and once an arbitrator is nominated, the Court does not retain any jurisdiction and becomes functus officio. The relevant paragraph of the aforesaid judgment is as follows:

> "18. 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 sub-section (4) of Section 20 of the 1940 Act. When an arbitrator is nominated under the 1996 Act, the court does not retain any jurisdiction with it. It becomes functus officio subject of course to exercise of jurisdiction in terms of constitutional provisions or the Supreme Court Rules."

38. In the same judgment, it has been held that since Patna High Court does not exercise any original civil jurisdiction, it would only be the Principal Civil Court of original jurisdiction in a district which would have jurisdiction to entertain an appeal under Section 37 of the Act.

39. The aforesaid proposition of law has also been indicated in the judgments rendered by Hon'ble the Supreme Court in the case of Garhwal Mandal Vikas Nigam Limited versus Krishna Travel Agency reported in MANU/SC/8316/2007 : (2008) 6 SCC 741;

> "9.There is another facet of the problem. The party will be deprived of the right to file an appeal under Section 37(1)(b) of the Arbitration and Conciliation Act. This means that a valuable right of appeal will be lost. Therefore, in the scheme of things, the submission of the learned counsel cannot be accepted. Taking this argument to a further logical conclusion, when the appointment is made by the High Court under Section 11(6) of the Arbitration and Conciliation Act, then in that case, in every appointment made by the High Court in exercise of its power under Section 11(6), the High Court will become the Principal Civil Court of Original Jurisdiction, as defined in Section 2(1)(e) of the 1996 Act. That is certainly not the intention of the legislature. Once an arbitrator is appointed then the appropriate forum for filing the award and for challenging the same,

will be the Principal Civil Court of Original Jurisdiction. Thus, the parties will have the right to move under Section 34 of the 1996 Act and to appeal under Section 37 of the 1996 Act. Therefore, in the scheme of things, if appointment is made by the High Court or by this Court, the Principal Civil Court of Original Jurisdiction remains the same as contemplated under Section 2(1)(e) of the 1996 Act.

10. We further reiterate that the view taken by this Court in National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd. [MANU/SC/1082/2003 : (2004) 1 SCC 540] and State of Goa v. Western Builders [MANU/SC/2967/2006 : (2006) 6 SCC 239] is the correct approach and we reaffirm the view that in case any appointment of arbitrator is made by the High Court under Section 11(6), the Principal Civil Court of Original Jurisdiction remains the District Court and not the High Court. And likewise, if an appointment of the arbitrator is made by this Court, in that case also, the objection can only be filed before the Principal Civil Court of Original Jurisdiction as defined in Section 2(1)(e) of the 1996 Act. Thus, in this view of the matter, we hold that the plea raised by learned counsel for the petitioner that this Court should entertain the award given by the arbitrator appointed by this Court and all objections to it should be disposed of by this Court is unacceptable and consequently, the prayer made in the application is rejected."

39 i. State of Maharashtra through Executive Engineer, Road Development Division No. 111, Panvel & Anr. versus Atlanta Limited reported in MANU/SC/0031/2014 : (2014)11 SCC 619;

24.1. Firstly, the very inclusion of the High Court "in exercise of its ordinary original civil jurisdiction", within the definition of the term "court", will be rendered nugatory, if the above conclusion was not to be accepted. Because, the "Principal Civil Court of Original Jurisdiction in a district", namely, the District Judge concerned, being a court lower in grade than the High Court, the District Judge concerned would always exclude the High Court from adjudicating upon the matter. The submission advanced by the learned counsel for the appellant cannot therefore be accepted, also to ensure the inclusion of "the High Court in exercise of its ordinary original civil jurisdiction" is given its due meaning. Accordingly, the principle enshrined in Section 15 of the Code of Civil Procedure cannot be invoked whilst interpreting Section 2(1)(e) of the Arbitration Act.

24.2. Secondly, the provisions of the Arbitration Act, leave no room for any doubt, that it is the superior-most court exercising original civil jurisdiction, which had been chosen to adjudicate disputes arising out of arbitration agreements, arbitral proceedings and arbitral awards. Undoubtedly, a "Principal Civil Court of Original Jurisdiction in a district", is the superior-most court exercising original civil jurisdiction in the district over which its jurisdiction extends. It is clear that Section 2(1)(e) of the Arbitration Act having vested jurisdiction in the "Principal Civil Court of Original Jurisdiction in a district", did not rest the choice of jurisdiction on courts subordinate to that of the District Judge. Likewise, "the High Court in exercise of its ordinary original jurisdiction", is the superior-most court exercising original civil jurisdiction, within the ambit of its original civil jurisdiction. On the same analogy and for the same reasons, the choice of jurisdiction will clearly fall in the realm of the High Court, wherever a High Court exercises "ordinary original civil

jurisdiction".

39 ii. State of West Bengal and Ors versus Associate Contractors reported in(2015)1 SCC 31;

"20. As noted above, the definition of "court" in Section 2(1)(e) is materially different from its predecessor contained 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. Firstly, as noted above, the definition is exhaustive and recognizes only one of two possible courts that could be "court" for the purpose of Section 2(1)(e). Secondly, under the 1940 Act, the expression "civil court" has been held to be wide enough to include an appellate court and, therefore would include the Supreme Court as was held in the two judgments aforementioned under the 1940 Act. Even though this proposition itself is open to doubt, as the Supreme Court exercising jurisdiction under Article 136 is not an ordinary appellate court, suffice it to say that even this reason does not obtain under the present definition, which speaks of either the Principal Civil Court or the High Court exercising original jurisdiction. Thirdly, if an application would have to be preferred to the Supreme Court directly, the appeal that is available so far as applications under Sections 9 and 34 are concerned, provided for under Section 37 of the Act, would not be available. Any further appeal to the Supreme Court under Article 136 would also not be available. The only other argument that could possibly be made is that all definition sections are subject to context to the contrary. The context of Section 42 does not in any manner lead to a conclusion that the word "court" in Section 42 should be construed otherwise than as defined. The context of Section 42 is merely to see that one court alone shall have jurisdiction over all applications with respect to arbitration agreements which context does not in any manner enable the Supreme Court to become a "court" within the meaning of Section 42. It has aptly been stated that the rule of forum conveniens is expressly excluded by Section 42 see JSW Steel Ltd. v. Jindal Praxair Oxygen Co. Ltd. [Jindal Vijayanagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Co. Ltd., MANU/SC/3765/2006 : (2006) 11 SCC 521] , SCC at p. 542, para 59). Section 42 is also markedly different from Section 31(4) of the 1940 Act in that the expression "has been made in a court competent to entertain it" does not find place in Section 42. This is for the reason that, 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. For all these reasons, we hold that the decisions under the 1940 Act would not obtain under the 1996 Act, and the Supreme Court cannot be "court" for the purposes of Section 42."

"25.....(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.

(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....."

40. Judgment rendered in the case of Associate Contractors (supra) has thereafter been affirmed by Constitution Bench judgment in the case of State of Jharkhand V. Hindustan Construction reported in MANU/SC/1596/2017 : (2018)2 Supreme Court Cases 602 in which it has also been held as follows:

> "66. ..... 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). Simply put, the principle is not acceptable because this Court cannot curtail the right of a litigant to prefer an appeal by stating that the doors are open to this Court and to consider it as if it is an original court. 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. That apart, as we see, the said principle is also contrary to what has been stated in Kumbha Mawji [Kumbha Mawji v. Union of India, MANU/SC/0001/1953 : 1953 SCR 878 : AIR 1953 SC 313] . 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.
>
> **67.** ..... It is to be borne in mind that the Court that has jurisdiction to entertain the first application is determinative by the fact as to which Court has the jurisdiction and retains the jurisdiction. In this regard, an example may be cited. When an arbitrator is not appointed under the Act and the matter is challenged before the High Court or, for that matter, the Supreme Court and, eventually, an arbitrator is appointed and some directions are issued, it will be inappropriate and inapposite to say that the superior court has the jurisdiction to deal with the objections filed under Sections 30 and 33 of the Act. The jurisdiction of a court conferred under a statute cannot be allowed to shift or become flexible because of a superior court's interference in the matter in a different manner."

41. The aforesaid judgments have been distinguished in the case of Indian Fertilizers (supra) on the ground that they do not pertain to examination of jurisdiction of a Court in terms of Section 29A, however the aspect of consideration of the definition of Court under Section 2 of the Act of 1996 and the ratio indicated in aforesaid judgments have not been appreciated in their true sense.

42. The concept of precedent, ratio decidendi and stare decisis has been explained by Hon'ble the Supreme Court in the case of Jayant Verma (supra) in the following terms;

> "54. This question is answered by referring to authoritative works and judgments of this Court. In Precedent in English Law by Cross and Harris (4th Edn.), "ratio decidendi" is described as follows:
>
> > "The ratio decidendi of a case is any rule of law expressly or impliedly treated by the Judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him, or a necessary part of his direction to the jury."(at p. 72)

55. In Dalbir Singh v. State of Punjab [Dalbir Singh v. State of Punjab, MANU/SC/0099/1979 : (1979) 3 SCC 745 : 1979 SCC (Cri) 848 : (1979) 3 SCR 1059] , a dissenting judgment of A.P. Sen, J. sets out what is the ratio decidendi of a judgment : (SCC p. 755, para 22 : SCR pp. 1073-74)

> "22. ... According to the well-settled theory of precedents every decision contains three basic ingredients:
>
> '(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;
>
> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
>
> (iii) judgment based on the combined effect of (i) and (ii) above.'
>
> For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker : The English Legal System. Butterworths, 1972, 3rd Edn., pp. 123-24.] It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of Qualcast (Wolverhampton) Ltd. v. Haynes [Qualcast (Wolverhampton) Ltd. v. Haynes, 1959 AC 743 : (1959) 2 WLR 510 : (1959) 2 All ER 38 (HL)] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the Judge is not bound to draw the same inference as drawn in the earlier case."

43. In view of aforesaid, in the considered opinion of this Court and with due respect, the aforesaid judgments could not have been brushed aside only on the ground that they pertain to a different section since the terminology of all the sections considered in the aforesaid judgments were referable to definition of a Court under Section 2 of the Act of 1996. The mere aspect that an appeal is maintainable against an award and not against an order under Section 29A of the Act would not make any material difference in view of the language used in said provisions. The aspect that the power to substitute an arbitrator under Section 29A of the Act would be referable to power to appoint under Section 11(6) of the Act cannot be inferred in view of the aforesaid judgments which have clearly indicated the absurd results which would accrue therefrom particularly in case such result is made applicable and particularly when taking such proposition to a logical conclusion where an application to substitute an arbitrator under Section 29 A

would also then lie before the Supreme Court, which would be against the terminology used in Section 2 of the Act.

44. Here it is also relevant to advert to the provisions of Section 10 of the Commercial Courts' Act, 2015, which is as follows:

> "Section 10: Jurisdiction in respect of arbitration matters.-Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and-
>
> (1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.
>
> (2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.
>
> (3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted."

45. The aforesaid provision specifically provides that in case of an international commercial arbitration, all applications arising out of such arbitration would be maintainable in a High Court in its commercial division and in case of domestic arbitration, all applications arising out of such arbitration that have been filed on the original side of High Court are to be heard by its commercial division and in case of domestic arbitrations all applications maintainable before a Principal Civil Court of original jurisdiction (not being a High Court) are to be heard by the Commercial Court where it has been constituted.

46. The aforesaid section clearly indicates the three categories with High Court not exercising original jurisdiction having been vested with such jurisdiction only in case of an international commercial arbitration and not in domestic arbitrations where such High Court does not have original jurisdiction.

47. The aforesaid aspect has also been considered by another coordinate bench of this Court in the case of Lucknow Agencies Lucknow through Sole Proprietor and Anr. versus U.P. Avas Vikas Parishad through Housing Commissioner LKO & Ors. reported in MANU/UP/0885/2019 in which held as follows:

> "12. On a bare reading of the aforesaid provision it is evident that if an Arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration

and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court. Now, this provision applies where the High Court exercises original civil jurisdiction to try suits involving commercial dispute as deferred in Section 2(1)(c) of the Act, 2015 as is evident from the use of the words "filed on the original side of the High Court". The Allahabad High court does not exercise original civil jurisdiction involving commercial disputes as defined in Section 2(1)(c) of the Act, 2015 as is evident from Rule 1 to 9 of Chapter VIII of the Allahabad High Court Rules, 1952. Moreover, Sub-section 3 of Section 10 of the Act, 2015 very categorically provides that if an arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the Act, 1996 that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Therefore, in the facts of the present case as the Allahabad High Court does not exercise original civil jurisdiction involving commercial disputes the application under Section 29-A of the Act, 1996 relating to a commercial dispute would lie before the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted and in an Arbitration relating to a non commercial dispute it would lie before the principal civil court of original jurisdiction i.e. the Court of District Judge as referred hereinabove. This is how the Act of 1996 and the Act, 2015 have to be read together to arrive at a harmonious understanding of the two Acts in matters of Arbitration."

48. The aforesaid judgment also while being noticed in the case of Indian Fertilizers, has been distinguished only on the ground that in the said case, Arbitrator had been appointed by Housing Commissioner and not under Section 11(6) of the Act of 1996 although the case of Lucknow Agencies Lucknow (supra) does not make any such distinction and has considered the provisions of Section 29A in terms of Section 2 of the Act of 1996 and therefore it was the ratio in the case of Lucknow Agencies Lucknow(supra) which was required to be considered in view of the proposition of ratio decidendi as enunciated in the case of Jayant Verma (supra).

49. However, a perusal of the aforesaid judgment in Indian Fertilizer also indicates the fact that other judgments rendered prior thereto by other coordinate Benches such as in M/s B.M.G. Construction v. National Small Industries Corporation Ltd. reported in MANU/UP/1271/2012 as well as in Jai Bahadur Singh v. State of U.P. [Writ-C No. 41221 of 2018] have not been brought to the notice of the learned judge although they have adverted to a proposition of law contrary to judgment rendered in Indian Farmers Fertilizers Cooperative Ltd. (supra). The relevant paragraphs of aforesaid judgments are as follows:

"11.Thus on the plain reading of the above definition of the 'Court', High Court is included within the principle Civil Court of original jurisdiction only if it exercises original civil jurisdiction and in such exercise has the power to determine the subject-matter of arbitration had it been brought before it by way of a suit. Therefore, for including the High Court within the principle Civil Court of original jurisdiction two conditions are necessary namely:

(i) High Court must exercise original civil jurisdiction; and

(ii) in such exercise of original jurisdiction it must also have the jurisdiction to decide the subject-matter of the arbitration as a regular suit.

12. It is not disputed before me that the High Court of Judicature at Allahabad does not exercise original civil jurisdiction. Therefore, apparently the first of the above two conditions is not fulfilled by this High Court so as to include it within the meaning of the Civil Court of original jurisdiction. Accordingly, the High Court of Allahabad is not a 'Court' under section 2(1)(e) of the Act before whom an application for seeking termination of the mandate of the arbitrator can be maintained.

13. This High Court is not even vested with the original jurisdiction to decide the subject-matter of the arbitration had it been subjected to the suit."

50. It is also a relevant factor that in Indian Fertilizers (supra) power to substitute an arbitrator has been held akin to the power under Section 14 of the Act of 1996 but has failed to consider the aspect that in the case of Nimet Resources (supra), Hon'ble the Supreme Court while considering provisions of said Section 14 of the Act has clearly held that it is only a High Court exercising original civil jurisdiction where an application under Section 14 of the Act of 1996 would be maintainable and as such also the said reasoning appears to be incongruous to the judgment rendered by Hon'ble the Supreme Court.

51. It is also a factor noticeable but not adverted to in the judgment of Indian Fertilizers that the exclusion of a High Court not having original jurisdiction with regard to entertainability of an application under Section 29A is deliberate and intentional as would be evident from amendments made to Sections 47 and 56 of the Act of 1996.

52. Section 47 of the Act pertains to evidence and explanation to Section 47(2) indicates a definition of 'Court' as distinct from such definition under Section 2 of the Act. It is relevant that prior to current explanation inserted vide Act No. 3 of 2016 in Section 47, it was the principal Civil Court of original Jurisdiction in a district which came within the definition of Court and included a High Court in exercise of its ordinary original civil jurisdiction but by means of the new explanation inserted in 2016, it is now only the High Court having original jurisdiction which comes within meaning of the word Court under the explanation and the principal civil court of original jurisdiction in a court has been deleted.

53. Same is the situation under Section 57 of the said Act pertaining to conditions for enforcement of foreign awards where earlier the explanation regarding a court was akin to the current definition under Section 2 of the Act of 1996 but by means of amendment incorporated, the principal Civil Court of original jurisdiction in a District has been deleted.

54. In view of aforesaid, the intention of legislature to include a High Court specifically having jurisdiction over aspects under specific provisions of the Act of 1996 has clearly been delineated. However no such amendment has been incorporated in Section 2 (1) (e) to exclude a civil court of original jurisdiction so far as it pertains to Section 29A of the Act. Considered in the light of amendments made in Sections 47 and 56 of the Act, the intention of legislature to include a High Court only when it has original jurisdiction is thus clear and unambiguous and in such circumstances, where there is no ambiguity, no purposive interpretation is required to be resorted to implant a perceived casus, which even otherwise was not omissus.

55. It is also evident that judgment rendered in Indian Fertilizers takes into account a supposed anomalous situation where an arbitrator appointed by Constitutional courts is substituted by district court. The aforesaid proposition clearly does not take into account a situation where an award rendered by an arbitrator appointed under Section 11(6) of the Act of 1996 can be set aside by a commercial court exercising powers under the Act of 2015 read with the Act of 1996. Once a commercial court has the power and jurisdiction to set aside the award of an arbitrator appointed under Section 11(6) of the Act of 1996, it does not stand to reason as to why such an arbitrator cannot be substituted exercising power under Section 29A of the Act in the circumstances indicated therein. Taking the aforesaid proposition of India Fertilizers further to its logical conclusion, it would mean that any award rendered by an arbitrator appointed under Section 11(6) of the Act would necessarily be required to be challenged only either in the High Court or in the Supreme Court but the said proposition of law has already been rejected by Hon'ble the Supreme Court in the case of Atlanta Limited, Associate Contractors and Hindustan Construction Company(supra).

56. The judgment in Indian Fertilizers also incorrectly presupposes that all appointments of arbitrators would be only under Section 11(6) of the Act and does not take into account where an application under Section 29A has been filed in an arbitration where arbitrators have been appointed by mutual consent. Making such a distinction, again would amount to including words and phrases in Section 29A of the Act where they have not been deliberately incorporated in the wisdom of the legislature.

57. The judgment in India Fertilizers also does take into account a situation where an arbitral tribunal compromises some members appointed mutually and others appointed under Section 11(6) of the Act as in the present case where one arbitrator was appointed by mutual consent and the other under Section 11(6) of the Act and subsequently, the presiding arbitrator was appointed by consent of both arbitrators.

58. At the cost of repetition, such a distinction not having been made under Section 29A, in the considered opinion of this Court cannot be inserted by judicial legislation.

59. In the case of Indian Fertilizers, the power of substitution under Section 29A of the Act has been made referable to Sections 14 and 15 of the Act without considering the distinction in substitution of arbitrator under provisions of Section 15 and Section 29 A of the Act. It is relevant to indicate that under Section 29A, substitution of arbitrator is at the instance of Court and under sub-section (7) the arbitral tribunal thus reconstituted is deemed to be in continuation of the previously appointed arbitral tribunal, whereas under Section 15 of the Act, substitution of arbitrator is to be without intervention of court and as per rules which were applicable to the appointment of arbitrator being replaced. Sub-section (3) of Section 15 of the Act does not indicate that the re-constituted arbitral tribunal would be in continuation of the previously appointed arbitral tribunal. Even otherwise provisions of Section 29A cannot be said to pre-suppose an automatic substitution of arbitrator and as such the basic premise of the aforesaid judgment, with all due respect, appears to be flawed.

60. The submission of learned counsel for applicants is that the provisions of Arbitration Act are in variance with Section 15 of the Code of Civil Procedure with regard to grade of court where proceedings can be entertained at the first instance and therefore application under Section 29A is required to be filed only in the High Court in order to lend credibility to the proceedings.

61. Learned counsel has placed reliance on the Judgment of Associate Contractors

(supra), the relevant paragraphs of which are as follows:-

> "13. .....The framers of the statute must certainly be taken to have been conscious of the definition of 'court' in the Act. It is easily possible to contemplate that they did not want the power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention apparently was to confer the power on the highest judicial authority in the State and in the country, on the Chief Justices of High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process. The argument that the power thus conferred on the Chief Justice could not even be delegated to any other Judge of the High Court or of the Supreme Court, stands negatived only because of the power given to designate another. The intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act was exercised by the highest judicial authority in the State or in the country concerned. This is to ensure the utmost authority to the process of constituting the Arbitral Tribunal.
>
> **18.** It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as persona designata. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial power."
>
> It is obvious that Section 11 applications are not to be moved before the "court" as defined but before the Chief Justice either of the High Court or of the Supreme Court, as the case may be, or their delegates. This is despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively. Again, Section 42 would not apply to applications made before the Chief Justice or his delegate for the simple reason that the Chief Justice or his delegate is not "court" as defined by Section 2(1)(e). The said view was reiterated somewhat differently in Pandey & Co. Builders (P) Ltd. v. State of Bihar [MANU/SC/8643/2006 : (2007) 1 SCC 467] , SCC at pp. 470 & 473, Paras 9 & 23-26."

62. The aforesaid submission also does not hold good ground since the said aspect has already been taken care of in the definition under Section 2 where the highest grade of court i.e. High Court has already been included in the definition of Court but only in case it exercises original civil jurisdiction and subject to conditions indicated therein.

63. Learned counsel for applicant has also adverted to the fact that the power under Section 11(6) of the Act has subsequently been held to be subject to review in view of

the fact that the High Court as a superior Court of record, can entertain review.

64. The aforesaid submission also would not hold good ground in view of the fact that power to review under Section 11(6) of the Act of 1996 has nothing to do whatsoever with the power to extend mandate of Arbitrator under Section 29 A of the Act.

65. The judgment in Indian Fertilizers (supra) also places reliance on judgments of various High Courts such as in the cases of:

> **12.** He has relied upon the decision of Calcutta High Court in case of Amit Kumar Gupta vs. Dipak Prasad MANU/WB/0068/2021. Relevant paras 17 and 18 of the judgment are extracted hereas under:
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> > "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.
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> > **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."
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> **13.** Reliance has also been placed upon decision of Delhi High Court in O.M.P. (Misc.) (Comm) No. 236 of 2019 (DDA vs. M/s Tara Chand Sumit Construction Co.) decided on 12.5.2020. Relevant paras 28, 29 and 30 of the judgment are extracted here as under :
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> > "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. Similarly, in case of International Commercial Arbitration, if one was to follow the definition of the term Court under Section 2(1)(e) and apply the same in a strict sense, then it would be the High Court exercising Original or Appellate jurisdiction which would have the power to extend the mandate and substitute the Arbitrator. In such a situation, the High Court would be substituting an Arbitrator appointed by the Supreme Court which would perhaps lead to the High Court over stepping its jurisdiction as the power to appoint the Arbitrator is exclusively in the domain of the Supreme Court. Thus, in the opinion of this Court, an application under Section 29A of the Act seeking extension of the mandate of the Arbitrator would lie only before the Court which has the power to appoint Arbitrator under Section 11 of the Act and not with the Civil Courts. The interpretation given by learned counsel for the respondent that for purposes of Section 29A, Court would mean the Principal Civil Court in case of domestic arbitration, would nullify the powers of the Superior Courts under Section 11 of the Act."

14. He then placed before the Court the decision rendered by Gujrat High Court

in the case of Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel MANU/GJ/1549/2018 : 2019 (2) GLR 1537 wherein the Court had taken the similar view. Relevant paras 14, 15 and 16 of the judgment are extracted hereas under :

> "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 sub-secs. (4), (5) and (6) of Sec. 11 of the Act. The provisions of Sec. 29A and in particular sub-sec. (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-sec. (3) of Sec. 29A which could be for a period not exceeding six months. Sub-section (4) of Sec. 29A, as noted, specifically provides that, if the award is not made within such period, as mentioned in sub-sec. (1) or within the extended period, if so done, under sub-sec. (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-sec. (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.
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> **15.** This provision thus make a few things clear. Firstly, the power to extend the mandate of an arbitrator under sub-sec. (4) of Sec. 29A beyond the period of twelve months or such further period it may have been extended in terms of sub-sec. (3) of Sec. 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 Sec. 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-secs. (4), (5) and (6) of Sec. 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-sec. (6) of Sec. 29A would be non-operatable. In such a situation, sub-sec. (6) of Sec. 29A would be rendered otiose. The powers under sub-sec. (6) of Sec. 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-sec. (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. 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 Sec. 11 of the Act and those of the Civil Court to substitute such arbitrators under Sec. 29A(6). This conflict can be avoided only by understanding the term "Court" for the purpose of Sec. 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 Sec. 11 vests exclusively with the Supreme Court. In terms of Sec. 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."

15. According to Sri Goyal, the question whether the meaning of word ''Court' would be High Court while exercising powers under Section 29A was also dealt with by the Bombay High Court in the case of Cabra Instalaciones Y. Servicios. S.A. vs. Maharashtra State Electricity Distribution Company Limited MANU/MH/2097/2019. Relevant paras 7 and 8 of the judgment are extracted hereas under :

"7. On a plain reading of Section 29A alongwith 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."

16. He placed before the Court judgment of Division Bench of Kerala High Court rendered in M/s Lots Shipping Company Limited vs. Cochin Port Trust Board of Trustees MANU/KE/1142/2020 : 2020 AIR (Kerala) 169. Relevant paras 9 and 11 of the judgment are extracted here as under :

"9. Question to be decided is whether the term "court" contained in Section 29A(4) requires a contextual interpretation apart from the meaning contained in Section 2(1)(e)(i) of the Act. A contextual interpretation is clearly permissible in view of the rider contained in sub-section (1) of Section (2), "unless the context otherwise requires". As argued by the counsel on either side and as submitted by the learned Amicus Curiae, a contextual interpretation is required since the power conferred on the court under Section 29A, especially under sub-sections (4) and (5), are more akin to the powers conferred on the Supreme Court and the High Court, as the case may be, under Sections 11(6), 14 & 15 of the Act, for appointment, termination of mandate and substitution of the arbitrator. It is pointed out that, the amendments introduced in the year 2015, with effect from 23.10.2015, has recognized the judgment of the Constitutional Bench of the apex court in SBP & Company v. Patel Engineering Company Ltd. MANU/SC/1787/2005 : (2005) 8 SCC 618 and conferred the power of appointment on the Supreme Court or the High Court. The amendment has not in any manner enhanced the power of the principal civil court, which continues only with respect to matters provided under Sections 9 and 34 of the Act. It is significant to note that the orders passed by the principal civil court of original jurisdiction under Sections 9 and 34 are made appealable under Section 37 of the Act. So also, order if any passed refusing to refer the parties to arbitration under Section 8 of the Act, was also made appealable under Section 37(1)(a) of the Act. Section 29A was introduced to make it clear that, if the arbitration proceedings is not concluded within 18 months, even if the parties have consented for an extension, it cannot be continued unless a judicial sanction is obtained. The power to grant extension by the court

is introduced under an integrated scheme which also allows the court to reduce the fees of the arbitrator or to impose cost on the parties and/or to substitute the arbitrator(s). The power of extension is to be exercised on satisfying "sufficient cause' being made out. In all respect, such power conferred under Section 29A for permitting extension with respect to the proceedings of arbitration, is clearly akin to the powers conferred under Sections 14 & 15 of the Act. The absence of any provision for an appeal with respect to the exercise of such power under Section 29A, in the nature as mentioned above, would indicate that the power under Section 29A is not to be exercised by the principal civil court of original jurisdiction. Otherwise, it will create anomalous situation of identical powers being exercised in a contrary manner, prejudicial to the hierarchy of the courts. In a case where appointment of an arbitrator is made under Section 11(6) of the Act by the High Court or the Supreme Court, as the case may be, it would be incongruous for the principal civil court of original jurisdiction to substitute such an arbitrator or to refuse extension of the time limit as provided under Section 29A, or to make a reduction in the fees of the Arbitrator. Therefore a purposive interpretation becomes more inevitable.

11. Taking note of the principle enunciated herein above and on the basis of the detailed analysis, we are inclined to hold that the term "court" used in Section 29(4) has to be given an contextual and purposive interpretation, which is to be in variance with the meaning conferred to the said term under sub-section Section 2(1)(e)(i) of the Act. The term "court" contained in Section 29(4) has to be interpreted as the ''Supreme Court' in the case of international commercial arbitrations and as the ''High Court' in the case of domestic arbitrations. Hence it is held that, either of the party will be at liberty to file an arbitration petition before the High Court under Section 29A(5) of the Act, seeking extension of time for continuance of the arbitration proceedings in exercise of the power conferred under Section 29A(4) of the Act, in the case of any domestic arbitration. The reference is answered accordingly."

66. A perusal of aforesaid judgments indicates that the same have been rendered on the proposition that the right to substitute can be exercised only by a Court which has the power to appoint and that substitution in fact of arbitrators appointed under Section 11(6) of the Act would lead to an anomalous situation. The said aspect of the matter has already been dealt with hereinabove and therefore no further exposition on the same is required particularly in the light of judgments rendered by Hon'ble the Supreme Court that interpreting the provisions in the manner as have been done in the said judgments would in fact lead to anomalous situation.

67. The concept of judgment having been rendered per incuriam has been considered in the case of Jayant Verma (supra) in the following terms:

58. Further, in State of M.P. v. Narmada Bachao Andolan [State of M.P. v. Narmada Bachao Andolan, MANU/SC/0599/2011 : (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875] , it was stated : (SCC pp. 679 & 680, paras 65 & 67)

"65. "Incuria" literally means "carelessness". In practice per incuriam is

> taken to mean per ignoratium. The courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.
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> *******
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> **67.** Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

59. It is clear, therefore, that where a matter is not argued at all by the respondent, and the judgment is one of reversal, it would be hazardous to state that the law can be declared on an ex parte appraisal of the facts and the law, as demonstrated before the Court by the appellant's counsel alone. That apart, where there is a detailed judgment of the High Court dealing with several authorities, and it is reversed in a cryptic fashion without dealing with any of them, the per incuriam doctrine kicks in, and the judgment loses binding force, because of the manner in which it deals with the proposition of law in question. Also, the ratio decidendi of a judgment is the principle of law adopted having regard to the line of reasoning of the Judge which alone binds in future cases. Such principle can only be laid down after a discussion of the relevant provisions and the case law on the subject. If only one side is heard and a judgment is reversed, without any line of reasoning, and certain conclusions alone are arrived at, without any reference to any case law, it would be difficult to hold that such a judgment would be binding upon us and that we would have to follow it. In the circumstances, we are of the opinion that the judgment in Yasangi Venkateswara Rao [SBI v. Yasangi Venkateswara Rao, MANU/SC/0027/1999 : (1999) 2 SCC 375] cannot deter us in our task of laying down the law on the subject.

68. Upon applicability of aforesaid judgment, clearly the ratio decidendi enunciated not only by previous Coordinate Benches of this Court but also by Hon'ble the Supreme Court as indicated hereinabove as well as specific provisions of statute, in the considered opinion of this Court and with all due respect could not be considered in the case of Indian Fertilizers (supra) due to which it cannot be said to have attained the status of a binding precedent.

69. In the light of aforesaid aspects as indicated hereinabove, the question is answered as follows:-

> 'The concept of 'Court' as envisaged under Section 29A read with Section 2(1)(e) of the Act of 1996 does not include a High Court not having original civil jurisdiction as in the case of Allahabad High Court and an application as such under Section 29A of the Act of 1996 would be maintainable only in the Principal Civil Court of original jurisdiction in a district.'

70. In light of aforesaid, the applications being not maintainable before this Court are therefore dismissed. Parties to bear their own costs.