

Resolving Jurisdictional Debate: Supreme Court's Ruling on Section 29A of the Arbitration and Conciliation Act, 1996

Khaitan & Co

MEMBER FIRM OF  MERITAS® View In Analytics
LAW FIRMS WORLDWIDE

India | September 9 2024

INTRODUCTION

The Arbitration and Conciliation Act of 1996 (Arbitration Act) was enacted with the aim of providing an efficient and expeditious mechanism for resolving disputes in India, aligning the country's arbitration framework with international standards. To further this objective, Section 29A was introduced through the Arbitration and Conciliation (Amendment) Act, 2015. This specific provision was designed to ensure the timely conclusion of arbitration proceedings by imposing a strict time limit for arbitral tribunals to deliver their awards.

While the intention behind Section 29A was to prevent delays and promote speedy dispute resolution, its interpretation has given rise to a host of legal challenges and uncertainties. A significant point of contention had been the determination of which courts possess the jurisdiction to entertain applications for extending the tribunal's mandate when the prescribed time limit is not met. This issue has led to conflicting decisions across various High Courts, resulting in considerable confusion among parties and legal practitioners alike.

The debate centred on whether such applications were to be filed before the appointing court, typically the High Court or Supreme Court as provided under Section 11 of the Arbitration Act, or before the “court” as defined under Section 2(1)(e) of the Arbitration Act, which included the principal civil court of original jurisdiction. The question became significant in view of the fact that only few High Courts in India have the original jurisdiction.

In this article, the authors have attempted to analyse the conflicting judgments that sparked this controversy, examined the Supreme Court's decision that ultimately settled the matter, and explored the potential implications of this landmark judgment for the arbitration landscape.

CONFLICTING DECISIONS BY THE HIGH COURTS

In *DDA v. Tara Chand Sumit Construction*^[1] the High Court of Delhi addressed the jurisdiction for applications under Section 29A of the Arbitration Act, ruling that such applications must be filed before the High Court for domestic arbitrations and the Supreme Court for international commercial arbitrations. The Court noted that while typically the District Court handles disputes below ₹2 crores, the phrase “*unless the context otherwise requires*” in Section 2(1)(e) of the Arbitration Act allows for a different interpretation when read alongside Section 11 of the Arbitration Act, which designates the High Court or Supreme Court as the appointing authority. It reasoned that allowing a District Court to substitute an arbitrator appointed by a superior court would be incongruous, thus reserving this power for the appointing court.

Following this reasoning, the High Court of Calcutta in *Amit Kumar Gupta v. Dipak Prasad*[2] also held that the term ‘Court’ under Section 29A of the Arbitration Act must be understood in the context of Section 11 of the Arbitration Act, meaning that jurisdiction lies only with the appointing court. The High Court of Gujarat, in *Nilesh Ramanbhai Patel v. Bhanubhai Ramanbhai Patel*[3] echoed this view, ruling that power under Section 29A of the Arbitration Act can be exercised by the appointing court only and it would be incongruous to permit the District Court to substitute an arbitrator who might have been appointed by a High Court or the Supreme Court.

Similarly, the High Court of Kerala in *Lots Shipping Company Ltd v. Cochin Port Trust*[4] and the High Court of Allahabad in *Lucknow Agencies v. U.P. Avas Vikas Parishad*[5] aligned with the view of the other High Courts and held that applications under Section 29A of the Arbitration Act should be made before the appointing court, even if it lacks original jurisdiction.

However, a differing perspective came from another bench of the High Court of Allahabad in *A’Xykn Capital Services v. State of U.P*[6], which held that applications under Section 29A of the Arbitration Act are maintainable before the Court as provided under Section 2(1)(e) of the Arbitration Act which would generally be the District Court and can also include the High Court if it has the original jurisdiction. Due to these conflicting decisions, the High Court of Allahabad in *Jaypee Infratech Ltd v. EHBH Services Pvt Ltd*[7] referred the matter to a larger bench. However, in view of the decision of the Supreme Court, it’s likely that the reference would be disposed of in terms of the judgment of the Supreme Court.

In *Cabra Instalaciones Y. Servicios v. MSEDCL*[8], the High Court of Bombay addressed the issue of jurisdiction in the context of international commercial arbitration , ruling that only the Supreme Court has the authority to entertain application(s) under Section 29A of the Arbitration Act, including the extension or substitution of an arbitrator. Contrasting this, a coordinate bench of the High Court of Bombay in *Mormugao Port v. Ganesh Benzoplast Ltd*[9] held that the District Court is the proper forum for adjudication of applications under Section 29A of the Arbitration Act. Faced with these conflicting decisions, the High Court of Bombay in *Sheela Chowgule v. Vijay V. Chowgule*[10] referred the issue to a larger bench. However, in view of the decision of the Supreme Court[11], it’s likely that the reference would be disposed of in terms of the judgment of the Supreme Court.

SUPREME COURT RULING

As noted above, the conflicting decisions of various High Courts concerning the appropriate forum for adjudication of applications under Section 29A of the Arbitration Act created considerable confusion and uncertainty among litigants, arbitrators, and practitioners alike.

This confusion has now been decisively addressed by the Supreme Court in its landmark ruling in *Chief Engineer (NH) PWD (Roads) v. M/s. BSC & C and C JV*[12]. The Supreme Court in this case provided much-needed clarity by holding that applications under Section 29A of the Arbitration Act are to be filed before the "court" as defined under Section 2(1)(e) of the Arbitration Act. This definition of "court" as provided under Section 2(1)(e) of the Arbitration Act refers to the principal civil court of original jurisdiction, which includes the District Courts in most cases but can also include a High Court if it has original jurisdiction over civil matters.

The Supreme Court further clarified that the power of substitution under Section 29A(6) of the Arbitration Act is merely a consequential power. Therefore, the District Court would have the the authority to extend an arbitral tribunal's mandate and, when necessary, to substitute the arbitrator(s).

CONCLUSION

The Supreme Court's decision has brought much-needed finality to the contentious issue of determining which court is competent to hear applications under Section 29A of the Arbitration Act. By clarifying that the principal civil court of original jurisdiction, including a High Court with original jurisdiction, is the appropriate forum for such applications, the decision eliminates the ambiguities that previously plagued the arbitration process. This standardisation across jurisdictions ensures that parties are no longer left in doubt about where to file their applications, thereby minimising unnecessary litigation and fostering greater procedural certainty.

The ruling also emphasises the importance of understanding the pecuniary jurisdiction of courts, which play a crucial role in determining the appropriate forum. For example, in Delhi, disputes involving claims exceeding ₹2 crores fall under the original jurisdiction of the High Court, whereas lower-value claims remain within the purview of the District Courts. This reinforces the need for accurate valuation of claims and counterclaims to ensure that applications are filed before the correct court.

Ultimately, this ruling enables parties to navigate the legal landscape with greater confidence, knowing that their applications will be heard by the appropriate court. It strengthens the arbitration framework in India by ensuring that jurisdictional clarity is maintained, procedural delays are minimised, and the process remains aligned with the legislative intent of facilitating the swift and fair resolution of disputes.

The content of this document does not necessarily reflect the views / position of Khaitan & Co but remain solely those of the author(s). For any further queries or follow up, please contact Khaitan & Co at editors@khaitanco.com.

Khaitan & Co - Abhisar Bairagi, Milind Sharma , Ausaf Ayyub and Raddhika Khanna Tandon

Powered by

LEXOLOGY.