



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No. _____ OF 2026
(@ SLP (C) No. 4430 OF 2025)**

RAJIV GADDH

... APPELLANT

VERSUS

SUBODH PARKASH

... RESPONDENT

J U D G M E N T

ALOK ARADHE, J.

1. Leave granted.
2. This appeal arises from the order dated 08.11.2024 passed by the Punjab and Haryana High Court (High Court) whereby application filed by the respondent under Section 11 of the Arbitration and Conciliation Act, 1996 (Act) was allowed and sole arbitrator was appointed. In order to appreciate the challenge laid by the appellant to the impugned order, it is necessary to set out relevant facts which are stated hereinafter.
3. The parties jointly participated in an auction conducted by Jammu & Kashmir Bank for auction of 550 *marlas* of land situated in Hoshiarpur, Punjab ('the Hoshiarpur Land'). The primary bid in respect of said land was made through

respondent's firm M/s. Aastha Trading Company. A new entity, namely M/s. JMD Special Steel Pvt. Ltd., in which both the parties were directors, was utilized for funding and registration purposes. A loan of Rs. 4.30 crores was obtained from HDFC Bank by mortgaging various properties. A Tripartite Agreement dated 20.03.2013 was executed between the appellant, the respondent and HDFC Bank to regulate the loan liability and to facilitate release of the mortgaged properties.

4. On 02.04.2013, the parties executed three agreements to resolve disputes relating to 'the Hoshiarpur Land' and other joint ventures. The substance of the three agreements is as follows: -

(i) **Agreement 1:** The appellant was required to execute a sale deed in respect of 8 Kanal Land in favour of respondent on or before 05.04.2014, upon its release from HDFC Bank.

(ii) **Agreement 2:** The joint ventures between the parties except 'the Hoshiarpur Land' stood dissolved. The mortgaged properties were to be released in favour of appellant's entity for a sum of Rs. 3.75 crores.

(iii) Agreement 3: The appellant was to hold 16.5 % shares in ‘the Hoshiarpur Land’ with a separate agreement to govern its settlement.

- 5.** Clause 6 of the aforesaid agreements contains an arbitration clause. The respondent invoked the arbitration clause by a notice dated 06.05.2015 and subsequently filed an application under Section 11 of the Act seeking appointment of an arbitrator. The High Court, by order dated 27.11.2015, appointed Justice M.S. Sullar, as sole Arbitrator, who later recused himself. Thereafter, Justice V.K. Jhanji was appointed on 12.08.2016. Allegations of bias were raised by the respondent on 10.02.2017, leading to arbitrator’s recusal on 11.02.2017. Subsequently, Justice Aftab Alam, was appointed as sole Arbitrator, on 01.09.2017.
- 6.** Competing claims were made before the sole Arbitrator, by both parties. On 10.02.2018, the respondent was granted a final opportunity to file his statement of claim, failing which the proceedings were liable to be closed. The respondent filed his claim on 16.03.2018, seeking recovery of Rs.4.16 crores. The appellant filed his statement of defence, followed by a rejoinder from the respondent.

- 7.** On 13.05.2019, the respondent and his counsel failed to appear before the sole Arbitrator. Despite adjournment and a failed mediation attempt, the respondent ceased participation in the proceedings and, on 13.07.2019, sent an email to the sole Arbitrator alleging bias. Further, allegations were raised on 14.08.2019 along with an indication to appoint another arbitrator. The Arbitrator declined this request and proceeded with the arbitration. By communication dated 29.08.2019, respondent refused to accept arbitrator's authority and stated that he would not participate further. He remained absent on 03.10.2019.
- 8.** The respondent filed a civil suit seeking mandatory injunction seeking termination of Arbitrator's mandate. The sole Arbitrator passed an award on 30.06.2020 observing that claims were intertwined and overlapping. The Arbitrator decreed the claim of appellant and dismissed the claim of respondent. While noting the power to terminate proceedings for non-prosecution, the Arbitrator granted a final opportunity to revive its claim by giving three months time to file an amended statement of claim, failing which the proceeding would stand terminated in respondent's claim. The respondent failed to comply.

- 9.** The respondent challenged the arbitral award dated 30.06.2020, under Section 34 of the Act. This Court, by a judgment dated 09.07.2021, passed in Civil Appeal No. 1599 of 2011, upheld the auction held by the Jammu & Kashmir Bank regarding ‘the Hoshiarpur Land’ and held that auction purchaser namely, the appellant and the respondent were entitled to ‘the Hoshiarpur Land’.
- 10.** On 01.09.2021, the respondent issued a fresh notice invoking arbitration based on aforesaid judgment of this Court. The appellant replied on 06.10.2021, asserting that respondent should agitate his claim before the Arbitrator. Thereafter, on 25.11.2021, the respondent filed a fresh application under Section 11 of the Act seeking appointment of an arbitrator.
- 11.** By the impugned order dated 08.11.2024, the High Court allowed the application and held that issue of *res judicata* need not be examined at the stage of Section 11 proceedings, leaving it to be decided by arbitral tribunal. The civil suit filed by the respondent seeking termination of the mandate of the Arbitrator was dismissed for non-prosecution on 23.07.2024. In the aforesaid factual background, this appeal arises for our consideration.

- 12.** Learned senior counsel for the appellant contended that the respondent had abandoned the earlier arbitration proceedings and was, therefore, barred from seeking a fresh appointment of an Arbitrator. It is submitted that Order 23 Rule 1(3) of the Code of Civil Procedure, 1908 (Code) imposes a bar on the substitution of subsequent proceedings for the same cause of action. In support of the aforesaid submissions, reliance has been placed on the decision of this Court¹.
- 13.** Learned counsel for the respondent, on the other hand, submitted that the issue of *res judicata* does not arise in a proceeding under Section 11 of the Act and a fresh cause of action accrued to the respondent, after judgment of this Court dated 09.07.2021 in Civil Appeal No. 1599 of 2011. In support of the aforesaid submission, reliance has been placed on the decision of this Court².
- 14.** We have considered the rival submissions and have perused the record.
- 15.** The scope and ambit of Section 11 of the Act is well settled. The jurisdiction under Section 11 of the Act is primarily confined to determining existence of an arbitration agreement.

¹ HPCL Bio-Fuels Ltd., v. Shahaji Bhanudas Bhad; 2024 SCC OnLine SC 3190.

² Indian Oil Corporation Limited v. SPS Engineering Limited; (2011) 3 SCC 507.

The issue of *res judicata* does not arise for consideration in a Section 11 proceeding³. Order 23 Rule 1 of the Code provides that if the plaintiff either abandons the suit or part of the claim or withdraws the same without leave of the court, then he is precluded from instituting a fresh suit in respect of such subject matter or such part of the claim. The plaintiff on abandoning a suit or part of the claim or withdrawing the same without leave of the court, also becomes liable to pay such costs as may be imposed by the court as provided under Order 23 Rule 1(4) of the Code. This Court in **HPCL Bio-Fuels Ltd.**, (supra) dealt with the issue, whether a fresh application under Section 11(6) of the Act would be maintainable, when no liberty to file a fresh application was granted at the time of withdrawal of the first application under Section 11(6) of the Act. A two-Judge Bench of this Court held that principles of Order 23 Rule 1 of the Code prohibiting the institution of fresh proceeding on the same cause of action without seeking leave of the court to file a fresh application, would apply to proceeding under Section 11(6) of the Act. It was further held that in the absence of any liberty at the time of withdrawal of

³ Indian Oil Corporation Limited (supra).

the first application, the fresh application under Section 11 of the Act is not maintainable.

- 16.** Another two-Judge Bench of this Court⁴ has held that the abandonment of the proceedings cannot be readily inferred and only if the established conduct of the claimant is such that it leads to only one conclusion that he has given up the claim, any inference of abandonment can be drawn.
- 17.** In the present case, the respondent himself by a notice dated 06.05.2015 had invoked the arbitration clause contained in the agreements dated 02.04.2013 and had filed a petition on 03.07.2015 under Section 11(6) of the Act. The High Court, on the application of the respondent, appointed an Arbitrator. From the communication dated 29.08.2019 sent by sole respondent to the Arbitrator informing him that he would not participate in the proceeding, it is evident that respondent had abandoned the proceeding.
- 18.** Now, we may examine whether the subsequent petition filed by the respondent was based on a different cause of action. It is noteworthy that auction of 'the Hoshiarpur Land' by Jammu & Kashmir Bank was held in 2005. The owners of the land

⁴ Dani Woolltex Corporation and Ors., v. Sheil Properties Pvt. Ltd. and Anr.; (2024) 7 SCC 1.

had challenged the same before the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal. The Writ Petition preferred by the owners of the land, namely, W.P. No. 8412 of 2009, was dismissed by High Court of Judicature at Bombay vide judgment dated 30.09.2009, and the validity of the auction was upheld. Thereafter, the owners approached this Court by filing Civil Appeal No. 1599 of 2011. During the pendency of the aforesaid Civil Appeal, the appellant and the respondent entered into three agreements on 02.04.2013. The respondent, during the pendency of the Civil Appeal filed by the owner of the land, invoked the arbitration clause by issuing a notice on 06.05.2015. The Civil Appeal preferred by the owners of the land was dismissed on 09.07.2021 by this Court.

- 19.** It is pertinent to note that the issue, which was *sub judice*, was with regard to validity of the auction. The dispute between the appellant and the respondent was not the subject matter of the Civil Appeal. Therefore, on dismissal of the Civil Appeal filed by the owner of the land, no fresh cause of action accrued to the respondent. Thus, it is axiomatic that the subsequent application filed under Section 11(6) was based on same cause of action and was barred on the principles

contained in Order 23 Rule 1 of the Code. A litigant cannot be permitted to abuse the process of Court to file a fresh proceeding again on the same cause of action. The bar contained in Order 23 Rule 1 of the Code which applies to proceeding under Section 11 of the Act is founded on Public Policy. For the aforementioned reasons, we hold that the subsequent application filed by the respondent was not maintainable.

- 20.** Accordingly, the impugned order dated 08.11.2024, passed by the High Court is quashed and set aside. The appeal is allowed. There shall be no order as to costs.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[ALOK ARADHE]

NEW DELHI;
APRIL 1, 2026.