



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CIVIL MISC. PETITION NO. 458 OF 2025

AND

CIVIL MISC. PETITION NO. 460 OF 2025

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CMP No.458/2025:

BETWEEN:

1. MR. SHAMASUNDER NAYAK
AGED ABOUT 58 YEARS,
SON OF LATE MANJUNATHA NAYAK,
2. MR. VASANTHA NAYAK,
AGE 55 YEARS
SON OF LATE MANJUNATH NAYAK

BOTH RESIDING AT DOOR NO. 110/7C/8
'SRI RAKSHA', T.T. ROAD,
KUNDAPURA- 576 201

...PETITIONERS

(BY SRI. VIVEK B R.,ADVOCATE)

AND:

MR. GURUDUT V KAMATH
AGED ABOUT 54 YEARS,
SON OF LATE P.V. KAMATH,
R/AT FLAT NO. 26, ARADHANA,
R.K. PATKAR'S SOCIETY,
11/15, OFF TURNER ROAD,
BANDRA WEST, MUMBAI 400050,
MAHARASHTRA.

ALSO AT





NC: 2025:KHC:42251
CMP No. 458 of 2025 c/w
CMP No. 460 of 2025

801, 8TH FLOOR, ESPERENZA,
LINKING ROAD, NEXT TO BANK OF BARODA,
BANDRA (WEST), MUMBAI-400 050
E-MAIL GVKAMATH71@GMAIL.COM

...RESPONDENT
(BY SRI. PRANAV VISHWANATH., ADVOCATE.,ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO APPOINT SRI. J.P.N. DESAI (RETIRED JUDGE, HONBLE HIGH COURT OF KARNATAKA) OR ANY OTHER SUITABLE PERSON AS THE SOLE ARBITRATOR TO ADJUDICATE THE DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENT ARISING OUT OF THE DEED OF PARTNERSHIP DATED 18.08.2000 PERTAINING TO THE PARTNERSHIP FIRM M/S. SRI. RAKSHA FRAGRANCES (AS PER CLAUSE 18 OF THE AGREEMENT PRODUCED AT ANNEXURE A) AND ETC.

IN CMP NO.460/2025:

BETWEEN:

MR. SHAMASUNDER NAYAK
AGED ABOUT 58 YEARS,
SON OF LATE P MANJUNATHA NAYAK,
R/AT D. NO. 110-7C/8, SRIRAKSHA,
T.T. ROAD, KUNDAPURA - 576 201,
KARNATAKA.

...PETITIONER
(BY SRI. VIVEK B R.,ADVOCATE)

AND:

MR. GURUDUT V KAMATH
AGED ABOUT 54 YEARS,
S/O LATE P.V. KAMATH,
R/AT FLAT NO. 26, ARADHANA,
R.K. PATKARS SOCIETY,
11/15, OFF TURNER ROAD,
BANDRA WEST, MUMBAI - 400050,
MAHARASHTRA.

ALSO AT
801, 8TH FLOOR, ESPERENZA,
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BANDRA (WEST), MUMBAI-400 050
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...RESPONDENT

(BY SRI. PRANAV VISHWANATH., ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO APPOINT SRI. J.P.N. DESAI (RETIRED JUDGE, HONBLE HIGH COURT OF KARNATAKA) OR ANY OTHER SUITABLE PERSON AS THE SOLE ARBITRATOR TO ADJUDICATE THE DISPUTES BETWEEN THE PETITIONER AND THE RESPONDENT ARISING OUT OF THE DEED OF RECONSTITUTION OF PARTNERSHIP DATED 17.08.2013 PERTAINING TO THE PARTNERSHIP FIRM M/S. SRI. RAKSHA BIOTECH (AS PER CLAUSE 18 OF THE AGREEMENT, PRODUCED AT ANNEXURE B) AND ETC.

THESE CMP'S, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The Petitioners in CMP No.458/2025 are before this

Court seeking for the following reliefs;

- i. *Appoint Sri J.P.N. Desai (retired Judge, Hon'ble High Court of Karnataka) or any other suitable person as the sole Arbitrator to adjudicate the disputes between the petitioner and the Respondent arising out of the Deed of Partnership dated 18.08.2000 pertaining to the partnership firm M/s Sri. Raksha Fragrances; (as per clause 18 of the Agreement produced at Annexure-A)*
- ii. *Grant such other relief/s that this Hon'ble Court deems fit in the interests of justice and equity.*



2. The petitioner in CMP No.460/2025 is before this Court seeking for the following reliefs;

- i. *Appoint Sri J.P.N. Desai (retired Judge, Hon'ble High Court of Karnataka) or any other suitable person as the sole Arbitrator to adjudicate the disputes between the petitioner and the Respondent arising out of the Deed of reconstitution of Partnership dated 17.09.2013 pertaining to the partnership firm M/s Sri. Raksha Biotech; (as per clause 18 of the Agreement produced at Annexure-B)*
- ii. *Grant such other relief/s that this Hon'ble Court deems fit in the interests of justice and equity.*

3. The Petitioners and the Respondent had entered into a deed of Partnership which is governed by an Arbitration Clause in terms of Clause 18 thereof, which is reproduced hereunder for easy reference:

18. Disputes, if any, arising out of the interpretation of any of the clause or clauses of this deed, any of matter or matters relating directly or indirectly to the partnership business shall be referred to arbitration and the provision of the Arbitration & Reconciliation Act, 1996 shall apply accordingly.

4. Certain disputes having arisen between the Petitioners and the Respondent, the Petitioners had issued a notice on 22.07.2025 invoking the Arbitration Clause, nominating its Arbitrator and



calling upon the Respondent to concur with such appointment.

5. Notice having been delivered on 24.07.2025, a response was issued on 01.08.2025 contending that an application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '**A&C Act**' for short), had been filed before the Hon'ble High Court of Bombay and that the Respondent was not agreeable to the nomination of the Arbitrator as mentioned in the notice of the Petitioners. The Respondent reserved the right to submit a detailed reply to the said notice; however, no detailed reply was submitted. It is in that background that the Petitioners have approached this Court for the appointment of an Arbitrator.
6. Notice having been issued, the Respondent has entered an appearance and filed his statement of objections.



7. The contention of Sri.Pranav Vishwanath, learned counsel for the Respondent, is that:

7.1. The Respondent having filed an application under Section 9 of the A&C Act before the Hon'ble High Court of Bombay, it is only the Hon'ble High Court of Bombay which would have jurisdiction over all subsequent matters arising out of Part I of the A&C Act. In this regard, he refers to Section 42 of the A&C Act, which is reproduced hereunder for easy reference:

42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

7.2. By referring to Section 42 of the A&C Act, he submits that, in respect of any arbitration agreement, if any application under Part-I



has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement, the arbitral proceedings shall be made in that Court and in no other Court.

7.3. He substantiates his submission by contending that in the Arbitration Clause, in the present matter, there is no seat which has been identified, and as such, the parties would be free to file any application under Section 9 of the A&C Act in any Court having jurisdiction over even a part of the cause of action. The Hon'ble High Court of Bombay having jurisdiction over such part of the cause of action, an application under said provision has been made by the Respondent before the Hon'ble High Court of Bombay and as such, the Hon'ble High Court of Bombay



being seized of the matter under Section 9 of the A&C Act, any further proceedings under Part-I, which includes that under Section 11 of the A& C Act, would have to be filed before the Hon'ble High Court of Bombay, which would have sole and exclusive jurisdiction over the subject matter.

7.4. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of **BGS SGS SOMA JV Vs. NHPC Limited**¹, more particularly, para 59 thereof, which is reproduced hereunder for easy reference:

59. Equally incorrect is the finding in Antrix Corporation Ltd. (supra) that Section 42 of the Arbitration Act, 1996 would be rendered ineffective and useless. Section 42 is meant to avoid conflicts in jurisdiction of Courts by placing the supervisory jurisdiction over all arbitral proceedings in connection with the arbitration in one Court exclusively. This is why the section begins with a non-obstante clause, and then goes on to state "...where with respect to an arbitration agreement any application under this Part has been made in a Court..." It is obvious that the application made under this

¹2020(4) SCC 234



part to a Court must be a Court which has jurisdiction to decide such application. The subsequent holdings of this Court, that where a seat is designated in an agreement, the Courts of the seat alone have jurisdiction, would require that all applications under Part I be made only in the Court where the seat is located, and that Court alone then has jurisdiction over the arbitral proceedings and all subsequent applications arising out of the arbitral agreement. So read, Section 42 is not rendered ineffective or useless. Also, where it is found on the facts of a particular case that either no "seat" is designated by agreement, or the so called "seat" is only a convenient "venue", then there may be several Courts where a part of the cause of action arises that may have jurisdiction. Again, an application under Section 9 of the Arbitration Act, 1996 may be preferred before a court in which part of the cause of action arises in a case where parties have not agreed on the "seat" of arbitration, and before such "seat" may have been determined, on the facts of a particular case, by the Arbitral Tribunal under Section 20(2) of the Arbitration Act, 1996. In both these situations, the earliest application having been made to a Court in which a part of the cause of action arises would then be the exclusive Court under Section 42, which would have control over the arbitral proceedings. For all these reasons, the law stated by the Bombay and Delhi High Courts in this regard is incorrect and is overruled.

7.5. By referring to **NHPC's** judgment, he submits that wherever the earliest application had been made in a Court, in which a part of cause of action arises, would then be the



exclusive Court under Section 42 of the A&C Act, which would have control over the arbitral proceedings and on that basis, he submits that it would only be the Hon'ble High Court of Bombay which will have control over the arbitral proceedings. Hence, in the present matter, the present application under Section 11 of the A&C Act, is not maintainable.

8. The contention of learned counsel for the Petitioners is that:

8.1. Reliance is placed on the decision in the case of ***Rodemadan India Ltd., Vs. International Trade Expo Centre Ltd²***, more particularly, paras 16, 17 and 25 thereon, which are reproduced hereunder for easy reference:

² (2006) 11 SCC 651



16. *The petitioner, however, has emphatically denied that any resolution was passed in the board meeting of 14-9-2004, as alleged, by which the Management Agreement has been repudiated or rendered ineffective. One Roger Shashoua, who is a major shareholder and director of the petitioner Company, is also a major shareholder and director of the respondent Company, had personal knowledge as to the affairs of the respondent Company and, therefore, the petitioner is aware that no such extraordinary general meeting of the respondent Company was held on 14-9-2004 at all, as alleged. However, in support of his stand, Mr Ranjit Kumar drew my attention to the copies of certain resolutions purporting to be the extract of the resolution passed on 14-9-2004 at 11:00 a.m. in an extraordinary general meeting held at business centre, Hotel Park Royal Intercontinental, Nehru Place, New Delhi. This resolution is vehemently disputed by Mr Nariman, appearing for the petitioner Company.*

17. *It is not possible to accept the correctness of the disputed documents or to proceed on the footing that there was such a resolution passed in an extraordinary general meeting by which the Management Agreement of 29-10-2003 was not approved and, therefore, resolved to be treated as null and void. Mr Ranjit Kumar then suggested that he be given an opportunity to lead evidence, including oral evidence to substantiate his stand. Exercising the discretion granted to me in Patel Engg. [(2005) 8 SCC 618] , I decline Mr Ranjit Kumar's request as I do not believe that oral evidence is necessary to determine the present issue. I decline to do so for even if the power under Section 11(6) be judicial in the sense of requiring a judicial determination by the designate of the Chief Justice, it surely does not render the designate of the Chief Justice into a trial court.*

25. *Finally, it is contended that as recourse had been taken by the petitioner under Section 9 of*



the Act to obtain interim relief by moving the Delhi High Court by their original petition OMP No. 98 of 2005 dated 24-3-2005, by reason of Section 42 of the Act that Court alone could have jurisdiction upon the Arbitral Tribunal. In my view, this contention has no merit as I have held earlier, neither the Chief Justice nor his designate under Section 11(6) is a "court" as contemplated under the Act. Section 2(1)(e) of the Act defines the expression "court". The bar of jurisdiction under Section 42 is only intended to apply to a "court" as defined in Section 2(1)(e). The objection, therefore, has no merit and is rejected.

8.2. By relying on **Rodemadan's** case, he submits that though it is the High Court or the Hon'ble Supreme Court which would decide an application filed under Section 11 of the A&C Act, the said Court would not come within the meaning and purview of Section 2(1)(e) of the A&C Act, inasmuch as it is not a Principal Civil Court having jurisdiction over the same.

8.3. Section 2(1)(e) of the A&C Act is reproduced hereunder for easy reference:

2(1)(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;

8.4. His submission is that for a Court to come within the definition of Section 2(1)(e) of the A&C Act, it is the Principal Civil Court of original jurisdiction and District and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions, forming subject matter of the arbitration, if the same had been the subject matter of suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court or any Court of small causes. He, therefore, submits that the Court



under Section 11 of the A&C Act would not have jurisdiction to decide the questions forming the subject matter of the arbitration. The Court, being either the Chief Justice of India or his designate or Chief Justice of a particular High Court and his designate, would not have the jurisdiction to decide the subject matter and as such, would not come within the purview of Section 2(1)(e) of the A&C Act. As such, the use of the word 'Court' in Section 42 of the A&C Act can only refer to a Court within the meaning of Section 2(1)(e) of the A&C Act and not otherwise. As such, Section 11 Court would not come within the purview of Section 42 of the A&C Act.

8.5. Lastly, he submits that even the Petitioners do not subject themselves to the jurisdiction of the Bombay High Court. The proceedings filed under Section 9 of the A&C Act have



been filed subsequent to the invocation of the Arbitration Clause by issuance of a notice under Section 21 of the A&C Act and therefore, the very filing of Section 9 proceedings being *mala fide*, the jurisdiction would be disputed in the objections to be filed under Section 9 proceedings.

9. Heard Sri.Vivek B.R., learned counsel for the petitioners and Sri.Asim Malik for Sri.Pranav Vishwanath, learned counsel for Respondent. Perused paper.
10. The points that would arise for consideration of this Court are:
 - i. **Whether Section 11 Court, that is, the Chief Justice of India or his designate, Chief Justice of a High Court and or his designate, could also be covered under Section 42 of the A&C Act, 1996?**
 - ii. **Whether the filing of a proceeding under Section 9 of the Arbitration and Conciliation Act, 1996 would require a subsequent proceeding under Section 11**



to be filed in the very same Court in which Section 9 proceedings had been filed?

- iii. **In the present case, would the present petition under Section 11 is maintainable?**
- iv. **What order?**

11. I answer the above points as under

12. **ANSWER TO POINT NUMBER 1: Whether Section 11 Court, that is, the Chief Justice of India or his designate, Chief Justice of a High Court and or his designate, could also be covered under Section 42 of the ANC Act, 1996?**

12.1. Section 42 and Section 2(1)(e) have been reproduced hereinabove. The judgments of the Hon'ble Apex Court in **Rodemadan's** case, as also in **NHPC's** case have been reproduced hereinabove. What would have to be taken note of by this Court is that both the judgments, being that of a Full Bench of the Hon'ble Apex Court, were authored by the very same judge. The scope and ambit of both the judgments were different, inasmuch as the decision in **NHPC Ltd.'s** case was one dealing with the



seat of arbitration, and while considering the same, the aspect of Section 42 was considered by the Full Bench with reference to an application which had been filed under Part-I. In that view of the matter, in that decision, the discussion by the Hon'ble Apex Court and the finding was restricted as regard to Court which would maintain exclusive control over the further proceedings under the A&C Act, 1996, and the Hon'ble Apex Court came to a conclusion that once an application under Section 9 had been filed, it is that Court alone which would have jurisdiction over the further proceedings under the A&C Act.

12.2. Juxtaposed with regard to the finding in **State of West Bengal and Others -v- Associated Contractors³** case, the subject matter of the proceedings in **Associated Contractors'** case

³ (2015)1 SCC 32



was one relating to the interplay between Section 2(1)(e), 8, 9, 11 and 42 of the A&C Act, 1996.

12.3. The question which had been referred to the Full Bench is as follows:

“Whether the Supreme Court is a “Court” within the meaning of Section 2(1)(e) of the Act ?

Whether Section 42 applies after the arbitral proceedings come to an end?”

12.4. The Hon'ble Apex Court while dealing with the same, referred to **SBP and Co. Vs. Patel Engineering Ltd. And another⁴**, more particularly para 13 and 18 thereof, which are reproduced hereunder for easy reference:

13. It is common ground that the Act has adopted the UNCITRAL Model Law on International Commercial Arbitration, but at the same time it has made some departures from the Model Law. Section 11 is in the place of Article 11 of the Model Law. The Model Law provides for the making of a request under Article 11 to “the court or other authority specified in Article 6 to take the necessary measure”. The words in Section 11 of the Act are “the Chief Justice or the person or institution

⁴ (2005) 8 SCC 618



designated by him". The fact that instead of the court, the powers are conferred on the Chief Justice, has to be appreciated in the context of the statute. "Court" is defined in the Act to be the Principal Civil Court of original jurisdiction of the district and includes the High Court in exercise of its ordinary original civil jurisdiction. The Principal Civil Court of original jurisdiction is normally the District Court. The High Courts in India exercising ordinary original civil jurisdiction are not too many. So in most of the States the court concerned would be the District Court. Obviously, Parliament did not want to confer the power on the District Court, to entertain a request for appointing an arbitrator or for constituting an Arbitral Tribunal under Section 11 of the Act. It has to be noted that under Section 9 of the Act, the District Court or the High Court exercising original jurisdiction, has the power to make interim orders prior to, during or even post-arbitration. It has also the power to entertain a challenge to the award that may ultimately be made. 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 the 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 negated 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.

14. *Normally, when a power is conferred on the highest judicial authority who normally performs judicial functions and is the head of the judiciary of the State or of the country, it is difficult to assume that the power is*



conferred on the Chief Justice as persona designata. Under Section 11(6), the Chief Justice is given a power to designate another to perform the functions under that provision. That power has generally been designated to a Judge of the High Court or of the Supreme Court respectively. Persona designata, according to Black's Law Dictionary, means "a person considered as an individual rather than as a member of a class". When the power is conferred on the Chief Justices of the High Courts, the power is conferred on a class and not considering that person as an individual. In Central Talkies Ltd. v. Dwarka Prasad [(1961) 3 SCR 495 : AIR 1961 SC 606] while considering the status in which the power was to be exercised by the District Magistrate under the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 this Court held: (SCR pp. 500-01)

"A persona designata is 'a person who is pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character'. (See Osborne's Concise Law Dictionary, 4th Edn., p. 253.) In the words of Schwabe, C.J., in Kokku Parthasaradhi Naidu Garu v. Chintlachervu Koteswara Rao Garu [ILR (1924) 47 Mad 369 : AIR 1924 Mad 561] , personae designatae are, 'persons selected to act in their private capacity and not in their capacity as Judges'. The same consideration applies also to a well-known officer like the District Magistrate named by virtue of his office, and whose powers the Additional District Magistrate can also exercise and who can create other officers equal to himself for the purposes of the Eviction Act."

In Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker [(1995) 5 SCC 5] this Court after quoting the above passage from Central Talkies Ltd. v. Dwarka Prasad [(1961) 3 SCR 495 : AIR 1961 SC 606] applied the test to come to the conclusion that when Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965 constituted the District Judge as an Appellate Authority under that Act, it was a case where the authority was being conferred on the District Judges who constituted a class and, therefore, the Appellate Authority could not be considered to be persona designata. What can be



gathered from P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn., 2005, is that "persona designata" is a person selected to act in his private capacity and not in his capacity as a judge. He is a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character. It is also seen that one of the tests to be applied is to see whether the person concerned could exercise the power only so long as he holds office or could exercise the power even subsequently. Obviously, on ceasing to be a Chief Justice, the person referred to in Section 11(6) of the Act could not exercise the power. Thus, it is clear that the power is conferred on the Chief Justice under Section 11(6) of the Act not as persona designata.

15. *Normally a persona designata cannot delegate his power to another. Here, the Chief Justice of the High Court or the Chief Justice of India is given the power to designate another to exercise the power conferred on him under Section 11(6) of the Act. If the power is a judicial power, it is obvious that the power could be conferred only on a judicial authority and in this case, logically on another Judge of the High Court or on a Judge of the Supreme Court. It is logical to consider the conferment of the power on the Chief Justice of the High Court and on the Chief Justice of India as Presiding Judges of the High Court and the Supreme Court and the exercise of the power so conferred, is exercise of judicial power/authority as Presiding Judges of the respective courts. Replacing of the word "court" in the Model Law with the expression "Chief Justice" in the Act, appears to be more for excluding the exercise of power by the District Court and by the court as an entity leading to obvious consequences in the matter of the procedure to be followed and the rights of appeal governing the matter. The departure from Article 11 of the Model Law and the use of the expression "Chief Justice" cannot be taken to exclude the theory of its being an adjudication under Section 11 of the Act by a judicial authority.*

16. *We may at this stage notice the complementary nature of Sections 8 and 11. Where there is an arbitration agreement between the parties and one of*



the parties, ignoring it, files an action before a judicial authority and the other party raises the objection that there is an arbitration clause, the judicial authority has to consider that objection and if the objection is found sustainable to refer the parties to arbitration. The expression used in this section is "shall" and this Court in P. Anand Gajapathi Raju v. P.V.G. Raju [(2000) 4 SCC 539] and in Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums [(2003) 6 SCC 503] has held that the judicial authority is bound to refer the matter to arbitration once the existence of a valid arbitration clause is established. Thus, the judicial authority is entitled to, has to and is bound to decide the jurisdictional issue raised before it, before making or declining to make a reference. Section 11 only covers another situation. Where one of the parties has refused to act in terms of the arbitration agreement, the other party moves the Chief Justice under Section 11 of the Act to have an arbitrator appointed and the first party objects, it would be incongruous to hold that the Chief Justice cannot decide the question of his own jurisdiction to appoint an arbitrator when in a parallel situation, the judicial authority can do so. Obviously, the highest judicial authority has to decide that question and his competence to decide cannot be questioned. If it is held that the Chief Justice has no right or duty to decide the question or cannot decide the question, it will lead to an anomalous situation in that a judicial authority under Section 8 can decide, but not a Chief Justice under Section 11, though the nature of the objection is the same and the consequence of accepting the objection in one case and rejecting it in the other, is also the same, namely, sending the parties to arbitration. The interpretation of Section 11 that we have adopted would not give room for such an anomaly.

17. *Section 11(6) does enable the Chief Justice to designate any person or institution to take the necessary measures on an application made under Section 11(6) of the Act. This power to designate recognised in the Chief Justice, has led to an argument that a judicial decision-making is negated, in taking the necessary measures on an application, under Section 11(6) of the Act. It is pointed out that the Chief Justice may designate even an institution like the*



Chamber of Commerce or the Institute of Engineers and they are not judicial authorities. Here, we find substance in the argument of Mr F.S. Nariman, learned Senior Counsel that in the context of Section 5 of the Act excluding judicial intervention except as provided in the Act, the designation contemplated is not for the purpose of deciding the preliminary facts justifying the exercise of power to appoint an arbitrator, but only for the purpose of nominating to the Chief Justice a suitable person to be appointed as arbitrator, especially, in the context of Section 11(8) of the Act. One of the objects of conferring power on the highest judicial authority in the State or in the country for constituting the Arbitral Tribunal, is to ensure credibility in the entire arbitration process and looked at from that point of view, it is difficult to accept the contention that the Chief Justice could designate a non-judicial body like the Chamber of Commerce to decide on the existence of an arbitration agreement and so on, which are decisions, normally, judicial or quasi-judicial in nature. Where a Chief Justice designates not a Judge, but another person or an institution to nominate an Arbitral Tribunal, that can be done only after questions as to jurisdiction, existence of the agreement and the like, are decided first by him or his nominee Judge and what is left to be done is only to nominate the members for constituting the Arbitral Tribunal. Looking at the scheme of the Act as a whole and the object with which it was enacted, replacing the Arbitration Act of 1940, it seems to be proper to view the conferment of power on the Chief Justice as the conferment of a judicial power to decide on the existence of the conditions justifying the constitution of an Arbitral Tribunal. The departure from the UNCITRAL Model regarding the conferment of the power cannot be said to be conclusive or significant in the circumstances. Observations of this Court in paras 389 and 391 in Supreme Court Advocates on Record Assn. v. Union of India [(1993) 4 SCC 441] (SCC at p. 668) support the argument that the expression "Chief Justice" is used in the sense of collectivity of Judges of the Supreme Court and the High Courts respectively.

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.

12.5. The Hon'ble Apex Court in **SBP's** case, seven Judge Bench had categorically come to a conclusion 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 the Supreme Court, as the case may be, or their delegates. Despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively, the Hon'ble Apex Court came to a conclusion that 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 a court as defined by Section 2(1)(e).

12.6. The Hon'ble Apex Court further went on to say in **Associated Contractor's** case at Para 17 that under Section 11(12)(b), an order passed will only be by such Chief Justice within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate, but would not be a court under Section 2(1)(e) for the purpose of Section 42. In that view of the matter, it is clear that the Full Bench of the Hon'ble Apex Court has come to a categorical conclusion that Section 42 of the A&C Act, 1996 would not apply to proceedings under Section 11 of the A&C Act, 1996.



12.7. **Hence, I answer point No.1 by holding that Section 11 Court, that is, the Chief Justice of India or his designate, Chief Justice of a High Court and or his designate, could not be covered under Section 42 of the A&C Act, 1996.**

13. **ANSWER TO POINTS No.2 AND 3: Whether the filing of a proceeding under Section 9 of the A&C Act, 1996, would require a subsequent proceeding under Section 11 to be filed in the very same Court in which Section 9 proceedings had been filed?**

AND

In the present case, would the present petition under Section 11 be maintainable?

13.1. In view of my answer to point No.1 that Section 42 will not apply to a proceeding under Section 11, the filing of Section 9 proceedings before any other court will have no relevance or effect on an application filed under Section 11 for the appointment of an arbitrator. What would have to be seen is whether the said application was



filed prior to any other application under Section 11 filed by the other party.

13.2. In the present case, by invocation of the arbitration clause by the petitioner having been made on 22.07.2025, the respondents have filed an application under Section 9 before the Hon'ble Bombay High Court on 01.08.2025, and it is subsequent thereto that Section 11 proceedings was filed before this Court on 07.08.2025. The proceedings under Section 11 were filed by the Respondent on 30.09.2025, which is subsequent to the Section 11 proceedings filed before this Court.

13.3. In that view of the matter, the present petition being prior in point of time, I am of the considered opinion that the subsequent proceedings under Section 11 filed before the Hon'ble Bombay High Court will not come in the way of this Court exercising jurisdiction over



the present matter, which is prior in point of time.

13.4. What would also have to be considered is that both the application of Section 9 and Section 11 were filed by a respondent much after the invocation of the arbitration clause by the petitioner, and it is only in the reply to the invocation that the Respondent had indicated that they had filed an application under Section 9 on 01.08.2025.

13.5. I am, therefore, of the considered view that the filing of the Section 9 proceedings before the Hon'ble Bombay High Court was with a mischievous intent and motive to try and raise jurisdiction in the Bombay High Court, knowing fully well that the petitioner had invoked the arbitration clause and issued a notice prior to the filing of Section 9 proceedings by the Respondent. A party to a litigation cannot be



permitted to make use of its own action to confer a jurisdiction on a particular court, more so when, in this particular case, I have come to a conclusion that the said attempt is a mischievous one.

13.6. In that view of the matter, I answer points No.2 and 3 by holding that the filing of Section 9 proceedings before the Hon'ble Bombay High Court will not take away the jurisdiction of this Court to consider the application under Section 11 filed before this Court subsequent to the prior invocation of the arbitration clause by the petitioner.

14. **ANSWER TO POINT No.3: What Order?**

14.1. In view of all the above, I pass the following:

ORDER

- i. Both the Civil Miscellaneous Petitions are allowed.
- ii. Both matters are referred to a Sole Arbitrator. Hon'ble Justice Ram Mohan



NC: 2025:KHC:42251
CMP No. 458 of 2025 c/w
CMP No. 460 of 2025

Reddy, Former Judge of this Court, is appointed as a Sole Arbitrator to decide disputes in both matters under the aegis of the Arbitration Centre attached to this Court.

iii. The Registry is directed to forward a copy of this order to the Director, Arbitration and Conciliation Centre, for doing the needful.

iv. Since the order is passed in the presence of both the counsel, they shall appear before the Director, Arbitration and Conciliation Centre without the requirement of any notice **on 12.11.2025 at 2.30 p.m.**

SD/-
(SURAJ GOVINDARAJ)
JUDGE

KTY, LN
List No.: 1 Sl No.: 97