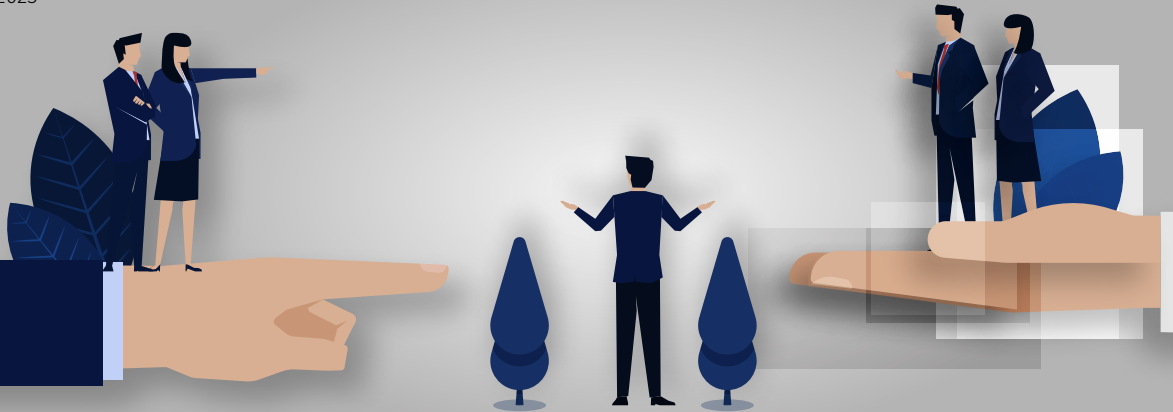


April 2023



High Court of Delhi reaffirms that res judicata applies to judgments passed under Section 11(6A) of the Arbitration and Conciliation Act, 1996¹

Brief Facts

Petitions had been filed under Section 11(6A) of the Arbitration and Conciliation Act, 1996 (“Act”) seeking appointment of an arbitrator in relation to disputes that had arisen between the Petitioner (i.e., the insured company) and the Respondent (i.e., the insurer). The Petitioner availed the Respondent’s Standard Fire and Special Peril policies for the Petitioner’s factory in June and October 2013. In September and October 2013, two fires broke out at the Petitioner’s factory. Surveyors were appointed by the Respondent and eventually the claims for both the fires were allegedly settled for INR 22 million and INR 28 million approximately, when the Petitioner signed Discharge Vouchers in favour of the Respondent.

After signing the Discharge Vouchers, the Petitioner claimed that they had been signed due to fraud, coercion and undue influence. The Respondent, on the other hand, contended that the settlement was accepted without any demur or protest and was binding on the Petitioner.

The Petitioner approached the High Court of Delhi for appointment of an arbitrator under Section 11 of the Act. The High Court allowed the petition and appointed an arbitrator. The Respondent preferred an appeal before the Supreme Court, which set aside the appointment on the ground that no arbitrable dispute existed between the parties in view of the settlement *vide* the Discharge Vouchers executed between the parties, which in turn demonstrated accord and satisfaction (“**Antique Art Export Judgment**”).² The Petitioner preferred a review petition against the aforesaid dismissal, which too was dismissed by the Supreme Court.³ Thereafter, the Supreme Court, in **Mayavati Trading Pvt. Ltd. v. Pradyut Deb Burman**⁴ (“**Mayavati Trading**”) overruled the Antique Art Export Judgment, holding that after the 2015 Amendment to the Act, the court’s power under Section 11(6A) is confined to examining whether a valid arbitration agreement exists. Accordingly, the court cannot go into whether any accord and satisfaction has taken place.

In view of the aforementioned findings of the Supreme Court in *Mayavati Trading (supra)*, the Petitioner, in the present case, filed fresh petitions under Section 11 for appointment of an arbitrator before the High Court of Delhi.

The Petitioner *inter alia* contended that:

- The Respondent as well as the surveyor and investigator appointed by the Respondent delayed the processing of the Petitioner’s claims.
- The Respondent forced the Petitioner to sign a Discharge Voucher for an undervalued claim by using unfair coercive bargaining power in its favour.
- The Supreme Court overruled the Antique Art Export Judgment on the issue of whether the signing of discharge vouchers makes the dispute non-arbitrable.
- Under Section 11(6A), the court only needs to examine whether an arbitration agreement exists.
- The judicial process under Section 11 for appointment of an arbitrator is not justiciable, even though the exercise of power is judicial. The forum under Section 11(6) is not a court under Section 2(1)(e) of the Act. Hence, there is no decision on merits while appointing an arbitrator. Accordingly, the bar of *res judicata* would not apply. In any case, there can be no *res judicata* on an erroneous decision and on a judgment passed with inherent lack of jurisdiction.
- Overruled decisions have no force of law.

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The Respondent on the other hand contended that:

- The Petitioner had signed the Discharge Voucher without any undue influence or coercion and was bound by it.
- Mere overruling of the principles on which the earlier judgment was passed by a subsequent judgment of a higher forum will not have the effect of uprooting the final adjudication between the parties.

Issue

Whether the petitions under Section 11 of the Act were barred by *res judicata*?

Judgment

The High Court held that even though the Antique Art Export Judgment had been overruled, the dispute *inter se* the parties with respect to the purported dispute arising out of the Discharge Vouchers executed by the Petitioner had attained finality. Relying on **Anil, S/o Jagannath Rana & Ors. v. Rajendra. S/o Radhakrishan Rana and Ors.**,⁵ the Court held that *res judicata* applies to proceedings under Section 11 of the Act. The Court also relied on **SBP and Co. v. Patel Engg. Ltd.**⁶ to hold that even though the High Court and Supreme Court are not “Court” within the meaning of Section 2(1)(e) of the Act in a petition under Section 11(6) of the Act, the exercise of the power under Section 11(6) by the High Court or Supreme Court is a judicial function. Accordingly, while exercising its judicial function, the High Court can decide the issue on maintainability, including whether the petition is barred by *res judicata*.

The Antique Art Export Judgment was overruled by the Supreme Court in **Mayavati Trading** (*supra*) on the ground that it did not lay down the correct law. The Supreme Court, while overruling the Antique Art Export Judgment in **Mayavati Trading**, laid down the correct law. However, the High Court held that the Antique Art Export Judgment would not be a nullity and accordingly, the judgment was binding on the parties.

Analysis

The High Court’s decision reaffirms that *res judicata* is applicable to proceedings under Section 11(6A) of the Act. It further clarifies that merely because a judgment determining the rights *inter se* parties is overruled in another judgment, the same would not give the parties the right to re-agitate the dispute.

Endnotes

- 1 Authored by Aditya Mukherjee, Partner and Aditya Thyagarajan, Associate; *Antique Art Export Pvt. Ltd. v. United India Insurance Company Ltd.*, Arb. P. No. 163/2022 and Arb. P. No. 164/2022, High Court of Delhi, 2023 SCC OnLine Del 1091, judgment dated 22 February 2023.
Coram: V. Kameswar Rao, J.
- 2 *United India Insurance Company Limited v. Antique Art Exports Pvt Ltd.*, Civil Appeal Nos. 3284/2019 and 3285/2019.
- 3 *Antique Arts Exports Pvt. Ltd. v. United India Insurance Co. Ltd.*, Review Petition No(s). 1406/07 of 2019.
- 4 Civil Appeal No. 7023 of 2019.
- 5 (2015) 2 SCC 583.
- 6 (2005) 8 SCC 618.

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