

A Fresh Section 11 Petition Is Not Maintainable After Termination of Arbitral Proceedings for Non-Payment of Fees: Supreme Court of India

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Introduction

In a significant decision on the architecture of the Arbitration and Conciliation Act, 1996 ("**the Act**"), the Supreme Court has examined the legal consequences of termination of arbitral proceedings on account of non-payment of arbitral fees and the remedies available to an aggrieved party. In ***Harshbir Singh Pannu vs. Jaswinder Singh*** [2025 INSC 1400], the Apex Court clarified the distinction between termination of arbitral proceedings and termination of the mandate of the arbitrator, and held that a fresh application under Section 11 of the Act is not maintainable once proceedings have been terminated under Section 38.

Facts

The dispute arose out of a partnership arrangement between the parties for running a healthcare and hospitality business. The partnership deeds contained an arbitration clause providing for resolution of disputes through arbitration. Following disputes relating to capital contribution and management, the appellants issued a notice invoking arbitration and, in the absence of consensus, approached the Punjab and Haryana High Court under Section 11 of the Act.

By an order dated 2 March 2020, the High Court appointed a sole arbitrator and directed that the fees be determined in accordance with the Fourth Schedule to the Act or as mutually agreed. During the arbitral proceedings, substantial claims and counterclaims were filed, resulting in the arbitrator revising the fees payable in terms of the Fourth Schedule.

The appellants expressed their inability to pay their share of the revised arbitral fees. The arbitrator, invoking Section 38 of the Act, called upon the respondent to indicate whether he would pay the appellants' share. Upon the respondent declining to do so, and both parties failing to deposit the requisite fees, the arbitrator terminated the arbitral proceedings by an order dated 28 March 2022.

The appellants challenged this order before the High Court under Article 227 of the Constitution of India. The High Court dismissed the challenge, holding that the arbitrator was empowered to terminate the proceedings under Section 38 of the Act and that a fresh Section 11 petition was not maintainable. Aggrieved, the appellants approached the Supreme Court.

Arguments

The appellants contended that termination of arbitral proceedings for non-payment of fees could only be traced to Section 32(2)(c) of the Act and that such termination automatically resulted in termination of the arbitrator's mandate. On this footing, it was argued that the appropriate remedy was the appointment of a substitute arbitrator under Section 15 read with Section 11 of the Act.

It was further submitted that, in view of the Supreme Court's decision in **ONGC Ltd. v. Afcons Gunanusa JV** [(2024) 4 SCC 481], an arbitral tribunal cannot unilaterally determine or enhance its fees without the consent of the parties. Consequently, termination of proceedings for non-payment of such fees was asserted to be legally unsustainable.

The respondent supported the reasoning of the High Court, contending that the termination was squarely within the scope of Section 38 of the Act and that the appellants had pursued an incorrect remedy by seeking appointment of a fresh arbitrator instead of challenging the termination in the manner contemplated by law.

Decision of the Supreme Court

The Supreme Court undertook an extensive analysis of the statutory scheme governing termination of arbitral proceedings, examining Sections 25, 30, 32 and 38 of the Act. The Apex Court held that the Act recognises multiple situations in which arbitral proceedings may be terminated, and that termination under Section 38 on account of non-payment of deposits or fees is a distinct statutory mechanism.

The Supreme Court rejected the contention that every termination of proceedings must necessarily be traced to Section 32(2)(c) of the Act. It held that Section 38 expressly empowers the arbitral tribunal to suspend or terminate proceedings where parties fail to pay the requisite deposits, and such termination cannot be equated, as a matter of course, with termination of the arbitrator's mandate under Sections 14 or 15.

Importantly, the Court held that once arbitral proceedings have been terminated under Section 38 of the Act, a fresh application under Section 11 for appointment of an arbitrator is not maintainable. The appropriate remedies available to an aggrieved party are either to seek recall of the termination order before the arbitral tribunal, where permissible, or to challenge the legality of such termination in accordance with the remedies recognised under the Act.

On the facts of the case, the Supreme Court found no infirmity in the High Court's refusal to entertain a second Section 11 petition under the Arbitration Act and upheld the view that the appellants had pursued an incorrect procedural course.

Comment

The decision brings much-needed clarity to an area that has seen inconsistent approaches across Courts. By drawing a clear line between termination of arbitral proceedings and termination of the arbitrator's mandate, the Supreme Court has reinforced procedural discipline under the Act. Parties who default in payment of arbitral fees cannot seek to revive arbitration indirectly through a fresh Section 11 petition. The ruling highlights that remedies must align with the nature of the termination and the statutory source of the arbitrator's power, and serves as a cautionary note on the consequences of non-payment of arbitral costs.

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