

## Fresh Section 11 Application On The Same Cause Of Action Not Maintainable After Abandonment Of Earlier Arbitration: Supreme Court

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### Introduction

In *Rajiv Gaddh v. Subodh Parkash* [2026 INSC 302], the Supreme Court considered whether a party that had abandoned earlier arbitral proceedings could later file a fresh application under Section 11 of the Arbitration and Conciliation Act, 1996 on the same cause of action.

The Supreme Court held that the subsequent Section 11 application was not maintainable. The Supreme Court found that the respondent had earlier invoked arbitration, participated in the proceedings, filed claims, and thereafter expressly refused to participate further. Such conduct amounted to abandonment of the arbitral proceedings.

The judgment clarifies that although the scope of Section 11 is generally confined to examining the existence of an arbitration agreement, the principles underlying Order XXIII Rule 1 of the Code of Civil Procedure, 1908 apply to Section 11 proceedings. A party that abandons earlier proceedings cannot restart arbitration on the same cause of action without liberty.

In this article, we navigate through the facts of the case and the findings rendered by the Supreme Court.

### Brief Facts

The dispute arose out of agreements executed between the parties in relation to certain joint business arrangements, including rights concerning land at Hoshiarpur, Punjab. The agreements contained an arbitration clause.

The respondent invoked arbitration in 2015 and filed an application under Section 11 of the Arbitration Act. An arbitral tribunal was thereafter constituted. Both parties filed competing claims before the arbitral tribunal.

During the arbitral proceedings, the respondent ceased participation. By communication dated 29 August 2019, the respondent refused to accept the authority of the arbitral tribunal and stated that he would not participate further.

An arbitral award was eventually passed in 2020. The respondent challenged the award under Section 34 of the Arbitration Act.

Thereafter, in separate proceedings concerning the validity of the auction of the Hoshiarpur land, the Supreme Court upheld the auction. Relying on this subsequent judgment, the respondent issued a fresh notice invoking arbitration and filed a fresh application under Section 11 of the Arbitration Act.

The High Court allowed the second Section 11 application, holding that the issue of res judicata need not be examined at the Section 11 stage and could be left to the arbitral tribunal.

Aggrieved by the order of the High Court, the appellant approached the Supreme Court.

## Arguments from Both Sides

The appellant contended that the respondent had abandoned the earlier arbitral proceedings and was therefore barred from seeking a fresh appointment of an arbitrator on the same cause of action.

It was submitted that the respondent had invoked arbitration, obtained constitution of the arbitral tribunal, filed claims, participated in the proceedings, and thereafter refused to participate further. According to the appellant, such conduct clearly amounted to abandonment.

The appellant relied on the principles underlying Order XXIII Rule 1 of the CPC. It was submitted that where a party abandons a proceeding or withdraws it without liberty, a fresh proceeding on the same cause of action is barred.

Reliance was placed on ***HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad*** [2024 SCC OnLine SC 3190], where the Supreme Court held that a fresh application under Section 11 is not maintainable where an earlier Section 11 application was withdrawn without liberty to file a fresh application on the same cause of action.

The respondent, on the other hand, contended that the issue of res judicata does not arise in a Section 11 proceeding and must be left to the arbitral tribunal. Reliance was placed on ***Indian Oil Corporation Limited v. SPS Engineering Limited*** [(2011) 3 SCC 507].

The respondent further submitted that a fresh cause of action had arisen after the Supreme Court upheld the auction of the Hoshiarpur land in the separate proceedings.

## Findings of the Supreme Court

The Supreme Court allowed the appeal and set aside the order passed by the High Court.

The Supreme Court first reiterated that the jurisdiction under Section 11 of the Arbitration Act is primarily confined to determining the existence of an arbitration agreement. The Supreme Court also noted that the issue of res judicata does not ordinarily arise for consideration in a Section 11 proceeding.

However, the Supreme Court clarified that the present case was not merely about res judicata. The question was whether the second Section 11 application was barred on the principles underlying Order XXIII Rule 1 of the CPC.

The Supreme Court noted that Order XXIII Rule 1 provides that where a plaintiff abandons a suit or part of a claim, or withdraws it without leave of the court, such

plaintiff is precluded from instituting a fresh suit in respect of the same subject matter or part of the claim.

The Supreme Court referred to ***HPCL Bio-Fuels (supra)***, where it had been held that the principles of Order XXIII Rule 1 apply to proceedings under Section 11 of the Arbitration Act. Therefore, where no liberty is obtained while withdrawing or abandoning an earlier Section 11 proceeding, a fresh Section 11 application on the same cause of action would not be maintainable.

The Supreme Court also referred to ***Dani Wooltex Corporation and Ors. v. Sheil Properties Pvt. Ltd. and Anr. [(2024) 7 SCC 1]***, where it was held that abandonment of proceedings cannot be readily inferred. Such an inference can be drawn only where the claimant's conduct leads to one conclusion, namely that the claimant had given up the claim.

Applying these principles, the Supreme Court held that the respondent had invoked arbitration by notice in 2015 and had filed an earlier Section 11 application. The respondent then participated in the arbitral proceedings and filed his claim.

The Supreme Court placed emphasis on the respondent's communication dated 29 August 2019, by which the respondent informed the arbitral tribunal that he would not participate further. The Supreme Court held that this communication clearly showed abandonment of the arbitral proceedings.

The Supreme Court then considered whether the second Section 11 application was based on a different cause of action. The respondent had argued that a fresh cause of action arose after the Supreme Court's later judgment upholding the auction of the Hoshiarpur land.

The Supreme Court rejected this contention. The Supreme Court held that the issue in the separate proceedings was the validity of the auction conducted by the bank. The inter se disputes between the appellant and the respondent were not the subject matter of those proceedings.

Accordingly, the Supreme Court held that the later judgment did not give rise to any fresh cause of action between the parties. The subsequent Section 11 application was based on the same cause of action and was therefore barred.

The Supreme Court further held that a litigant cannot be permitted to abuse the process of court by filing a fresh proceeding on the same cause of action after abandoning an earlier proceeding. The bar under Order XXIII Rule 1, as applicable to Section 11 proceedings, is founded on public policy.

Accordingly, the Supreme Court held that the respondent's subsequent Section 11 application was not maintainable and set aside the order appointing an arbitrator.

## Comment

The judgment in ***Rajiv Gaddh (supra)*** clarifies an important procedural limitation on repeated invocation of arbitration.

The Supreme Court has reiterated that the limited scope of Section 11 cannot be used to revive arbitral proceedings that a party has already abandoned. While questions of res judicata may ordinarily be left to the arbitral tribunal, the principles underlying Order XXIII Rule 1 can be applied at the Section 11 stage where a party seeks to restart arbitration on the same cause of action after abandonment.

The decision is significant because it brings procedural discipline to arbitral referrals. A party that invokes arbitration, participates in the arbitral process, files claims, and then deliberately refuses to participate further cannot later seek a fresh constitution of an arbitral tribunal for the same dispute.

At the same time, the Supreme Court has recognised that abandonment should not be lightly inferred. The conduct must clearly show that the party has given up the claim. In the present case, the express refusal to participate further was sufficient to establish abandonment.

The judgment also clarifies that a later development in related proceedings does not automatically create a fresh cause of action. Unless the later development affects the inter se rights forming the subject matter of the arbitration, it cannot be used to restart arbitration.

The decision therefore reinforces that arbitration cannot be treated as a process that may be repeatedly restarted at the convenience of one party. Once arbitral proceedings are abandoned without preserving the right to re-agitate the same cause of action, a fresh Section 11 application may be barred.

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