

Substitution Under Section 29A(6) Is Not Automatic: Supreme Court

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Introduction

In *Viva Highways Ltd. v. Madhya Pradesh Road Development Corporation Ltd.* [SLP (C) No. 38327 of 2025], the Supreme Court intervened at an interim stage to correct a fundamental misapplication of Section 29A of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"/ "**the Act**").

In this case, the Madhya Pradesh High Court had terminated the mandate of the existing arbitrator and directed parties to propose a new arbitrator. It did so by reading a prior Supreme Court decision in *Mohan Lal Fatehpuria vs. Bharat Textiles* (2025 INSC 1409) as laying down that substitution is an inevitable consequence once the mandate of an arbitrator stands terminated. The Supreme Court held that this reading was erroneous and that the High Court was not the appropriate forum to decide an application under Section 29A of the Act in the facts of the case.

Facts

During the course of an arbitration between Viva Highways and Madhya Pradesh Road Development Corporation, an application was moved seeking extension of the arbitrator's mandate under Section 29A(4). Instead of dealing with the application as one for extension, the High Court passed an interim order which (i) declared the mandate of the existing arbitrator to be terminated, and (ii) directed the parties to propose names for the appointment of a new arbitrator.

The High Court proceeded on the footing that the decision in *Mohan Lal Fatehpuria (supra)* required substitution of the arbitrator as a consequence of termination of the mandate.

In effect, the High Court treated substitution under Section 29A(6) of the Act as mandatory and an inevitable consequence once time had expired.

The Supreme Court's Intervention

The Supreme Court allowed the appeal and quashed the High Court's interim order. It did so on two grounds.

First, the Supreme Court clarified that when *Mohan Lal (supra)* used the expression that Section 29A(6) of the Act "*empowers and obligates*" the Court to substitute an arbitrator, it did not mean that substitution must inevitably follow in every case where the mandate stands terminated under Section 29A(4) of the Act. The word "*obligates*" was used in the limited sense that the Court must

appoint a substitute if the situation warrants it. Substitution is therefore conditional and fact-sensitive, not automatic.

Secondly, the Supreme Court held that, on the facts of the case, the Section 29A(4) application did not lie before the High Court at all. The Court relied on its decision in ***Jagdeep Chowgule v. Sheela Chowgule*** [2026 INSC 92], where it held that Section 11 of the Act has no bearing on the Section 29A. The necessary consequence is that the forum for Section 29A is governed by the definition of "*Court*" under Section 2(1)(e), and not by the fact that an arbitrator may have been appointed by the High Court under Section 11 of the Act in some cases.

On this reasoning, the Supreme Court set aside the High Court's order and revived the application that had been disposed of by the Commercial Court, Bhopal. The Commercial Court was directed to decide the extension application expeditiously.

Comments

In ***Velusamy Highways (supra)***, the Court clarified that ***Mohan Lal (supra)*** does not mandate substitution as an inevitable consequence when a Court is considering extension of an already expired mandate. ***Mohan Lal (supra)*** proceeded to substitute the arbitrator because the facts warranted it. That, the Apex Court reiterated, is the correct understanding.

This clarification is important because Section 29A has seen a drift in practice in some Courts where expiry of time is treated as a trigger for immediate termination and substitution, rather than as a stage at which the Court must decide whether extension should be granted, and if so, on what terms.

The order in ***Velusamy Highways (supra)*** is best understood as restoring three pieces of statutory discipline.

One, forum discipline. Parties frequently assume that if the High Court has appointed an arbitrator under Section 11 of the Act, that High Court remains the appropriate Court for all later supervisory applications.

The Supreme Court again makes clear that this is incorrect for Section 29A. The Section 29A application must go to the "*Court*" as defined, which in many domestic arbitrations means the Commercial Court or the principal civil Court of original jurisdiction, not the High Court.

Two, remedial discipline. Section 29A is not designed to punish parties by forcing a restart of arbitration as a default response to delay. It is designed to ensure completion. The Court's first responsibility is to decide whether extension should be granted, and then to consider whether any terms are warranted. Substitution

is a tool available to the Court where circumstances demand it, not a mechanical endpoint.

Three, interpretive discipline. Words used in judgments cannot be extracted and treated as rigid commandments divorced from statutory structure and factual context. The Supreme Court's explanation of "*obligates*" in ***Mohan Lal (supra)*** is a reminder that Section 29A(6) of the Act is discretionary in operation, even if it is part of a mandatory statutory framework.

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