



April 2026

## **Supreme Court of India reaffirms that principles of Order 23 Rule 1 of Code of Civil Procedure, 1908 apply to proceedings under Section 11 of the Arbitration and Conciliation Act, 1996**

The Hon'ble Supreme Court of India ("**Supreme Court**") in the case of *Rajiv Gaddh vs. Subodh Prakash*<sup>1</sup>, set aside the order dated November 08, 2024 ("**Impugned Order**") passed by the Ld. High Court of Punjab and Haryana ("**P&H HC**"). The P&H HC allowed an application filed by the respondent under Section 11 of Arbitration and Conciliation Act, 1996 ("**Arbitration Act**")<sup>2</sup>, and appointed a sole arbitrator. While doing so, the Supreme Court reiterated that the principles under Order 23 Rule 1<sup>3</sup> of the Code of Civil Procedure, 1908 ("**CPC**") apply to proceedings under Section 11 of the Arbitration Act, and that a fresh application under Section 11 of the Arbitration Act is not maintainable when: (a) a party has abandoned earlier arbitration proceedings without obtaining liberty; and (b) where there is no fresh cause of action.

### **Brief facts**

Rajiv Gaddh ("**Appellant**") and Subodh Prakash ("**Respondent**") (collectively referred to as "**Parties**"), jointly participated in an auction which was conducted by Jammu and Kashmir Bank ("**J&K Bank**") for 550 (five hundred and fifty) marlas of land situated in Hoshiarpur, Punjab ("**Hoshiarpur Land**"). A new entity, M/s. JMD Special Steel Private Limited, in which both parties were directors, was utilised for funding and registration purposes. Accordingly, a loan of INR 4,30,00,000 (Indian Rupees four crore thirty lakh) was obtained from HDFC Bank by mortgaging various properties, and a tripartite agreement dated March 20, 2013 was executed between the Appellant, the Respondent and HDFC Bank to regulate the loan liability and facilitate release of the mortgaged properties.

On April 2, 2013, the parties executed 3 (three) agreements to resolve disputes relating to the Hoshiarpur Land and other joint ventures. Clause 6 of the said agreements contained an arbitration clause. The Respondent invoked arbitration by a notice dated May 6, 2015 and subsequently filed an application under Section 11 of the Arbitration Act. The first arbitrator appointed by the P&H HC recused himself. Thereafter, the Respondent raised allegations of bias against the second arbitrator appointed by the P&H HC, who also, consequently, recused himself. Following this, a third arbitrator was appointed.

During the course of the arbitration, the Respondent raised allegations of bias against the third arbitrator and refused to accept the arbitrator's authority, stating that he would not participate further in the proceedings. The arbitrator

<sup>1</sup> SLP (C) No. 4430 of 2025 (decided on April 01, 2026)

<sup>2</sup> Section 11 of the Arbitration Act governs the appointment of arbitrators and provides the machinery for constituting an arbitral tribunal when parties fail to do so on their own.

<sup>3</sup> Order 23 Rule 1 of the CPC governs the withdrawal and abandonment of suits, providing the plaintiff the right to exit pending litigation either absolutely or conditionally.

passed an award on June 30, 2020 decreeing the Appellant's claim and dismissing the Respondent's claim. In the interim, the Respondent also filed a civil suit seeking termination of the arbitrator's mandate, which was ultimately dismissed for non-prosecution on July 23, 2024.

Subsequently, relying on the judgment of this Hon'ble Court dated July 9, 2021 in Civil Appeal No. 1599 of 2011, which upheld the auction of the Hoshiarpur Land conducted by J&K Bank and further held that the Appellant and Respondent were entitled to the Hoshiarpur Land, the Respondent issued a fresh notice invoking arbitration on September 1, 2021. Thereafter, on November 25, 2021, the Respondent filed a fresh application under Section 11 of the Arbitration Act seeking appointment of an arbitrator for resolution of disputes between him and the Appellant. The P&H HC, by way of the Impugned Order, allowed the application, holding that the issue of *res judicata* need not be examined at the stage of Section 11 and leaving the same to the arbitral tribunal to decide.

## Issues

1. Whether Order 23 Rule 1 of the CPC applies to proceedings under Section 11 of the Arbitration Act?
2. Whether there was a fresh cause of action pursuant to the judgment in of the Civil Appeal No. 1599 of 2011?

## Findings and analysis

The Supreme Court reaffirmed that the jurisdiction under Section 11 of the Arbitration Act is primarily confined to determining the existence of an arbitration agreement, and that the issue of *res judicata* does not arise in such proceedings.

However, on the question of the applicability of Order 23 Rule 1 of the CPC to the proceedings under Section 11 of the Arbitration Act, the Supreme Court reiterated its earlier decision of *HPCL Bio-Fuels Limited vs. Shahaji Bhanudas Bhad*<sup>4</sup> where it was held that the principles of Order 23 Rule 1 of the CPC, which prohibit the institution of fresh proceedings on the same cause of action without seeking leave of the court, apply with equal force to proceedings under Section 11(6) of the Arbitration Act. Accordingly, it was held that in the absence of any liberty at the time of withdrawal/abandonment of the first proceeding, a fresh application under Section 11 of the Arbitration Act was not maintainable.

While coming to the aforesaid conclusion, the Supreme Court, relying on *Dani Wooltex Corporation and Ors. vs. Sheil Properties Private Limited and Anr.*<sup>5</sup>, did reaffirm that the abandonment of proceedings cannot be readily inferred. Further, an inference of abandonment could only be drawn if the established conduct of the claimant is such that it leads to only one conclusion that he has given up the claim. In the present case, the Supreme Court held that the Respondent's written communication expressly declaring that he refused to accept the arbitrator's authority and would not participate further left no manner of doubt that the Respondent had abandoned the arbitration proceedings.

On facts, the Supreme Court also went on to hold that Civil Appeal No. 1599 of 2011 was filed by the original owners of the Hoshiarpur Land challenging the validity of the J&K Bank auction, and the dispute between the Appellant and the Respondent *inter se* was not the subject matter of that Civil Appeal. Therefore, the dismissal of the Civil Appeal by the Court on July 9, 2021 did not give rise to any fresh cause of action in favour of the Respondent *vis à vis* the arbitration agreement. Therefore, the fresh Section 11 application filed by the Respondent, not being based on a fresh cause of action was barred.

The Supreme Court further held that the bar contained in Order 23, Rule 1 of the CPC is founded on public policy, and a litigant cannot be permitted to abuse the process of court by filing fresh proceedings on the same cause of action.

<sup>4</sup> *HPCL Bio-Fuels Ltd. vs. Shahaji Bhanudas Bhad* (2024 SCC OnLine SC 3190)

<sup>5</sup> *Dani Wooltex Corporation and Ors., vs. Sheil Properties Private Limited and Anr.* (2024) 7 SCC 1

## Conclusion

The judgment strongly reaffirmed the principle that while arbitration is a creature of party autonomy, it is equally subject to procedural constraints designed to prevent abuse of process. The application of Order 23 Rule 1 of the CPC to Section 11 proceedings under the Arbitration Act, ensures that a party cannot strategically abandon previous arbitration proceedings and subsequently re-invoke arbitration on the same cause of action without obtaining appropriate liberty. The judgment also underlines that a court ruling which is unrelated and separate to the subject matter, even if it touches on some aspects of the present matter, does not automatically give rise to fresh cause of action, and that the party cannot use it to file a fresh application to re-invoke arbitration.

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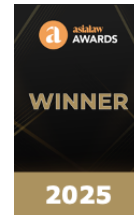
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