

**IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL CIVIL JURISDICTION  
ORIGINAL SIDE**

**RESERVED ON: 18.12.2025  
DELIVERED ON: 14.01.2026**

**PRESENT:  
HON'BLE JUSTICE GAURANG KANTH**

**IA No. GA 2 OF 2021  
AP-550 OF 2017**

**SMT. JAYA KAR**

**VERSUS  
UNION OF INDIA AND ORS.**

***Mr. Sukukmar Bhattacharyya, Adv.  
Ms. Amrita Pandey, Adv.***

***..... for the petitioner/applicant***

***Mr. Meghnath Dutta, Adv.  
Mr. Mohan Kumar P., Adv.***

***..... for the respondent***

**JUDGMENT**

**Gaurang Kanth, J.:-**

- 1.** The Applicants/Respondents has filed the present application, being GA 02/2021, in the disposed of proceedings, seeking to assail the arbitral award dated 28.01.2020 rendered by the learned Sole Arbitrator upon adjudication of the disputes between the parties.
- 2.** At the threshold, the Petitioner/Non Applicant has raised a preliminary objection as to the maintainability of the said application. In view of the nature of the objection, which goes to the root of the jurisdiction of this Court, this Court considers it appropriate to examine and determine the issue of maintainability as a preliminary issue, before adverting to the merits of the challenge, if any.
- 3.** The facts leading to the present petition are as follows:

4. The Petitioner/Non Applicant, Smt. Jaya Kar, had instituted the present petition being AP/550/2017 under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator for adjudication of disputes that had arisen between the parties. This Court, by an order dated 31.07.2017, was pleased to appoint Mr. Jayanta Banerjee as the sole Arbitrator to adjudicate the disputes between the parties. Upon such appointment, the Section 11 proceedings stood concluded and the petition was accordingly disposed of.
5. Pursuant thereto, the learned Sole Arbitrator entered upon the reference, adjudicated the disputes between the parties, and ultimately rendered an arbitral award dated 28.01.2020.
6. The Applicants/Respondents thereafter filed the present application, being GA 02/2021, on 17.09.2021, seeking, inter alia, the following reliefs:
- (a) *Leave to file the application and condonation of a delay of 444 days in filing the same;*
  - (b) *Setting aside of the arbitral award dated 28.01.2020 passed by the learned Sole Arbitrator, Mr. Jayanta Banerjee;*
  - (c) *Stay of all further proceedings for execution of the said arbitral award, if any;*
  - (d) *An ad-interim order in terms of prayers (a) and (b) above; and*
  - (e) *Such further or other orders as this Hon'ble Court may deem fit and proper.*

**Submission on behalf of the Applicants/Respondents**

7. Learned Counsel appearing for the Applicants/Respondents submits that although the challenge to the arbitral award ought to have been instituted by way of an independent petition under the Act, the present application

came to be filed in the disposed of Section 11 proceedings due to an inadvertent and bona fide mistake on the part of the learned Counsel. In view thereof, it is prayed that this Court may be pleased to convert the present application, GA 02/2021, into a separate Arbitration Petition. In support of such submission, reliance has been placed upon the order passed by a Coordinate Bench of this Court in **M/s Swadha Builders Pvt. Ltd. v. Murari Mohan Das (AP/507/2019)**, the judgment of the Hon'ble Supreme Court in **Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur**, reported in **(2009) 5 SCC 162**, as well as the decision of the Allahabad High Court in **Union of India v. M/s Bhular Construction Company (Matters under Article 227 No. 8841/2023)**.

**Submission on behalf of the Petitioner/Non Applicant**

8. Per contra, learned Counsel appearing for the Petitioner/Non Applicant vehemently opposes the maintainability of the present application. It is submitted that an arbitral award cannot be assailed by filing a General Application in a disposed of proceeding under Section 11 of the Act. Learned Counsel contends that the statute contemplates a specific and exclusive remedy under Section 34 of the Act, which must be invoked by filing an independent and substantive petition. It is further submitted that once the appointment of the Arbitrator is made, the Section 11 Court becomes *functus officio* and ceases to have jurisdiction to entertain or pass any further orders in relation to the arbitral proceedings or the award. In support of this submission, reliance is placed on the decision of the Hon'ble Supreme Court in **Kamal Gupta v. L.R. Builders Pvt. Ltd.**, reported as **2025 SCC OnLine SC 1691**. It is therefore contended that, since the Applicants have sought to challenge the arbitral award in

proceedings that had already attained finality, the present application is procedurally defective, without jurisdiction, and not maintainable in law.

### **Legal Analysis**

- 9.** This Court heard the arguments advanced by the learned counsel appearing for the parties and perused the materials on record.
- 10.** It is not in dispute that the proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 culminated in the appointment of the learned Sole Arbitrator by order dated 31.07.2017, where after the said proceedings stood finally disposed of. Once such appointment was made, the jurisdiction of this Court under Section 11 stood exhausted and the Court became *functus officio*. Any challenge to the arbitral award thereafter could only be mounted in the manner expressly prescribed under the statute, namely by filing an independent petition under Section 34 of the Act.
- 11.** While this Court is not unmindful of the submission advanced on behalf of the Applicants that the present application came to be filed in the disposed of Section 11 proceedings owing to an inadvertent and bona fide mistake on the part of the learned Counsel, such an error cannot confer jurisdiction upon this Court where none exists. Procedural latitude, howsoever liberal, cannot be extended so as to defeat the statutory scheme of the Act, particularly when the remedy and forum for assailing an arbitral award are specifically delineated.
- 12.** The Applicant/Respondent has placed reliance upon the decision of a Coordinate Bench of this Court in **M/s Swadha Builders Pvt. Ltd.** (supra) to contend that this Court possesses the jurisdiction to direct conversion of the present application into a separate arbitration petition. This Court

has carefully examined the said decision. In the said matter, by order dated 28.04.2023, this Court had appointed a learned Sole Arbitrator. However, as the arbitral proceedings were not commenced thereafter, the petitioner in that case approached this Court seeking appropriate relief. By an order dated 20.12.2023, this Court granted liberty to the petitioner therein to take recourse to appropriate proceedings in accordance with law. Pursuant to such liberty, an application under Section 14(5) read with Section 15(2) of the Arbitration and Conciliation Act, 1996 came to be filed. In those circumstances, this Court, by order dated 07.04.2025, directed the Registry to renumber the said application as an Arbitration Petition instead of a General Application. The factual matrix of the present case, however, is entirely distinguishable. In the instant matter, the Applicant has sought to challenge the arbitral award by filing a General Application in a disposed of petition under Section 11 of the Act, without any liberty having been granted by this Court to institute further proceedings. Unlike in **Swadha Builders** (*supra*), the proceedings under Section 11 herein had attained finality upon appointment of the Arbitrator, and this Court had not retained seisin over the matter nor granted any leave to file subsequent applications.

- 13.** In any event, the legal position as authoritatively settled by the Hon'ble Supreme Court in **Kamal Gupta** (*supra*) must prevail. The Coordinate Bench decision relied upon by the Applicant does not consider the ratio laid down in **Kamal Gupta** (*supra*), which categorically holds that upon appointment of the Arbitrator, the Court exercising jurisdiction under Section 11 becomes functus officio.

- 14.** As regards the other authorities relied upon by the Applicant, namely ***Nawab Shaqafath Ali Khan*** (*supra*) and the decision of the Allahabad High Court in ***Union of India v. M/s Bhular Construction Company*** (*supra*), the same do not arise out of proceedings under Section 11 of the Act. The said decisions pertain to situations where procedural irregularities were permitted to be cured in pending proceedings or where conversion was allowed without trenching upon jurisdictional limitations. Consequently, the said authorities do not advance the case of the Applicant.
- 15.** Accordingly, the decisions relied upon by the Applicant are clearly distinguishable on facts and do not dilute the settled legal position that a challenge to an arbitral award cannot be entertained within proceedings that have already attained finality. On the contrary, the binding pronouncement of the Hon'ble Supreme Court in ***Kamal Gupta*** (*supra*) unequivocally affirms that once an Arbitrator is appointed, the Court under Section 11 ceases to retain seisin over the matter and lacks jurisdiction to entertain any application touching upon the arbitral proceedings or the award in the disposed of Section 11 proceedings.
- 16.** In view of the aforesaid, this Court holds that the prayer seeking conversion of GA 02/2021 into a separate arbitration petition is misconceived and untenable in law. The present application, having been filed in a disposed of proceeding and not in the manner contemplated under Section 34 of the Act, the said application is dismissed as not maintainable.
- 17.** It is, however, clarified that this Court has not examined the merits of the arbitral award, and dismissal of the present application shall not, by itself,

preclude the Applicants from pursuing such remedy as may be available to them in accordance with law, subject to limitation and other statutory requirements.

**18.** Accordingly, GA 02/2021 is dismissed.

**19.** The copy of the original award shall be returned to the petitioner subject to filing of the Xerox copy of the same.

**(GAURANG KANTH, J.)**

Sakil Amed P.A.

