Extension of time limit for an arbitral award—a case comment on Lots Shipping v. Cochin Port Trust and DDA v. Tarachand

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Published on 1 June 2020

M/S Lots Shipping Company Limited v. Cochin Port Trust

Court: Kerala High Court| **Case number**: OP (C)No.586 of 2018(O)| **Citation**: MANU/KE/1125/2020 |**Bench**: CK Abdul Rehim and Shircy V JJ| **Date**: 28 April 2020

DDA v. Tarachand Sumit Construction Co.

Court: Delhi High Court| **Case number**: OMP (Misc) (Comm) 236 of 2019| **Citation**: 2020 (2) ARBLR 505 (Delhi) | **Bench**: Jyoti Singh J| **Date**: 12 May 2020

Which court can extend the time limit under Section 29A ACA for making an arbitral award and substitute the arbitrator(s) if necessary?[1] The answer seems apparent from the statute. Section 29A confers jurisdiction on the Court as defined under Section 2(1)(e) ACA.

However, a 2-judge bench of the Kerala High Court in *M/s Lots Shipping* and a single-judge bench of the High Court of Delhi in *DDA* has concluded (but considering the statute pre-2019 Amendments) that "Court" in Section 29A does not mean Court as defined. Instead, they say it is either the Supreme Court or the High Court exercising the power of appointment under Section 11 ACA.

This case comment tries to contextualize both the decisions. However, as will presently appear, it is also necessary to examine Sections 14 and 15 ACA, which too provide for substituting the arbitrator(s) in different circumstances. Section 14 confers jurisdiction on the "Court" as defined. And yet, which will be that court has also been a concern of many decisions, directly or indirectly. *Lots Shipping* makes a reference to these sections and a judgment of the Bombay High Court that *DDA* cited bases its decision on them (to say that the definition of Court does not apply to Section 29A).

A. The provisions

The following five provisions should be noted:

(a) *Definition of Court under Section 2(1) (e)*: The Court is the High Court for international commercial arbitration. The Court is both the principal Civil Court of original jurisdiction and the High Court if it exercises original jurisdiction for any other arbitration.

(b) *Section 11 (appointment of arbitrators)*: If court assistance is required for appointment in international commercial arbitration, the power vests with the Supreme Court or a person or institution designated by it. In other arbitrations, the power vests with the High Court or a person or institution designated by it.

(c) *Section 14*: Titled "failure or impossibility to act", it provides that an arbitrator's mandate shall terminate and another arbitrator shall substitute him in specified cases. Section 14(2) further provides that if a controversy remains concerning the termination, a party may apply to the Court (as defined).

[1]After the 2019 Amendments, the time limit under Section 29A applies only to an arbitration other than international commercial arbitration.

(d) *Section 15*: Titled as "termination of mandate and substitution of arbitrator", it provides two more grounds in addition to those mentioned in Section 14 (and the circumstances mentioned in Section 13). It further provides that a substitute arbitrator shall be appointed according to the rules that applied to the appointment of the arbitrator being replaced.

(e) *Section 29A*: After the 2019 Amendments, it now prescribes a time limit of twelve months for making an award in a matter other than international commercial arbitrations[2]. Parties by consent can extend the period by another six months. If the award is not made even then, the mandate of the arbitrator shall terminate unless the Court has, either before or after the expiry of the period so specified, extended the period. While extending the period, the Court has the power to order reduction of fees of the arbitrator(s) if it finds that the proceedings have been delayed for reasons attributable to the tribunal. The Court also has the power to substitute one or all of the arbitrators.

B. The question in Lots Shipping and DDA and what did they decide?

In *Lots Shipping*, a petition under Section 29A (5) ACA had been filed before the Kerala High Court for extension of time. The registry marked the petition as defective because of another decision of that court in *URC Construction Pvt. Ltd.* v. *BEML Ltd.*, 2017 (5) KHC 865. *URC* was a case where a single-judge bench (Anil K Narendran J) had, applying Section 2(1)(e) ACA, rejected a petition under Section 29A ACA. He concluded that the Kerala High Court was not "Court" as defined because it does not exercise original jurisdiction.

In *DDA*, a petition was filed for an extension of time before the High Court but was sent back to the civil court for lack of pecuniary jurisdiction. Later, an application was made for recall of that order.

Both decisions—*Lots Shipping* and *DDA*—concluded that the expression "Court" in Section 29A refers to that court which has the power to make an appointment under Section 11 ACA.

Lots Shipping's reasons were these: -

(a) Contextual interpretation is permissible because Section 29(1) ACA contains a rider: "unless the context otherwise requires". A contextual understanding is also required because the power under Section 29A is akin to the "powers conferred on the Supreme Court and the High Court, as the case may be, under Sections 11(6), 14 & 15 of the Act, for an appointment, termination of mandate and substitution of the arbitrator."

(b) The civil court has power only under Sections 9 (interim relief) and 34 ACA (set-aside proceedings). The 2015 Amendments have not enhanced this power (to include Section 29A). Orders passed under Sections 9 and 34 are appealable, but an order passed under Section 29A is not. This indicates that the power under Section 29A is not to be exercised by the civil court.

(c) The power of extension is introduced under an integrated scheme, which also allows reduction of fees, the imposition of cost on the parties, the substitution of the arbitrator(s). The power is to be exercised on satisfying "sufficient cause'. The power is akin to the powers conferred under Sections 14 & 15 ACA.

(d) Where the appointment of an arbitrator is made under Section 11(6) ACA by the High Court or the Supreme Court, it would be incongruous for the principal civil court of original jurisdiction to substitute the arbitrator or to refuse an extension of the time limit, or to reduce the fees of the arbitrator.

(e) A purposive interpretation becomes more inevitable (citing to *Shailesh Dhairyawan Mohan Balakrishna Lulla*, (2016) 3 SCC 619).

In *DDA* v. *Tarachand*, the Delhi High Court gave similar reasons:

[2]In international commercial arbitration, the proviso says, an endeavour may be made to dispose of the matter.

(a) "Court" can be interpreted differently in Section 29A because sub-Section (1) of Section 2 ACA begins with the expression "in this part, unless the context otherwise requires".

(b) Under Section 29A (6), ACA is a complete code on the issue of time extension: the arbitrators can be substituted, their fees reduced, and if substitution happens proceedings begin from the same point.

(c) The power of substitution raises complexity. The one being substituted may have been appointed by the Supreme Court or the High Court. A civil court replacing those arbitrators would be in the teeth of Section 11 ACA. In international commercial arbitration, the High Court substituting an arbitrator appointed by the Supreme Court would perhaps lead to overstepping jurisdiction since the power to appoint is in the exclusive domain of the Supreme Court.

(d) Authorities: –

(i) Jyoti Singh J said she was fortified in her view by a 2-judge bench of the Gujarat High Court in *Nilesh Ramanbhai Patel and Others BhanubhaiRamanbhai Patel and others* (decided on 14 September 2018). Speaking for the court, AkilKureshi J had said that the conflict between Section 29A and Section 11 could be avoided only by reading the Court in Section 29 A as the Supreme Court or the High Court in Section 11.

(ii) A decision of the single judge of the Bombay High Court in *CabraInstalaciones Y Servicios, S*A v. *Maharashtra State Electricity Distribution Company Limited*, 2019 SCC Online Bom 1437 was referred as "concerning a somewhat similar controversy". In this case, GS Kulkarni J examined Sections 11, 14, 15 and 29A ACA and concluded that appointment of the substitute arbitrators must be made following Section 11. Section 29A cannot be read in isolation. He said that appointment of arbitrators in matters of international commercial arbitration is the exclusive domain of the Supreme Court.

C. Comment

Both decisions are based on the opening words of Section 2(1)(e) ACA which qualify the entire 'definitions' clause with the expression "unless the context otherwise requires". The interpretive technique both courts used is to read the 'context' of Section 29A differently (as opposed to saying that the courts referred under Section 11 are covered under the definition of Court under Section 2(1)(e)).

At the centre of the courts' enquiry in locating a different context is the following concern: (i) if the Supreme Court of India appointed an arbitrator, how can a High Court, let alone the district court, substitute her?; and (ii) if the High Court appointed an arbitrator, how can the district court replace him?

But why not? The reader will find the following answer in the judgments: there would be a conflict between Section 29A and Section 11.

Are these answers simply based on a misplaced presupposition that the hierarchy of the courts and judicial discipline will be adversely affected if the defined term "Court" is applied to Section 29A? Or, are they based on a reasonable assessment of conflict between Section 11 and Section 29A?

C1. Is there a conflict between Section 29A and Section 11?

It is respectfully submitted that the answer is, no.

First, what are conflicting provisions? If two provisions are contrary, they are inconsistent, mutually repugnant or opposed to one another. Both cannot stand. The acceptance of one implies the abandonment of another. If they relate to the same subject-matter, to the same situation, and both substantially overlap and are co-extensive and at the same time so contrary and repugnant in their terms and impact that one must perish wholly if the other were to prevail at all — then, they are inconsistent. [See *Basti Sugar Mills Co. Ltd.* v. *State of UP*, (1979) 2 SCC 88]

Second, Section 29A does not conflict with Section 11 primarily because:

(a) Section 11 relates to court assistance in appointment of arbitrator(s) in getting the arbitral process started. Section 29A is a provision that applies during the arbitration proceedings. In essence, the two provisions confer the power to act in two different situations.

(b) The basis for substitution will be facts occurring after the appointment. Those facts or reasons would not be in existence or at issue when the arbitrator was initially appointed. The Court will be required to assess the presence of those facts.

Third, conferment of the power under Section 29A on the Court as defined is deliberate and express conferment of power:

(a) Enacted initially, the power of appointment under Section 11 was with the "Chief Justice or any person or institution designated by him" and not to any court or the Court as even then defined.

(b) The 2015 Amendments replaced the expression of Chief Justice with the High Court and the Supreme Court. But the Section-11 courts were not brought within the definition of Section 2(1)(e), and jurisdiction under Section 29A was conferred on the "Court".

(c) The legislature is not supposed to have made linguistic mistakes. It is not suggested that the legislature lacks the power to confer jurisdiction on two different sets of courts in the two different situations in question. The principle is quite the opposite. Jurisdiction is a matter strictly of the statute.

Fourth, in the context of the case, it is erroneous to say that the power of appointment vests exclusively in the Supreme Court or the High Court. A provision that expressly confers the power of substitution on the Court as defined should not be read down on the logic that such power exclusively lies somewhere else. This is turning the argument on its head. The power does not only lie under Section 11 else because it is conferred by Section 29A also.

Fifth, the underlying assumption in the judgments that Section 29A will conflict with Section 11 and judicial hierarchy and hurt judicial discipline is also erroneous. Such an argument was rejected in *State of Jharkhand* v. *Hindustan Construction Company Ltd.*, (2018) 2 SCC 602 by a 5-judge bench of the Supreme Court while considering some provisions of the 1940 Act:

(a) The Supreme Court had appointed the arbitrator and directed that the award be filed before it. An award was passed and presented by the arbitrator before the Supreme Court. The award-debtor challenged the award in the civil court, and the award-holder applied to the Supreme Court to pronounce a judgment in terms of the award. Could the Supreme Court consider a challenge to the award? The provision under which challenges could be ordinarily made used the expression Court, and Section 2 (c) of the 1940 Act had defined "Court" with a caveat "unless there is anything repugnant in the subject or context".

(b) Because there were several conflicting decisions, the matter went to a 5-judge bench of the Supreme Court.

(c) An argument was raised that "once the superior court has retained control and passed a specific direction to file an award … then all other courts cease to have jurisdiction for determination of the controversy … judicial discipline and respect has to prevail and, therefore, no proceeding can be initiated in any court other than the superior court."

(d) The court held that solely because the Supreme Court had retained control over the proceedings at the time of appointment of arbitrators does not mean that "Court" as defined should be interpreted differently.

(e) In doing so, *State of MP Saith and Skelton (P) Ltd.* (1972) 1 SCC 702 was overruled. *Saith* had said that the expression "court" would have to be understood as defined in Section 2(c) of the Act, only if

there is nothing repugnant in the subject or context. …". The background in *Saith* was that the Supreme Court had by its earlier order retained control over the arbitration proceedings, and there was also a direction to the effect that the parties are at liberty to apply for an extension of time for making the award.

It should be added here that *Hindustan Construction*, affirmed a 3-judge bench decision in *State of W.B.* v. *Associated Contractors*, (2015) 1 SCC 32, in which Nariman J, speaking for the court, had rejected the argument that the Supreme Court is a Court within the meaning of Section 42 ACA. It was held that there are a variety of reasons as to why the Supreme Court cannot possibly be considered to be "Court" within the meaning of Section 2(1)(e) even if it retains *seisin* over the arbitral proceedings.[3] Neither *DDA* nor *Lots Shipping* note either of the two judgments.

Sixth, the courts did not notice that Section 11 confers the power not only on the Supreme Court or the High Court but a person or institution designated by it. Indeed, under the 2019 Amendments (yet-to-be-notified-provisions), the appointment is to be done by an arbitral institution.

For all of the reasons above, it is submitted that there is nothing in the context of Section 29A, which invites giving the defined term Court a different meaning. As a 3-judge bench said in *CST* v. *Union Medical Agency*, (1981) 1 SCC 51, "there is no dispute with the proposition that the meaning of a word or expression defined may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in definition section, namely "unless the context otherwise requires." In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words in a particular section. But where there is no obscurity in the language of the section, there is no scope for the application of the rule ex visceribus actus. This rule is never allowed to alter the meaning of what is of itself clear and explicit."

The effect of the two judgments is that Section 29A (6) must now (at the minimum) be read to say that the mandate shall terminate unless "in case of the international commercial arbitration, the Supreme Court, and in case of any other, the High Court has … extended the period."

Let us now turn to Sections 14 and 15, ACA and the decisions.

C2. Termination of mandate and substitution under Sections 14 And 15 ACA: Irreconcilable precedent on jurisdiction

Several questions spring from the two provisions:

(a) What is the meaning of the Court in Section 14—as defined or otherwise?

(b) Are proceedings under Section 14 and Section 15 to be taken out separately, or can be combined?

[3]The reasons offered were: (i) the definition of Court under Section 2 (1) (e) is exhaustive and recognises only one of two possible courts that could be "Court" as defined; (ii) Under the 1940 Act, the expression "civil court" has been held to be wide enough to include an appellate court and, therefore would include the Supreme Court. Even though this proposition itself is open to doubt, as the Supreme Court exercising jurisdiction under Article 136 is not an ordinary appellate court, even this reason does not apply given the definition of Court under the 1996 Act, which speaks of either the Principal Civil Court or the High Court exercising original jurisdiction; (iii) If an application would have to be preferred to the Supreme Court directly, the appeal that is available so far as applications under Sections 9 and 34 are concerned, provided for under Section 37 of the Act, would not be available. Any further appeal to the Supreme Court under Article 136 would also not be available; (iv) The context of Section 42 does not in any manner lead to a conclusion that the word "court" in Section 42 should be construed otherwise than as defined. The context of Section 42 is merely to see that one court alone shall have jurisdiction over all applications with respect to arbitration agreements which context does not in any manner enable the Supreme Court to become a "court" within the meaning of Section 42.

(c) If Court as defined has jurisdiction under Section 14 to decide on the controversy as to termination, does it have authority to substitute the arbitrator too in cases where a Superior Court made the original appointment?

A quick (by no means complete) survey of case laws concerning both sections limited to the point of court's jurisdiction offers an irreconcilable classification.

Some decisions apply Section 11 to Sections 14 and 15, but without considering the expression "Court" in Section 14 ACA. For example in *Satya Kailashchandra Sahu and others* v. *M/S Vidarbha Distillers and others*, 1997 SCC OnLine Bom 476, the Bombay High Court noted that Section 11 provides an exhaustive procedure for appointment of arbitrators and is to be read along with sections 14 and 15 ACA.

The words in Section 15 (2) which require a substitution "according to the rules applicable to the appointment of the arbitrator being replaced" has been considered in many cases. Several decisions have ruled that "rules" include the procedure set out in the parties' contract. These cases go on to say that if a substitute cannot be appointed *via* the contractually agreed procedure, the court under Section 11 (6) has the jurisdiction to appoint the substitute. Again, the effect of the expression Court in Section 14.

San-A Tradubg Co. Ltd. v. *IC Textiles Ltd.*, (2012) 7 SCC 192 was one of the earliest cases (28 April 2006) on the point by the Chief Justice's designate PP Naolekar J.

Yashwith Constructions (P) Ltd. v. *Simplex Concrete Piles India Ltd.*, (2006) 6 SCC 204 (decided on 03 July 2006) is an oft-cited case where a 2-judge bench of the Supreme Court comprising PK Balasubramanyan and RV Raveendran JJ directly considered the question as to when does jurisdiction under Section 11 (6) gets triggered in cases concerning termination of mandate and substitution of arbitrators. The court answered that Section 11 would apply if the appointment of a substitute arbitrator cannot be made following the mechanism provided in the agreement for the appointment of the original arbitrator. On facts, they said that the contractual arrangement had not failed.

Shailesh Dhairyawan v. *Mohan Balkrishna Lulla*, (2016) 3 SCC 619 is a relatively recent decision (Dr AK Sikri and RF Nariman JJ). The arbitration clause had named a former Judge as the arbitrator. The Bombay High Court appointment her by passing a consent order. Later the arbitrator resigned. An application was filed under Section 11(5) in the Bombay High Court, and a substitute arbitrator was appointed. This was challenged on the ground that once the mandate of the named arbitrator terminated, there is in effect no rules for substitution, Section 15 will not apply. The Supreme Court concluded that unless excluded by the agreement, a substitution should happen even in such a case. Then it found that approaching the original appointing authority (Bombay High Court) for the appointment of a substitute arbitrator was "according to the rules that were applicable to the appointment of the arbitrator being replaced" following Section 15(2) of the Act.

The Bombay High Court in *SAP India Private Limited* v. *Cox & Kings Limited* 2019 SCC OnLine Bom 722 is on the same point.

There are several decisions which just presume that the appointment under Section 15 was to be done following Section 11. These do not include the question of jurisdiction, including: -

(a) *National Highways Authority of India* v. *Bumihiway DDB Ltd. (JV)*, (2006) 10 SCC 763.

(b) *NBCC Ltd.* v. *JG Engg. (P) Ltd.*, (2010) 2 SCC 385.

(c) *Union of India* v. *UP State Bridge Corpn. Ltd.*, (2015) 2 SCC 52.

Then there are decisions which consider the expression "Court" in Section 11 and rule that Section 11 does not apply to Sections 14 or 15. But, these do not consider as to what will happen if the original appointment had been made under Section 11. In *Nimet Resources Inc.* v. *Essar Steels Ltd.*, (2009) 17 SCC 313, the Chief Justice's designate SB Sinha J considered the question directly for the first time. An application under Section 11 had been filed earlier, and an arbitrator had been appointed. Another supplication was later filed

before the Supreme Court seeking termination of the mandate of the arbitrator and appointment of a substitute. SB Sinha J noted Section 14 (2) and concluded that it is only the "Court", within the meaning of Section 2 (1) (e) which has the power to entertain such an application as that was a defined term. He added that jurisdiction under Section 11(6) of the 1996 Act is used for a different purpose, and the Chief Justice or his designate exercises a limited authority. When an arbitrator is nominated under the ACA, the court does not retain any jurisdiction with it. It becomes functus officio subject, of course, to exercise of authority in terms of constitutional provisions or the Supreme Court Rules. He distinguished *Yashwith* by saying that it "merely held that the court can exercise its jurisdiction to nominate an arbitrator only when there is a failure on the part of the party to arbitration agreement to perform his part in terms of Section 15(2) of the 1996 Act".

Also, there are decisions which recognize that for any controversy as to termination, the remedy is to approach the defined court. But these do not deal with the question of substitution or Section 11. *Lalit Kumar V. Sanghavi* v. *Dharamdas V. Sanghavi*, (2014) 7 SCC 255 is a decision of a 3-judge bench decision of the Supreme Court (of 04 March 2014). The arbitrator, initially appointed by the Bombay High Court, had terminated the proceedings. A party first applied to the arbitrator for revocation of the order. Subsequently, the order of termination was impugned in a petition under Section 11. The court noted Sections 2(1)(e) and Section 14 and concluded that Section 14(2) before a Court as defined under Section 2(1)(e) gives a remedy to determine the controversy on the termination.

There is a decision from Meghalaya which ruled that though an arbitrator was appointed initially under Section 11 ACA, the termination of the mandate would be decided by Court as defined (*Patel Engineering Company* v. *State of Meghalaya*, 2014 SCC OnLine Megh 122).

There also are cases where the mandate had already terminated, and there was no controversy. These cases rule that when the mandate has already terminated, and the agreement does not prescribe any procedure, the substitution is to be made under Section 11 (3). [see *MBL Infrastructure* v. *State of Uttarakhand*, 2018 SCC OnLine Utt 682; *Shivalik Drugs & another* v. *Lalit Kumar Jain & another*, 2015 SCC OnLine Utt 2280].

There are yet another which conclude that an application under Section 11 application is not maintainable for deciding on termination of the mandate. But they do not address as to who will substitute—[*see VK Sood Engineer* v. *State of Punjab and others*, 2012 SCC OnLine P&H 342].

There is at least one case which has taken the position that determining termination is in the domain of the Court as defined. Still, substitution is for later, and a combined application under Section 14 and 15 is not maintainable. The Rajasthan High Court in *Doshion Private Limited* v. *Hindustan Zinc Limited*, 2018 SCC OnLine Raj 949 concluded that proceedings for substitution of the arbitrator could be initiated once the finding regarding the termination of the mandate of the arbitrator is recorded by the jurisdictional Court as defined and a combined application is not maintainable.

There is a decision from the Chhattisgarh High Court which says that a determination on the controversy of termination is for the defined court, but does not comment if an application under Section 11 lies for substitution. In *Rahul Somani* v. *RamgopalSomani*, 2017 SCC OnLine Chh 1531, Prashant Kumar Mishra J had before him an application filed under an application under Section 11(6) read with Sections 12, 14 & 15 ACA for termination of the mandate of the arbitration and his substitution. The court ruled that the application could be filed only before the Court as defined under (in this case, the Principal Civil Court). He added that he was not commenting on the jurisdiction of the Court under Section 11(6) ACA once the mandate had terminated.

Some decisions which summarise Sections 14 and 15 in one context or another reiterate the statutory language. For instance in *Bharat Broadband Network Ltd.* v. *United Telecoms Ltd.*, (2019) 5 SCC 755, speaking for the 2-judge bench Supreme Court, RF Nariman J considered the scheme of Sections 12, 13 and 14 and found that in cases an arbitrator is unable to perform his functions, for example, as a matter of law, his mandate automatically terminates, and he shall then be substituted by another arbitrator under Section 14(1) itself. It is only if a controversy occurs concerning whether he has become de jure unable to perform

his functions as such, he noted, that a party has to apply to the Court to decide on the termination of the mandate unless otherwise agreed by the parties.

Lastly, there is the decision of the Bombay High Court in *CabraInstalaciones Y. Servicios, SA* v. *Maharashtra State Electricity Distribution Company Limited*, 2019 SCC OnLine Bom 1437 which rules that Court in Section 14 and 15, as well as Section 29A, is not as defined but the courts referred in Section 11. GS Kulkarni J said:

> on a plain reading of Section 29A along with its sub-sections, it can be seen that for seeking an extension of the mandate of an arbitral tribunal, these are substantive powers which are conferred on the Court and more particularly given the explicit provisions of sub-section (6) which provides that while extending the period referred to in sub-section (4), it would be open to the Court to substitute one or all the arbitrators, which is a power to make an appointment of a new/substitute arbitrator or any member of the arbitral tribunal. Thus certainly when the arbitration in question is an international commercial arbitration as defined under Section 2(1)(f) of the Act, the High Court exercising power under Section 29A, cannot make an appointment of a substitute arbitral tribunal or any member of the arbitral tribunal as prescribed under sub-section (6) of Section 29-A, as it would be the exclusive power and jurisdiction of the Supreme Court considering the provisions of Section 11(5) read with Section 11(9) as also Sections 14 and 15 of the Act. It also cannot be overlooked that in a given case, there is the likelihood of opposition to an extension application, and the opposing party may pray for the appointment of a substitute arbitral tribunal, requiring the Court to exercise powers under sub-section (6) of Section 29-A. In such a situation while appointing a substitute arbitral tribunal, when the arbitration is international commercial arbitration, Section 11(9) which confers exclusive jurisdiction on the Supreme Court to appoint an arbitral tribunal, would come into play.

Jyoti Singh J referred to this decision as being one on the point of somewhat similar controversy.

C3. Conclusion

The problem lies in the fact that there must be consistency in how the court applies the statute in similar situations. Substitution under Section 29A should ideally be done by the same jurisdictional court which has the power to substitute an arbitrator under Section 15. Both sections confer jurisdiction on the Court as defined. As of now, there is no clear-cut binding authority on the issue. A blog post published on Kluwer notes that the Supreme Court once came close in considering the question but eventually did not because the case was withdrawn.[4]

When the ACA was enacted, the power under Section 11 vested with the Chief Justice or his designated person or institution. A dispute as to the termination of the mandate under Section 14 had to go to the Court as defined. In 2006, in *Yashwith* case the Supreme Court accepted *sub silentio* that the Section 11 court has jurisdiction under Section 15. *Nimet* was one of the earlier cases where the question of jurisdiction was directly considered, and the designated Judge SB Sinha J rightly rejected an application under Section 14. There are several decisions of the Supreme Court and the various High Courts which simply presume that, without assessing all the issues, Section 11 applies to Sections 14 and 15.

Nimet conflicts with *Yashwith*, though Sinha J made a distinction, and being a decision of a designate-judge will not have 'precedential' value. *Yashwith* and cases which follow *Yashwith* have the barrier in *Lalit*.

When the ACA was amended in 2015, the power to appoint vested in the Supreme Court/High Court or any person or institution designated by it. But the amendments did not clarify the confusion surrounding Sections 14 and 15. It introduced Section 29A and again conferred jurisdiction on the Court as defined.

[4] Gaurav Juneja and Ashish Jain, Applications for Extension of Time for Passing the Award in India: Which Court to Entertain?, http://arbitrationblog.kluwerarbitration.com/2020/01/01/applications-for-extension-of-time-for-passing-the-award-in-india-which-court-to-entertain/?doing_wp_cron=1590945125.1312139034271240234375.

Lots Shipping and *DDA* rewrote the statute based on an intuitive logic but without articulating all the issues. A practitioner may support this logic and ask which subordinate court will substitute an arbitrator appointed by a superior court?

Because precedent is inconsistent, there will likely be contradictory decisions on Section 29A like we have in decisions under Sections 14 and 15.

Interpretation is a process of trial and error. But, unlike say literature, there are limitations in the interpretation of law. Law requires certainty. The issues explored in this case-comments shows that legislative intervention is necessary to bring this certainty in issues concerning Sections 29A, 14 and 15 ACA.