



## **Order 23 Rule 1 CPC Governs Section 11 Proceedings: Supreme Court Restricts Re-Initiation of Arbitration**

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The Hon'ble Supreme Court of India, in a significant ruling in *Rajiv Gaddh versus Subodh Parkash*<sup>1</sup>, has delivered a significant ruling clarifying the legal consequences of abandoning arbitration proceedings. The judgment addresses the maintainability of a fresh application under Section 11 of the Arbitration and Conciliation Act, 1996, after a party has withdrawn or ceased participation in earlier arbitral proceedings. By invoking principles analogous to Order XXIII Rule 1 of the Code of Civil Procedure, 1908, the Court has reinforced the doctrine that procedural law cannot be circumvented to revive claims that have effectively been given up.

The factual matrix of the dispute before the Hon'ble Supreme Court was that a dispute arose from a commercial arrangement between the Appellant and the Respondent relating to the acquisition and management of land in Hoshiarpur, Punjab, which had been auctioned by Jammu & Kashmir Bank. Both parties participated in the auction through associated business entities and subsequently entered into a structured arrangement involving financing through HDFC Bank and execution of three Agreements, dated 02.04.2013. These Agreements governed the sale of certain land parcels, dissolution of joint ventures, and allocation of shareholding rights, and also contained an arbitration clause for dispute resolution.

Subsequently, disputes emerged between the parties, prompting the Respondent to invoke arbitration in 2015. An arbitral tribunal was constituted, and proceedings commenced. However, over time, the Respondent failed to actively participate in the arbitration. Notably, the Respondent not only remained absent from hearings but also communicated a refusal to accept the authority of the arbitrator, effectively disengaging from the process. This conduct culminated in the arbitral proceedings continuing in his absence and eventually resulted in an award. Despite this earlier invocation of arbitration, the Respondent issued a fresh Notice in 2021 seeking to initiate arbitration again, purportedly on the basis of a Supreme Court judgment that upheld the validity of the auction of the land. This led to a fresh application under Section 11 before the High Court, which allowed the appointment of a new arbitrator, thereby giving rise to the present appeal before the Supreme Court.

The central controversy before the Hon'ble Supreme Court revolved around whether a party who has abandoned earlier arbitration proceedings can subsequently seek to initiate fresh arbitration on the same cause of action. The Appellant contended that the Respondent's conduct amounted to clear abandonment and that permitting a fresh application would violate the bar contained in Order XXIII Rule 1 of the Code of Civil Procedure, which prohibits institution of fresh proceedings on the same cause of action without express liberty. It was further argued that such conduct constituted an abuse of process and undermined the finality of dispute resolution mechanisms. On the other hand, the Respondent argued that the scope of inquiry under Section 11 is limited and does not extend to examining issues such as res judicata or abandonment. It was further contended that the Hon'ble Supreme Court's earlier judgment regarding the auction created a fresh cause of action, thereby justifying a new invocation of arbitration.

The Hon'ble Court undertook a careful examination of the scope of Section 11 and the applicability of procedural principles derived from civil law. It reiterated that while the jurisdiction under Section 11 is confined to determining the existence of an arbitration agreement, this does not imply that foundational procedural bars can be ignored when they are evident on the face of the record. In this context, the Hon'ble Court emphasized that the principles underlying Order XXIII Rule 1 of the Code of Civil Procedure are rooted in public policy and are intended to prevent multiplicity of proceedings and abuse of judicial process. The Hon'ble Court held that these

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<sup>1</sup> 2026 INSC 302



principles are equally applicable to arbitration proceedings. Consequently, if a party withdraws or abandons proceedings without obtaining liberty to re-initiate them, a subsequent proceeding on the same cause of action is barred.

The Hon'ble Supreme Court further examined the concept of abandonment and observed that it is not to be inferred lightly. However, where the conduct of a party clearly demonstrates an intention to relinquish the claim, such an inference becomes unavoidable. In the present case, the respondent's explicit communication refusing to participate in the arbitration and rejecting the authority of the arbitrator constituted unequivocal evidence of abandonment. On the issue of whether a fresh cause of action had arisen, the Hon'ble Court rejected the Respondent's contention.

The Hon'ble Court observed the established precedents that delineate both the scope of Section 11 and the applicability of procedural bars. The reliance was placed on *Indian Oil Corporation Limited versus SPS Engineering Limited*<sup>2</sup>, wherein it was held that issues such as res judicata do not fall within the limited jurisdiction exercised at the stage of Section 11 proceedings. At the same time, the Hon'ble Court referred to *HPCL Bio-Fuels Limited versus Shahaji Bhanudas Bhad*<sup>3</sup> to affirm that principles analogous to Order XXIII Rule 1 of the Code of Civil Procedure apply to arbitration proceedings, thereby barring fresh applications on the same cause of action in the absence of liberty at the time of withdrawal. Further, the Court drew support from *Dani Wooltex Corporation and others versus Sheil Properties Private Limited and another*<sup>4</sup> to emphasize that abandonment of proceedings must be inferred from clear and unequivocal conduct, and not presumed lightly. Collectively, these precedents provided the doctrinal foundation for the Court's conclusion that the respondent's subsequent invocation of arbitration was legally untenable.

The Hon'ble Court held that the earlier judgment dealt with the validity of the auction conducted by the bank and did not concern the inter se disputes between the parties. Since the arbitration dispute existed independently and prior to that judgment, the dismissal of the civil appeal relating to the auction did not give rise to a new cause of action.

In light of its analysis, the Supreme Court concluded that the fresh application under Section 11 was not maintainable as it was based on the same cause of action that had already been abandoned by the Respondent. The Hon'ble Court held that permitting such a course of action would amount to allowing a litigant to abuse the process of law by repeatedly initiating proceedings on identical grounds. Accordingly, the Hon'ble Supreme Court set aside the High Court's order appointing an arbitrator and allowed the appeal. The ruling effectively terminated the respondent's attempt to revive arbitration proceedings and reaffirmed the importance of procedural finality in dispute resolution.

Thus, it may be noted that this judgment represents a significant reaffirmation of the principle that arbitration, while designed to be flexible and efficient, is not exempt from fundamental procedural safeguards. By applying the bar under Order XXIII Rule 1 of the Code of Civil Procedure to arbitration proceedings, the Hon'ble Supreme Court has ensured that parties cannot exploit procedural mechanisms to prolong disputes or relitigate abandoned claims. The decision thus strengthens the integrity of arbitration as a dispute resolution mechanism by emphasizing finality, discouraging dilatory tactics, and aligning arbitral practice with broader principles of civil justice.

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<sup>2</sup> (2011) 3 SCC 507

<sup>3</sup> 2024 SCC OnLine SC 3190

<sup>4</sup> (2024) 7 SCC 1