

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 1

CIVIL MISC. ARBITRATION APPLICATION NO.4 OF 2024

M/S GEO MILLER & CO. PVT. LTD.

v.

UP JAL NIGAM AND OTHERS

WITH

CIVIL MISC. ARBITRATION APPLICATION NO.5 OF 2024

GPT INFRAPROJECTS LIMITED

v.

KANPUR DEVELOPMENT AUTHORITY

For the Applicants : Sri S.D. Singh with Sri Shadab Alam, Advocates
Sri Sujeet Kumar with Ms. Chhaya Gupta, Advocates

For the Respondents: Sri Vimlesh Kumar Rai, Advocate for U.P. Jal Nigah
Sri Anand Prakash Paul, Advocate for Kanpur Development
Authority

Last heard on May 7, 2024

Judgement on May 17, 2024

HON'BLE SHEKHAR B. SARAF, J.

1. These applications have been filed under Section 29(A)(4) and Section 29(A)(5) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act') praying for extension of the mandate of the arbitral tribunal.

2. Since the instant applications (ARBT – 4 of 2024 and ARBT – 5 of 2024) involve similar issues, they are being taken up together.

FACTS

3. The brief factual matrix involved in ARBT – 4 of 2024 has been delineated below:

- (a) M/s Geo Miller and Co. Pvt. Ltd. (hereinafter referred to as the ‘Petitioner – ARBT 4’) and U.P. Jal Nigam and Others (hereinafter referred to as the ‘Respondents - ARBT 4’) entered into a contract. Disputes and differences arose between the parties which were referred to arbitration.
- (b) Petitioner – ARBT 4 filed an application under Section 11 of the Act for appointment of an arbitrator before this Court.
- (c) Vide orders dated September 16, 2021 and October 6, 2021, this Court appointed Mr. Justice R.D. Khare (Former Judge of this Court) as the sole arbitrator.
- (d) The time limited for making an arbitral award as provided under Section 29A of the Act expired on February 29, 2024. The arbitrator could not publish his award within the statutory time limit, and therefore, he asked the parties to seek extension of time in accordance with the law.
- (e) Hence, the Petitioner – ARBT 4 filed the instant application being Civil Misc. Arbitration Application No. – 4 of 2024 under Section 29A of the Act.

4. The brief factual matrix involved in ARBT – 5 of 2024 has been delineated below:

- (a) Disputes and differences arose between GPT Infraprojects Limited (hereinafter referred to as the ‘Petitioner – ARBT 5’) and Kanpur Development

Authority (hereinafter referred to as the 'Respondent – ARBT 5') which were referred to arbitration.

- (b) The arbitrator in the case was appointed by this Court under Section 11 of the Act vide orders dated June 18, 2021 and July 29, 2021.
- (c) Since the time limit to make an arbitral award in accordance with Section 29A of the Act was about to expire on March 7, 2024, the Petitioner – ARBT 5 filed the instant application being Civil Misc. Arbitration Application No. – 5 of 2024 seeking extension of time before this Court.

CONTENTIONS OF THE APPLICANT IN ARBT NO. 4 OF 2024

5. Sri S.D. Singh, learned counsel appearing for the applicant has made the following submissions:

- (i) This Court vide its order dated February 26, 2024 passed in *M/s. Jaypee Infratech Limited -v- Ehbh Services Private Limited and Another* had referred the issue regarding Section 29A of the Act before the Larger Bench in light of various conflicting judgments passed by different Coordinate Benches of this Court.
- (ii) The question which arose in the present matter was that what will be the situation for deciding the cases during the pendency of the issues referred to the Larger Bench.
- (iii) According to various judgments of the Hon'ble Supreme Court, earlier decision can be relied upon during the pendency of the reference before the Larger Bench unless there is a specific order restraining the Court from deciding any matter on the issues that have been referred to the Larger Bench.
- (iv) Judgment of this Court in *Lucknow Agencies LKO -v- UP Awas Vikas Parishad and Ors.* reported in

MANU/UP/0885/2019 deals with a different situation and as such the said judgment is not in conflict of any of the judgments delivered by other Coordinate Benches of this Court. In the said case it has been held by this Court that when the arbitrator has not been appointed under Section 11 of the Act, an application under Section 29A of the Act would be maintainable only before the court as defined under Section 2(1)(e) of the Act.

- (v) The issue that “Whether an application filed under Section 29A of the Act for extension of the mandate of the arbitral tribunal is maintainable before this Court or before the Court as defined under Section 2(1)(e) of the Act, when this Court has appointed the arbitrator under Section 11 of the Act” arose before this Court for the first time in *Indian Farmers Fertilizers Cooperative Limited -v- Manish Engineering Enterprises* reported in **MANU/UP/0515/2022**.
- (vi) It has been held in *Indian Farmers Fertilizers (supra)* that when this Court has exercised its jurisdiction under Section 11 of the Act to appoint the arbitrator, an application under Section 29A of the Act would be maintainable before this Court only. Therefore, it is clear that the first judgment on this issue is *Indian Farmers Fertilizers (supra)*.
- (vii) The instant matter or any other similar matter are not required to be kept pending till such time the reference made to Larger Bench is answered. The instant matter or any other similar matter is needed to be decided by this Court based on its judgement in *Indian Farmers Fertilizers (supra)*, as per the law laid down by the Hon’ble Supreme Court in *National Insurance Co. Ltd. -v- Pranay Sethi & Ors.* reported in **(2017) 16 SCC 680**

and *Union Territory of Ladakh & Ors. -v- Jammu and Kashmir National Conference and Anr.* reported in 2023 SCC OnLine SC 1140.

- (viii) The Constitution Bench of the Hon'ble Supreme Court in *Pranay Sethi (supra)* held that there can be no scintilla of doubt that an earlier decision of co-equal Bench binds another Bench of the same strength".
- (ix) The Hon'ble Supreme Court in *Union Territory of Ladakh & Ors. -v- Jammu and Kashmir National Conference and Anr. (supra)* dealt with the issue that what will be the course of action for deciding the pending matters or the matters which have been filed during the interregnum period, when any issue is pending before the Larger Bench.
- (x) Based on the facts and circumstances of this case, it is prayed that this Court may be pleased to exercise its jurisdiction under Section 29(A) of the Act and extend the time period for making the arbitral award.

ANALYSIS AND CONCLUSION

6. I have heard the learned counsel appearing for the parties and perused the material on record.

7. The question of law involved in the instant applications is as to which of the judgments in light of the conflicting position of law on Section 29A of the Act espoused by different coordinate Benches of this Court would hold the field till such time as the reference to Larger Bench made vide this Court's order dated February 26th, 2024 is answered. Hence, for the better adjudication of the matter, I have divided the instant judgment into two issues:

Issue No. 1: When there are conflicting judgments of different benches of coequal strength of a court on a similar question of law, which one assumes the status of binding

precedent when the said question of law has been referred to a larger bench for adjudication ?

Issue No. 2: Which judgment will govern the field of law on Section 29A of the Act as far as this Court is concerned ?

ISSUE NO. 1

8. The principle of judicial discipline is a cornerstone of the legal system, essential for maintaining the integrity, coherence, and predictability of judicial decisions. One of the key mechanisms through which judicial discipline is maintained is the doctrine of stare decisis, which literally means “to stand by things decided”. Under this doctrine, courts are bound to follow their own previous decisions when confronted with similar legal issues. This principle serves several important purposes. Firstly, it promotes consistency and predictability in the law, ensuring that similar cases are decided in a uniform manner. This fosters legal certainty and promotes the rule of law by providing litigants with a clear understanding of their rights and obligations. Secondly, stare decisis promotes respect for judicial authority and fosters public confidence in the legal system. By adhering to established legal precedents, courts demonstrate a respect for the decisions of their predecessors and the principle of continuity in the law. This enhances the legitimacy of judicial decisions and reinforces the notion that courts are impartial arbiters of legal disputes, guided by established legal norms rather than personal preferences or biases.

9. Additionally, the doctrine of stare decisis promotes judicial efficiency by reducing the need for courts to revisit settled legal issues. By following established legal precedents, courts can focus their attention on resolving new and novel legal questions, rather than re-litigating issues that have already been decided. This streamlines the judicial process and enables the courts to operate more effectively, ensuring that scarce judicial resources are allocated efficiently.

10. When a Coordinate Bench issues a judgment on a particular legal issue, that judgment becomes binding precedent for subsequent cases involving a similar issue before another Coordinate Bench. This ensures that

similar cases are decided in a consistent and uniform manner, regardless of the particular composition of the Bench.

11. In *State of Uttar Pradesh and Others -v- Ajay Kumar Sharma* reported in (2016) 15 SCC 289, the Hon'ble Supreme Court espoused on the significance of the doctrine of stare decisis as follows:

“13. Time and again this Court has emphatically restated the essentials and principles of “precedent” and of stare decisis which are a cardinal feature of the hierarchical character of all common law judicial systems. The doctrine of precedent mandates that an exposition of law must be followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and subordinate courts. That is to say that a smaller and a later Bench has no freedom other than to apply the law laid down by the earlier and larger Bench; that is the law which is said to hold the field. Apart from Article 141, it is a policy of the courts to stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is so perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon'ble Chief Justice to constitute a larger Bench.

14. If binding precedents even of coordinate strength are not followed, the roots of continuity and certainty of law which should be nurtured, strengthened, perpetuated and proliferated will instead be deracinated. Although spoken in a totally different context, we are reminded of the opening stanza of the poem “The Second Coming” authored by William Butler Yeats. The lines obviously do not advert to the principle of precedent but they are apposite in bringing out the wisdom of this ancient and venerable principle.

“Turning and turning in the widening gyre

The falcon cannot hear the falconer;

Things fall apart; the centre cannot hold;

Mere anarchy is loosed upon the world.”

12. What follows from the aforesaid decision of the Hon'ble Supreme Court is that the doctrine of stare decisis holds paramount importance. The adherence to precedent is not merely a matter of legal formalism but serves the vital function of bestowing predictability on judicial decisions, thereby fostering certainty in the law. The analogy drawn by the Hon'ble Supreme Court to William Butler Yeats' poem "The Second Coming" poignantly captures the essence of the doctrine of stare decisis. Just as the falcon in Yeats' poem struggles to maintain its course amidst chaos and disarray, so too does the legal system face the risk of fragmentation and disintegration when courts fail to uphold established precedents. Without the anchor of precedent to guide its decisions, the judiciary risks descending into a state of "mere anarchy", where the fundamental principles of justice and equity are cast aside in favour of individual whim or caprice.

13. Indeed, the parallels between Yeats' evocative imagery and the principles of stare decisis are striking. The image of "things fall apart" when the centre cannot hold resonates with the chaos that ensues when legal precedent is disregarded, leading to uncertainty, inconsistency, and a loss of faith in the judicial system. In contrast, the preservation of precedent serves as a bulwark against the tide of legal tumult, anchoring the law in a bedrock of stability and continuity.

14. Justice Benjamin N. Cardozo eloquently stated "The labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case, and one could not lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him." Thus, while precedent provides a foundation for legal reasoning, it also allows for the exercise of judicial wisdom and discretion in exceptional cases.

15. In the intricate tapestry of legal precedent, one of the most formidable challenges facing the judiciary is the dilemma of conflicting precedents. At the heart of the dilemma lies the clash of titans – two or more precedents that stand in direct opposition to one another. This clash may arise due to a variety of reasons, including divergent interpretations of statutory language,

conflicting judicial philosophies, or evolving societal norms. When confronted with conflicting precedents by earlier benches of coequal strength, courts usually have limited options before them. One such option is the principle of distinguishing, whereby a court seeks to identify meaningful differences between the conflicting precedents and apply the one that is most applicable to the case at hand. This approach allows courts to preserve the integrity of both precedents while harmonizing their application to the facts before them. In addition to the same, another option available to courts in cases of conflicting precedents is to make a reference to a bench of larger strength. This option recognizes the complexity and significance of the issue at hand. Take for example, the practice of en blanc review present in the United States. En blanc review involves rehearing a case before all the judges of a court, rather than a smaller panel, and is typically reserved for cases of exceptional importance or complexity. By convening a larger bench, courts ensure that decisions of significant consequences are made with the benefit of a wider range of perspectives and expertise.

16. However, the question remains as to the path that must be followed till such time as the larger bench returns its decision.

17. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited -v- Pranay Sethi (supra)* wherein the Hon'ble Supreme Court grappled with a similar question and concluded as follows after making a reference to precedents:

“16. In State of Bihar v. Kalika Kuer [State of Bihar v. Kalika Kuer, (2003) 5 SCC 448] , it has been held :

“10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ...”

The Court has further ruled :

“10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

17. In *G.L. Batra v. State of Haryana* [*G.L. Batra v. State of Haryana*, (2014) 13 SCC 759 : (2015) 3 SCC (L&S) 575], the Court has accepted the said principle on the basis of judgments of this Court rendered in *Union of India v. Godfrey Philips India Ltd.* [*Union of India v. Godfrey Philips India Ltd.*, (1985) 4 SCC 369 : 1986 SCC (Tax) 11], *Sundarjas Kanyalal Bhatija v. Collector, Thane* [*Sundarjas Kanyalal Bhatija v. Collector, Thane*, (1989) 3 SCC 396] and *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel* [*Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*, AIR 1968 SC 372]. It may be noted here that the Constitution Bench in *Madras Bar Assn. v. Union of India* [*Madras Bar Assn. v. Union of India*, (2015) 8 SCC 583] has clearly stated that the prior Constitution Bench judgment in *Union of India v. Madras Bar Assn.* [*Union of India v. Madras Bar Assn.*, (2010) 11 SCC 1] is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by the later Constitution Bench.

18. In this regard, we may refer to a passage from *Jaisri Sahu v. Rajdewan Dubey* [*Jaisri Sahu v. Rajdewan Dubey*, AIR 1962 SC 83] :

*“10. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision [*Dasrath Singh v. Damri Singh*, 1925 SCC OnLine Pat 242 : AIR 1927 Pat 219] given by a Bench is not brought to the notice of a Bench [*Ram Asre Singh v. Ambica Lal*, AIR 1929 Pat 216] hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court*

appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Gundavarupu Seshamma v. Kornepati Venkata Narasimharao [Gundavarupu Seshamma v. Kornepati Venkata Narasimharao, 1939 SCC OnLine Mad 367 : ILR 1940 Mad 454] that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England,

'1687. ... the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.'

In Katragadda Virayya v. Katragadda Venkata Subbaya [Katragadda Virayya v. Katragadda Venkata Subbaya, 1955 SCC OnLine AP 34 : AIR 1955 AP 215] it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in D.D. Bilimoria v. Central Bank of India [D.D. Bilimoria v. Central Bank of India, 1943 SCC OnLine MP 97 : AIR 1943 Nag 340] . The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

19. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with

the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.

20. In the context, we may fruitfully note what has been stated in Pradip Chandra Parija v. Pramod Chandra Patnaik [Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1] . In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench [Pradip Chandra Parija v. Pramod Chandra Patnaik, Civil Appeal No. 791 of 1993, order dated 24-10-1996 (SC)] disagreeing with the three-Judge Bench [Nityananda Kar v. State of Orissa, 1991 Supp (2) SCC 516 : 1992 SCC (L&S) 177] decision directed the matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated :

“6. ... In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. ...”

21. In Chandra Prakash v. State of U.P. [Chandra Prakash v. State of U.P., (2002) 4 SCC 234 : 2002 SCC (L&S) 496] , another Constitution Bench dealing with the concept of precedents stated thus :

“22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in Raghbir Singh [Union of India v. Raghbir Singh, (1989) 2 SCC 754] held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ...”

Be it noted, Chandra Prakash [Chandra Prakash v. State of U.P., (2002) 4 SCC 234 : 2002 SCC (L&S) 496] concurred with the view expressed in Raghbir Singh [Union of

India v. Raghubir Singh, (1989) 2 SCC 754] and Pradip Chandra Parija [Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1] .

22. *In Sandhya Educational Society v. Union of India [Sandhya Educational Society v. Union of India, (2014) 7 SCC 701] , it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In Rattiram v. State of M.P. [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] , the Court dwelt upon the issue, what would be the consequent effect of the later decision which had been rendered without noticing the earlier decisions. The Court noted the observations in Raghubir Singh [Union of India v. Raghubir Singh, (1989) 2 SCC 754] and reproduced a passage from Indian Oil Corpn. Ltd. v. Municipal Corpn. [Indian Oil Corpn. Ltd. v. Municipal Corpn., (1995) 4 SCC 96] which is to the following effect : (Rattiram case [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] ,*

“27. ... ‘8. ... The Division Bench of the High Court in Municipal Corpn., Indore v. Ratnaprabha Dhanda [Municipal Corpn., Indore v. Ratnaprabha Dhanda, 1988 SCC OnLine MP 116 : 1989 MP LJ 20] was clearly in error in taking the view that the decision of this Court in Ratnaprabha [Municipal Corpn., Indore v. Ratnaprabha, (1976) 4 SCC 622] was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. ...’ (Indian Oil Corpn. case [Indian Oil Corpn. Ltd. v. Municipal Corpn., (1995) 4 SCC 96] , SCC p. 100, para 8)”

23. *It also stated what has been expressed in Raghubir Singh [Union of India v. Raghubir Singh, (1989) 2 SCC 754] by R.S. Pathak, C.J. It is as follows : (Rattiram case [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] ,*

“26. ... ‘28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. ...’

(Raghubir Singh case [Union of India v. Raghubir Singh, (1989) 2 SCC 754] , SCC p. 778, para 28) ”

24. In Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] the three-Judge Bench had delivered the judgment on 12-4-2013. The purpose of stating the date is that it has been delivered after the pronouncement made in Reshma Kumari case [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] . On a perusal of the decision in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , we find that an attempt has been made to explain what the two-Judge Bench had stated in Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] . The relevant passages read as follows : (Rajesh case [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , SCC p. 61, paras 8-9)

27. We are compelled to state here that in Munna Lal Jain [Munna Lal Jain v. Vipin Kumar Sharma, (2015) 6 SCC 347 : (2015) 3 SCC (Civ) 315 : (2015) 4 SCC (Cri) 195] , the three-Judge Bench should have been guided by the principle stated in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] which has concurred with the view expressed in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] or in case of disagreement, it should have been well advised to refer the case to a larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in Reshma Kumari [Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] being earlier in point of time would be a binding precedent and not the decision in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . ”

18. What emerges from the wisdom of the Hon’ble Supreme Court is that the doctrine of precedent, is not without its nuances and complexities. As elucidated by the Hon’ble Supreme Court, an earlier decision, even if

considered incorrect by a later Bench, retains its binding effect on subsequent Benches of coordinate jurisdiction. The principle which emerges is that the earlier decision must be followed until the decision of the larger bench is returned. This principle is rooted in tradition, certainty, and the integrity of precedent itself. As articulated by the Apex Court, the law would be bereft of utility if thrown into a state of uncertainty by conflicting decisions. Throughout history, the stability and continuity of law have been upheld through adherence to established precedent. By following the earlier decision, even in the face of conflicting precedents, courts preserve the integrity of the legal system and uphold the principle of stare decisis – the notion that like cases should be decided like. From a practical standpoint, following the earlier decision until the decision of the larger bench is returned serves to promote certainty and predictability in the administration of justice. When conflicting precedents arise, uncertainty abounds, and litigants may be left in a state of limbo, unsure of their rights and obligations under the law. By adhering to the earlier decision, courts provide a measure of stability and clarity, allowing parties to proceed with confidence while awaiting resolution from the larger bench.

19. In *Union Territory of Ladakh & Others -v- Jammu and Kashmir National Conference (supra)*, the Hon'ble Supreme Court reiterated the principle laid down in *Pranay Sethi (supra)* and propounded that when conflicting decisions of coequal benches exist, the earlier one is to be followed as binding precedent. Relevant paragraph is extracted herein:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced

with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680⁵. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

20. Recently, in ***Mary Pushpam -v- Telvi Curusumary*** reported in (2024) 3 SCC 224, the Hon’ble Supreme Court reiterated the significance of the doctrine of judicial discipline and propriety:

“Vikram Nath, J.— The rule of “Judicial Discipline and Propriety” and the doctrine of precedents has a merit of promoting certainty and consistency in judicial decisions providing assurance to individuals as to the consequences of their actions. The Constitution Benches of this Court have time and again reiterated the rules emerging from judicial discipline. Accordingly, when a decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench. It is the only course of action open to a Bench of co-equal strength, when faced with the previous decision taken by a Bench with same strength.”

21. The Hon’ble Supreme Court’s aforesaid pronouncements serve as a clarion call, admonishing against the perils of judicial vacillation and indecision. The directive to accord precedence to earlier judgments, notwithstanding doubts cast by subsequent coordinate benches, elucidates the unwavering commitment to upholding the rule of law and preserving the sanctity of legal precedent. The Supreme Court’s assertion that decisions of coordinate benches of the same High Court are to be respected and considered binding, subject to the right of coequal benches to refer the question to a larger bench, reflects the delicate balance between adherence to precedent and the pursuit of legal evolution by reaffirming the authority of precedent while acknowledging the judiciary’s prerogative to revisit established doctrines when warranted.

22. Precedents are not mere legal doctrines; they are the embodiment of centuries of legal wisdom and collective judicial experience. When courts deviate from established precedents without due consideration, they risk undermining the credibility and legitimacy of the legal system. Therefore, it

is imperative for courts to uphold the sanctity of legal precedents and adhere to established principles of judicial discipline, even in the face of conflicting opinions or pressures to depart from precedent.

23. This is reminiscent of Shakespeare's "Hamlet", where the protagonist grapples with the weight of inherited wisdom and the demands of his own conscience. Hamlet's dilemma mirrors the judicial predicament faced by courts when confronted with conflicting precedents. Like Hamlet, judges must navigate the intricate web of legal doctrines and precedents, weighing the authority of past decisions against the exigencies of the present moment. In embracing the rule of precedent, the judiciary echoes Hamlet's famous soliloquy (To be, or not to be, that is the question), acknowledging the enduring power of tradition while grappling with the imperatives of justice and fairness.

24. In light of the aforesaid, Issue No. 1 is answered as follows:

“When a bench of coequal strength is faced with conflicting judgments of other coequal benches, the judgment delivered earlier will continue to govern the field of law, till such time, the same is overturned or in case the question(s) of law, if referred to the larger bench is answered. This will also hold true when a lower court is faced with conflicting judgments of a higher court, or a coordinate bench is faced with conflicting judgments of a division bench.”

ISSUE NO.2

25. In *Lucknow Agencies (supra)*, which was delivered on March 15, 2019, a Coordinate Bench of this Court while considering an application under Section 29A(4) and Section 29(A)(5) of the Act held that given the fact that the arbitrator in the case was not appointed by the High Court under Section 11 of the Act, and that the Allahabad High Court does not exercise ordinary original civil jurisdiction, it does not have the power to hear an application under Section 29A of the Act, and the same will have to be made before the Court as defined under Section 2(1)(e) of the Act. Relevant paragraphs from the aforesaid judgment are extracted herein:

“3. In the instant case an Arbitrator was appointed by the Housing Commissioner of the Housing Board, U.P. and not by this Court under Section 11 of the Act, 1996. The proceedings could not be concluded within the time limit specified for rendering the arbitral award under Section 29-A but the parties by their consent extended the period for six months as has been recorded in the proceedings before the Arbitral Tribunal dated 13.01.2018, however, the proceedings could not be concluded even during this extended period of six months, therefore, this application has been filed.

11. On a bare reading of the aforesaid provision it is evident that if an Arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court. Now, this provision applies where the High Court exercises original civil jurisdiction to try suits involving commercial dispute as deferred in Section 2(1)(c) of the Act, 2015 as is evident from the use of the words 'filed on the original side of the High Court'. The Allahabad High court does not exercise original civil jurisdiction involving commercial disputes as defined in Section 2(1)(c) of the Act, 2015 as is evident from Rule 1 to 9 of Chapter VIII of the Allahabad High Court Rules, 1952. Moreover, Sub-section 3 of Section 10 of the Act, 2015 very categorically provides that if an arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the Act, 1996 that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Therefore, in the facts of the present case as the Allahabad High Court does not exercise original civil jurisdiction involving commercial disputes the application under Section 29-A of the Act, 1996 relating to a commercial dispute would lie before the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted and in an Arbitration relating to a non commercial dispute it would lie before the principal civil court of original jurisdiction i.e. the Court of District Judge as referred hereinabove. This is how the Act of 1996 and the Act, 2015 have to be read together to arrive at a harmonious understanding of the two Acts in matters of Arbitration.”

26. This Court in *Lucknow Agencies (supra)* did not deal with a situation wherein the arbitrator was appointed under the powers contained in Section 11 of the Act, and hence this Court, did not deal with the potential conflict between Section 11 of the Act and Section 29A of the Act which might arise in such a situation.

27. The aforesaid issue was dealt with for the first time by this Court in *Indian Farmers Fertilizers (supra)*, which was delivered on March 11, 2022. This Court held that where an arbitrator has been appointed under Section 11 of the Act, an application for extension of the mandate of the arbitral tribunal under Section 29A of the Act will lie before the court which appointed the arbitrator. Relevant paragraphs are extracted herein:

“43. Here, we are concerned with the extension of time limit for the arbitral award under Section 29A, wherein an arbitrator has been appointed by the High Court exercising power under Section 11 of the Act. Section 42 will not be attracted and it is only the High Court which has the power to grant extension to the Arbitral Tribunal for making award.

44. Reliance placed on the various decisions by the respondent's counsel relate to the definition of the word "court" under Section 2(1) (e) prior to the amendment of year 2015. In none of the judgment placed before the Court Sections 11 and 29A of the Act has been taken into consideration.

45. As far as decision of coordinate Bench of this Court in case of M/s. Lucknow Agencies and Another (supra) is concerned, the arbitrator was appointed by the Housing Commissioner and not by the High Court exercising power under Section 11 of the Act. The Court while considering the provisions of Section 29A(4) and (5) held that it was the principal Civil Court where the application for extension of time for arbitral award was maintainable and not before the High Court. In the said judgment there was no consideration as to subsection (6) and (7) of Section 29A of the Act. The said decision is distinguishable on the facts of the present case.

46. In the present case this Court exercising power under Section 11 of the Act has appointed the arbitrator way back in the year 2014.

47. Thus, the question framed above stand answered holding that the application for extension of time for arbitral award moved under Section 29A is maintainable before this Court.”

28. Unlike *Lucknow Agencies (supra)*, this Court in *Indian Farmers Fertilizers (supra)*, squarely addressed the issue of arbitrators appointed under Section 11 of the Act and the corresponding jurisdiction of this Court to grant extensions of time under Section 29A of the Act. The different approach adopted by this Court in *Lucknow Agencies (supra)* and *Indian Farmers Fertilizers (supra)* underscores the contextual specificity inherent in legal interpretation. The judgment in *Indian Farmers Fertilizers (supra)* clarified the the jurisdictional contours in cases involving arbitrators appointed under Section 11 of the Act.

29. At first glance, the judgments in *Lucknow Agencies (supra)* and *Indian Farmers Fertilizers (supra)* may appear to be at odds with each other. However, a closer examination reveals that they are not conflicting but rather complementary expressions of judicial wisdom. The divergence in factual scenarios necessitates different interpretative approaches. Context serves as the lens through which legal principles are applied to real – life scenarios, ensuring that the law remains relevant and responsive to the complexities of human affairs. Legal interpretation is not a mechanical exercise but a nuanced art that requires judges to consider the underlying facts and circumstances. As Justice Oliver Wendell Holmes famously remarked, “The life of the law has not been logic; it has been experience”. In other words, the law must reflect the lived experiences of individuals and communities to be meaningful and just. *Lucknow Agencies (supra)* and *Indian Farmer Fertilizers (supra)* exemplify this principle by taking into account the different factual scenarios before them and tailoring their interpretation accordingly. In *Lucknow Agencies (supra)*, where the arbitrator was not appointed by the High Court under Section 11 of the Act, this Court recognized the jurisdictional limitation of the Allahabad High Court and directed the parties to the appropriate forum as defined under the Act. On the other hand, *Indian Farmers Fertilizers (supra)*, dealt with a different factual scenario wherein the arbitrator was appointed by this Court under Section 11 of the Act.

30. However, this Court in *A'Xykno Capital Services (supra)*, this Court took a divergent view. After discussing the doctrine of *per incuriam*, this Court held that the judgment in *Indian Farmers Fertilizers (supra)* cannot be considered as a *binding precedent*. This Court further held that irrespective of who appointed the arbitrator, it is only the court as defined under Section 2(1)(e) of the Act that can entertain an application under Section 29A of the Act. Relevant paragraphs are extracted below:

“68. Upon applicability of aforesaid judgment, clearly the ratio decidendi enunciated not only by previous Coordinate Benches of this Court but also by Hon'ble the Supreme Court as indicated hereinabove as well as specific provisions of statute, in the considered opinion of this Court and with all due respect could not be considered in the case of Indian Fertilizers (supra) due to which it cannot be said to have attained the status of a binding precedent.

69. In the light of aforesaid aspects as indicated hereinabove, the question is answered as follows:-

'The concept of 'Court' as envisaged under Section 29A read with Section 2(1)(e) of the Act of 1996 does not include a High Court not having original civil jurisdiction as in the case of Allahabad High Court and an application as such under Section 29A of the Act of 1996 would be maintainable only in the Principal Civil Court of original jurisdiction in a district.'”

31. In *Jaypee Infratech (supra)*, I had discussed why the reasoning adopted in *A'Xykno Capital Services (supra)* was flawed:

“50. The reasoning as adopted in A'Xykno Capital Services (supra), will lead to a situation wherein although not intended by the legislature, power of substitution under Section 29A(6) would be bestowed upon the Court as defined under Section 2(1)(e) of the Act even when the initial appointment of the arbitrator(s) may have been made under Section 11 of the Act by the High Courts or the Supreme Court. Each provision in the Act, is required to be interpreted in the context under which it has been used. Literal rule of interpretation is not the only rule of interpretation. Section 29A of the Act, as interpreted in A'Xykno Capital Services (supra), creates absurdity by putting two provisions of the Act, in direct conflict with each other. Section 29A of the Act, cannot be read in isolation with Sections 11 and 14 of the Act. The judgment in A'Xykno Capital Services (supra) further goes against the principle of judicial hierarchy.

51. In A'Xykno Capital Services (supra), this Court also held that the power to substitute an arbitrator under Section 29A of the Act is not akin to the power to appoint an arbitrator under Section 11(6) of

the Act. This, in my view, is an erroneous reasoning. The usage of the term "appointed" in Section 29(7) of the Act indicates that substitution under Section 29(6) of the Act amounts to appointment:

"(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal."

52. Furthermore, the distinguishing of the judgment of Lucknow Agencies (supra), in Indian Fertilizers (supra), was held as erroneous by this Court in A'Xykno Capital Services (supra). To my view, this could not have been done. The judgments in Lucknow Agencies (supra) and Indian Fertilizers (supra) were delivered on different factual scenarios and therefore, the varying interpretation of Section 29A of the Act in the said judgments was not in conflict with each other. Where a High Court or the Supreme Court has not appointed the arbitrator, the Court within the meaning of Section 2(1)(e) of the Act can exercise the powers contained under Section 29A of the Act as the same would not lead to a conflict with the provisions contained under Section 11 of the Act and will also not go against the principal of judicial hierarchy. However, in case, where the appointment of the arbitrator(s) has been made under Section 11 of the Act, it is only the Court which appointed the arbitrator(s) that can hear an application under Section 29A of the Act."

32. In my view, the judgment of this Court in ***Indian Farmers Fertilizers (supra)*** ought to have been followed in ***A'Xykno Capital Services (supra)***. The doctrine of per incuriam is based on the latin phrase meaning "thorough lack of care". It allows the courts to depart from established precedent when a previous decision was made without proper consideration of relevant statutes, regulations, or binding authorities. However, the doctrine of per incuriam must be exercised with caution to ensure that it is not used as a pretext for disregarding inconvenient precedent. The principle should only be invoked in exceptional cases where the error is clear and unequivocal, and where adherence to the precedent would result in a grave injustice. Per incuriam should be used sparingly and only in exceptional cases.

33. In light of the above, the Issue No. 2 is answered as follows:

"The judgments in Lucknow Agencies (supra) and Indian Farmers Fertilizers (supra) having been delivered under different factual scenarios will continue to govern the field of

law as far as Section 29A of the Act is concerned before this Court. All applications filed under Section 29A of the Act till such time as the Larger Bench, reference to which was made vide this Court's order dated February 26, 2024, returns its decision on the questions of law, will have to be decided in accordance with the law laid down in Lucknow Agencies (supra) and Indian Farmers Fertilizers (supra). The judgment in A'Xykno Capital Services (supra) having been delivered after the aforesaid judgments, will not hold any precedential value. Needless to say, this position will be subject to the decision of the Larger Bench."

DIRECTIONS

34. In light of the aforesaid, since the appointment of the arbitrator in ARBT NOS. 4 and 5 of 2024 was made by this Court in exercise of its powers under Section 11 of the Act, the instant applications filed under Section 29A(4) and Section 29(A(5) of the Act are maintainable before this Court.

35. Accordingly, ARBT NO.4 of 2024 is allowed and the mandate of the arbitrator is extended for a period of 8 months from the date of this judgment.

36. ARBT NO. 5 of 2024 is also allowed and the mandate of the arbitrator is extended for a period of 8 months from the date of this judgment. There shall be no order as to the costs.

Date :- 17.05.2024
Kuldeep

(Shekhar B. Saraf, J.)