

(2024) 11 BOM CK 0031

Bombay High Court

Case No: Writ Petition No. 2315 Of 2015

Shri. Deepak Manaklal Katariya

APPELLANT

Vs

Mr. Ashok Motilal Katariya And  
Ors

RESPONDENT

**Date of Decision:** Nov. 29, 2024

**Acts Referred:**

- Code of Civil Procedure, 1908 - Section 11, Order 14 Rule 2
- Arbitration Act, 1940 - Section 20
- Arbitration and Conciliation Act, 1996 - Section 2(c), 2(e), 9, 21, 85(2)(a)

**Hon'ble Judges:** Amit Borkar, J

**Bench:** Single Bench

**Advocate:** Shriram S. Kulkarni, Aniruddha A

**Final Decision:** Disposed Of

### Judgement

Amit Borkar, J

1. The petitioner is challenging the order dated 10th November 2014 passed by the 3rd Joint Civil Judge Senior Division, Nashik, in Civil Miscellaneous

Application No. 321 of 2000 filed under Section 20 of the Arbitration Act, 1940, wherein it was held that the Court had no jurisdiction to entertain the

application.

2. The relevant facts for adjudication are as follows. According to the petitioner, on 28th May 1995, an arbitration agreement was executed between

the petitioner and respondent No. 1 concerning movable and immovable properties described in the application. The arbitration agreement was

purportedly governed by the Arbitration Act, 1940. A dispute arose between the parties in 1994, leading to the appointment of an Arbitrator. The

Arbitrator submitted a draft arbitration award on 17th February 1997, which was accepted by the petitioner but refused by respondent No. 1.

Consequently, no final arbitration award materialized between the parties, which became the crux of the subsequent litigation.

3. On 17th March 1998, the petitioner filed Civil Miscellaneous Application No. 54 of 1998 in the Court of Civil Judge, Senior Division, Nashik, under

Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim injunction against respondent No. 1. The Trial Court granted a temporary

injunction on 7th April 1998.

4. Respondent No. 1 challenged the injunction order by filing Civil Miscellaneous Application No. 244 of 1998 before the 2nd Additional District Judge,

Nashik. By judgment and order dated 20th October 1999, the District Judge set aside the injunction, holding that the Civil Judge, Senior Division, was

not a "Court" within the meaning of Section 2(e) of the Arbitration and Conciliation Act, 1996.

5. The petitioner challenged the District Judge's order in Writ Petition No. 663 of 1999 before this Court. By order dated 4th April 2000, this Court

confirmed the Appellate Court's findings but permitted the petitioner to withdraw the Section 9 application with liberty to pursue appropriate remedies.

The Supreme Court dismissed the petitioner's Special Leave Petition No. 12388 of 2000 on 6th November 2000. Subsequently, the petitioner

withdrew Civil Miscellaneous Application No. 54 of 1998 with liberty to file a fresh application, which was allowed by the Trial Court on 13th

December 2000.

6. On 14th December 2000, the petitioner filed Civil Miscellaneous Application No. 321 of 2000 under Section 20 of the Arbitration Act, 1940, before

the Civil Judge, Senior Division, Nashik. Respondent No. 1 filed an application seeking the framing of a preliminary issue regarding the Court's

jurisdiction. By the impugned order dated 10th November 2014, the Trial Court held that it lacked jurisdiction to entertain the application.

7. Mr. Kulkarni, learned Advocate representing the petitioner, contended that the respondents are barred by the principle of estoppel from raising

objections regarding the applicability of the Arbitration Act, 1940. He pointed out that in earlier proceedings, including before the Supreme Court, the respondents had specifically pleaded that the purported arbitration agreement dated 28th May 1995 and the subsequent dispute were governed by the provisions of the Arbitration Act, 1940. Referring to paragraph 6(i) of the reply filed by the respondents before the Supreme Court, he submitted that the respondents unequivocally acknowledged that the arbitration agreement and reference pertained to the Arbitration Act, 1940. He argued that the doctrine of estoppel, as enshrined in Section 115 of the Indian Evidence Act, 1872, precludes a party from denying or going back on their prior statements, especially when such statements were relied upon by the petitioner to initiate proceedings under the old Act.

8. Further, Mr. Kulkarni submitted that the Trial Court erred in conflating the issues of maintainability and jurisdiction. He asserted that maintainability pertains to procedural compliance, whereas jurisdiction involves the Court's legal authority to adjudicate. The Trial Court, he argued, failed to address the petitioner's submissions in light of the respondents' own admissions and prematurely concluded on jurisdiction without analyzing the broader context of Section 20 of the Arbitration Act, 1940. In conclusion, Mr. Kulkarni argued that the impugned order deserves to be quashed as it overlooked material facts, misapplied the law, and failed to consider the binding nature of prior statements made by the respondents in judicial proceedings.

9. Per contra, Mr. Garge, learned Advocate representing respondent No. 1, supported the impugned order by emphasizing the transition in the statutory regime governing arbitration. He argued that the Arbitration and Conciliation Act, 1996, explicitly repealed the Arbitration Act, 1940, through Section 85(1). The savings clause under Section 85(2)(a) provides that the provisions of the 1940 Act would only apply to arbitration proceedings that had commenced before the enactment of the 1996 Act, i.e., before 22nd August 1996. Mr. Garge contended that the phrase "commencement of arbitration proceedings" must be interpreted in light of Section 21 of the Arbitration and Conciliation Act, 1996, which states that proceedings

commence when the respondent receives a request for arbitration from the claimant. He argued that since no arbitration proceedings had commenced under the 1940 Act before its repeal, the petitioner cannot invoke its provisions.

10. Mr. Garge further argued that the Trial Court correctly framed and decided the preliminary issue of jurisdiction under Order XIV Rule 2 of the

Code of Civil Procedure, 1908, as it pertains to the foundational competence of the Court to entertain the matter. According to him, the Trial

Court's findings align with the legislative intent and jurisprudence under the 1996 Act, which prioritizes procedural clarity and eliminates dual

regimes for arbitration.

11. Having heard the learned Advocates for the respective parties and upon considering the record, it is evident that the Trial Court conflated the

concepts of jurisdiction and maintainability. The terms "jurisdiction" and "maintainability" are often mistakenly used interchangeably, yet they hold

distinct legal connotations. A precise understanding of the distinction is crucial for judicial adjudication. Jurisdiction refers to the power and authority of

a court or tribunal to adjudicate a dispute and render a binding decision. It is derived from the Latin words "juris" (law) and "dico" (I speak), which

collectively signify "speaking by the law." The concept extends to the legal power to entertain, inquire into facts, apply the law, and issue enforceable

judgments. Jurisdiction can be classified into three distinct categories:

Subject Matter Jurisdiction – The court's power to deal with a specific type of case based on statutory provisions.

Territorial Jurisdiction – The geographic area within which a court can exercise its authority.

Pecuniary Jurisdiction – The monetary limits of a court's power to hear a case.

12. Jurisdiction derives its authority from statutes, and its absence renders the court incompetent to decide the matter. Jurisdiction does not depend on

the correctness of the decision; a court may decide rightly or wrongly, yet its jurisdiction remains unaffected. It is foundational to the legitimacy of

judicial proceedings, as it embodies the legal capacity to entertain a suit and adjudicate on the merits.

13. Maintainability pertains to whether a legal proceeding is competent to be entertained, factoring in procedural and substantive requirements.

Maintainability relates to whether the suit is procedurally valid and not inherently barred. A case dismissed for lack of maintainability does not necessarily negate the existence of jurisdiction, as it may only reflect procedural infirmities. Unlike jurisdiction, maintainability addresses preliminary objections arising from procedural non-compliance or statutory bars rather than the inherent authority of the court. Examples of factors affecting maintainability include:

- (i) Bar under Statutes: Prohibitions on the initiation of proceedings due to legislative provisions (e.g., res judicata under Section 11 of CPC).
- (ii) Limitation Period: Filing of proceedings after the prescribed period under the Limitation Act, 1963.
- (iii) Locus Standi: The legal standing of the petitioner to institute proceedings.

14. Jurisdiction derives its authority from statutes conferring power on the court. Maintainability arises from procedural and statutory compliance requirements for initiating proceedings. Lack of jurisdiction results in the nullity of proceedings, as the court inherently lacks authority to adjudicate.

Non-compliance with maintainability bars leads to dismissal without deciding the merits of the case but does not affect the court's inherent power.

15. Thus, while jurisdiction focuses on the court's authority, maintainability examines the legal validity of the proceedings.

16. A perusal of the impugned order reveals that the Trial Court framed the issue of jurisdiction. However, while recording its findings, it concluded that the proceeding was not maintainable due to the inapplicability of Section 20 of the Arbitration Act, 1940. This approach demonstrates a fundamental misunderstanding of the distinction between jurisdiction and maintainability.

17. The respondents' stand before the Supreme Court, as extracted below, further complicates the matter:

6(i) The alleged or purported agreement of the arbitration entering into reference is of 1995 and therefore the application, if any, could have been made

only under the Arbitration Act of 1940.

18. The respondents themselves admitted that the arbitration agreement and reference pertained to the provisions of the Arbitration Act, 1940. This

admission assumes significance because Section 85(2)(a) of the Arbitration and Conciliation Act, 1996 saves proceedings that commenced under the 1940 Act prior to its repeal. The Trial Court's failure to properly consider this aspect underscores a flawed application of the legal principles.

19. The petitioner's application under Section 20 of the Arbitration Act, 1940 was filed to enforce an arbitration agreement entered before the repeal of the 1940 Act. It is pertinent to note that Section 20 allows parties to seek court intervention for filing an arbitration agreement in court and for the appointment of an arbitrator. The jurisdiction of the Civil Judge, Senior Division, to entertain such an application is derived under Section 2(c) of the Act which defines court as a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit.

20. The Trial Court improperly conflated the provisions of Section 20 with maintainability. Jurisdiction must be determined based on the pleadings in the application. The petitioner's averments regarding the arbitration agreement and the alleged consent by respondent No. 1 to appoint the arbitrator establish a prima facie case for jurisdiction under the 1940 Act. The issue of whether respondent No. 1 consented to the arbitrator's appointment or the draft award is a matter for substantive adjudication and does not affect the Court's jurisdiction to entertain the application.

21. The Trial Court, while concluding that it lacked jurisdiction, proceeded to consider the maintainability of the petitioner's claim under Section 20 of the Arbitration Act, 1940. This consideration was beyond the scope of the Trial Court's authority, as a finding of lack of jurisdiction precludes further deliberation on the merits or maintainability of the case.

22. In view of the above analysis, the Trial Court's order reflects a fundamental misapplication of legal principles. Consequently, the following order is passed:

(a) The impugned order dated 10th November 2014 passed by the 3rd Joint Civil Judge, Senior Division, Nashik in Civil Miscellaneous Application No. 321 of 2000 is quashed and set aside.

(b) Civil Miscellaneous Application No. 321 of 2000 is restored to the file of the Civil Judge, Senior Division, Nashik. The Trial Court shall adjudicate the application

on merits, including the issue of maintainability, strictly in accordance with law.

23. The writ petition stands disposed of in the above terms. No order as to costs.