IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

FRIDAY, THE 12TH DAY OF DECEMBER 2025 / 21ST AGRAHAYANA, 1947

RP NO. 1582 OF 2025

AGAINST THE JUDGMENT DATED 18.11.2025 IN AR NO.179 OF 2025 OF HIGH COURT OF KERALA

REVIEW PETITIONER/PETITIONER:

KOSHY PHILLIP
AGED 71 YEARS
S/O. P.M.KOSHY, RESIDING AT PADINJATTEDATHU GRACE BHAVAN, PUNNAKKADU, MALLAPUZHASSERI, PUNNAKKAD PO, PATHANAMTHITTA, KOLENCHERRY, 689652, PRESENTLY RESIDING AT PADINJATTEDATHU, 32/2140B, PJRA-202, PJ ANTONY ROAD, EDAPALLY, ERNAKULAM, KERALA, PIN – 682024.

BY ADV SRI.MILLU DANDAPANI

RESPONDENTS/RESPONDENTS:

1 **THOMAS P MATHEW**
S/O. MATHAN MATHAYI, PULIYILETHU HOUSE, MANARCADU PO, KOTTAYAM, PIN – 686019.

2 **P.M. MATHEW**
S/O MATHAN MATHAYI, PULIYILETHU HOUSE, MAKKAPUZHA P.O., RANNI 689676, PRESENTLY AT: PULIYILETHU HOUSE,
HOUSE NO. PFRA-22, NEAR PROVIDENT FUND OFFICE, KALOOR 682017, ERNAKULAM NOW RESIDING 2, THE RISE EDGWARE UNITED KINGDOM, HA 88NR.

3 M/S PETRA CRUSHERS
14/64, PULIYILETH, BULIDING NO:X1/541B,
MANARCAUDU P.O., KOTTAYAM DIST, KERALA-686019,
REPRESENTED BY ITS MANAGING DIRECTOR THOMAS P MATHEW.

OTHER PRESENT:ADV GEORGE CHERIAN, (SR)

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 24.11.2025, THE COURT ON 12.12.2025 PASSED THE FOLLOWING:

[CR]

S.MANU, J.

R.P.No.1582 of 2025
in
A.R.No.179 of 2025

Dated this the 12th day of December, 2025

ORDER

A.R.No.179/2025 was dismissed by order dated 18.11.2025. Feeling aggrieved by the aforementioned order, the petitioner presented this review petition. When this review petition was listed for admission, both parties were called upon to address the Court concerning the maintainability of the review petition.

2. Heard Sri.Millu Dandapani, learned counsel for the petitioner and Sri.George Cherian, learned Senior Counsel for the respondents.

3. Sri.Millu Dandapani submitted that the High Court being a court of record has inherent power and duty to ensure that the records are correctly maintained and hence rectifying errors is

within the inherent powers of the High Court. He further contended that the power under Section 11(6) of the Arbitration and Conciliation Act is a judicial power and therefore power of substantive review can be exercised with respect to orders passed under Section 11(6) of the Act. The learned counsel relied on an order of the Bombay High Court in **Hindustan Construction Co.Ltd. v. State of Maharashtra** [Review Petition No.2 of 2013 in Arbitration Appeal No.6 of 2007 in Arbitration Application No.44 of 2003]. The order was passed in a review petition filed against an order and judgment in an Arbitration Appeal rendered by a learned Single Judge. The learned Single Judge held that the provisions of Arbitration and Conciliation Act, 1996 [henceforward mentioned as 'the Act'] does not exclude the powers of the High Court to exercise its plenary powers to have procedural review in case of error apparent on the face of the record. The learned Judge allowed the review petition.

4. The learned counsel also relied on a judgment of a learned Single Judge of this Court in the **Superintending Engineer v. M/S.P.C.Thomas and Company** (R.P.No.126/2010 in A.R.No.40/2006 & connected R.Ps.). He pointed out that the learned Single Judge entertained the review petitions, however rejected them on merits. He further contended that the Hon'ble Supreme Court in **M.M.Thomas v. State of Kerala and Another** [2000 (1) SCC 666] held that the High Court as a court of record, as envisaged in Article 215 of the Constitution, has inherent powers to correct the records. Further, it was held that the High Court has a duty to itself to keep all its records correctly and in accordance with law. The power of the High Court in that regard was held as plenary. He submitted that in view of the amendment to Section 11(6) by the Arbitration and Conciliation (Amendment) Act, 2015, the request is made to the Supreme Court or as the case may be to the High Court or any person or institution designated by such court. Therefore, it is no longer a power vested with a

designated authority, but on the court. As the Supreme Court and the High Courts are courts of record, the inherent plenary powers can be extended to review orders passed under Section 11(6) of the Act. The learned counsel hence contended that this Court has indubitable authority to entertain the instant review petition and to decide it on merits. The learned counsel addressed the court on merits also. Nevertheless, those submissions need not be detailed at this stage as the issue of maintainability requires to be decided first.

5. Learned Senior Counsel for the respondent contended that the power available to this Court under Section 11 of the Act is a statutory power. Therefore, the power of review can be exercised only if the statute permits the same. There is no provision in the Act enabling to review an order passed under Section 11(6) of the Act. Therefore, no review petition can be entertained against orders passed under the said provision. The learned Senior Counsel relied on an order of this Court in **Sanjay Gupta v. Kerala State Industrial Development**

Corporation Ltd. [2009 SCC OnLine Ker 6361] and submitted that the learned Single Judge held that review petition was not maintainable. The learned Senior Counsel relied on two judgments of a learned Single Judge of the Delhi High Court in **Diamond Entertainment Technologies Private Limited and Others v. Religare Finvest Limited through its Authorized Officer** [2023 SCC OnLine Del 95] and **Kush Raj Bhatia v. DLF Power & Services Ltd.** [2022 SCC OnLine Del 4263] also. The learned Single Judge held that review is not maintainable with respect to an order passed under Section 11 of the Act. The learned Senior Counsel cited another order of the Delhi High Court rendered by a Division Bench in **N.S. Atwal v. Jindal Steel & Power Ltd** [2011 SCC OnLine Del 103]. The learned Judges considered an appeal filed against an order passed in a review petition and though the appeal was rejected as not maintainable, the Division Bench held that the review petition was not maintainable. He also relied on a judgment of a learned Single Judge of Allahabad High Court in **M/s. Shiv Hare**

Builders through Proprietor, Agra v. Executive Engineer, Provincial Division, Public Works Department, Agra and others [2010 SCC OnLine All 2309].The learned Single Judge held that the Chief Justice, while exercising power under Section 11(6) of the Act, is not a court, and at the highest, what would be inherent would be only the power of procedural review. The learned Senior Counsel submitted that the power conferred on the Court under Section 11(6) of the Act is a limited statutory power and the same cannot be compared with the powers available to the High Court under its constitutional, civil or criminal jurisdictions. No express or inherent power of review is available under the Arbitration and Conciliation Act regarding orders passed in exercise of the authority under Section 11(6) of the Act. He hence submitted that the review petition is liable to be rejected as not maintainable and hence did not proceed to advance any arguments on merits.

6. In the brief judgment in **Sanjay Gupta** *(Supra),* a learned Single Judge of this Court held that review is not

maintainable. Nevertheless, the same learned Single Judge, in the judgment pointed out by the learned counsel for the petitioner in **Superintending Engineer** *(Supra)* dismissed a bunch of review petitions on merits; however, in the said case, the petitioners had approached the Hon'ble Supreme Court in Special Leave Petitions against the orders passed under Section 11(6) of the Act and the SLPs were withdrawn with liberty to approach the High Court for clarification/modification of the impugned order. As stated in paragraph 2 of the judgment of the learned Single Judge, the Apex Court ordered that if any such application is filed within a period of one week the High Court would consider and dispose of the same expeditiously. Thereafter, the review petitions were filed. It appears that the learned Single Judge proceeded to consider the petitions on merits in view of the order passed by the Hon'ble Supreme Court. Nevertheless, as clear from paragraph 2, permission sought by the petitioners was to approach this Court for clarification/modification and not for filing review petitions. It

seems that the learned Single Judge considered the review petitions as petitions seeking clarification/modification. The issue as to whether review petitions were maintainable was not considered and decided.

7. Since both sides have advanced substantial contentions regarding maintainability of the review petition it is indispensable to analyse the issue in detail.

8. Nature of the jurisdiction under Section 11(6) of the Act was considered by a Bench of seven Judges of the Hon'ble Supreme Court in **SBP & Co. v. Patel Engineering Ltd. and Another** [(2005) 8 SCC 618]. The Hon'ble Supreme Court held that the said power is a judicial power. Originally, in the 1996 Act, under Section 11(6), the request was to be made to '*the Chief Justice or any person or institution designated by him*'. The same set of words was repeated in all relevant provisions under Section 11. By Arbitration and Conciliation (Amendment) Act, 2015, the words *'the Chief Justice or any person or institution designated by him'* were substituted in all provisions

under Section 11 with '*the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court'*. Contention of the learned counsel for the petitioner is that in view of the amendment, the jurisdiction to refer is now vested with the 'Court' and not with 'the Chief Justice or any person or institution designated by him'. The learned counsel hence submitted that the Supreme Court and High Courts being superior courts with plenary powers, enjoy the authority to review and rectify their records and the said power is undoubtedly available in the case of proceedings under Section 11 of the Arbitration and Conciliation Act also. The learned counsel relied on the judgment of the Hon'ble Supreme Court in **M.M.Thomas** *(Supra)* in this regard.

9. The learned Senior Counsel on the other hand placed heavy reliance on the judgment of this Court in **Sanjay Gupta** *(Supra)* and submitted that in the light of the said judgment the issue is covered and no detailed deliberation is required. However, it is to be noted that the judgment in **Sanjay Gupta**

(Supra) was rendered on 29.7.2009, much before the amendment to Section 11 of the Act noted above. It is to be noted that the emphasis of the court was on the aspect that the request under Section 11 does not lie to the High Court and the Chief Justice or a Judge of the High Court acting as a designate of the Chief Justice merely acts as a statutory authority in terms of Section 11 of the Act. In view of the significant amendment substituting the 'court' for 'the Chief Justice', the statutory premises on which the court proceeded in the said case have changed.

10. The learned Senior Counsel referred to the judgment of a Division Bench of the Delhi High Court in **N.S. Atwal** *(Supra)*. The Division Bench considered a challenge against an order passed by a learned Single Judge in a review petition filed against dismissal of an application under Section 11 of the Act. The Division Bench held that substantive review was not maintainable against an order passed under Section 11 of the Act because of absence of a provision in the Act investing the

powers of review. However, the said conclusion was also arrived at for the reason that a decision under Section 11 of the Act is not taken by a 'court'. The said judgment was rendered on 10.11.2011, before the amendment. The learned Division Bench noticed the judgment of the Hon'ble Supreme Court in **SBP and Co.** *(Supra)* wherein it was held that an order passed under Section 11 can be assailed under Article 136 of the Constitution and though the Division Bench concluded that the review was not maintainable, yet the appeal was dismissed as not maintainable.

11. The learned Senior Counsel relied on a judgment of the Allahabad High Court also. In **M/S.Shiv Hare Builders** *(Supra),* a learned Single Judge of the Allahabad High Court also held that the Chief Justice or his designate is not a court for the purpose of exercising review jurisdiction and the power of substantive judicial review is not inherent in a court or tribunal but it has to be specifically conferred. Difference between the power of substantial review and procedural review was also

noted and it was held that the Chief Justice is not a court who can exercise the power of substantive review as it has not been specifically conferred. The said judgment was also rendered before the amendment in 2015.

12. The learned Senior Counsel relied on the judgment of a learned Single Judge of the Delhi High Court in **Diamond Entertainment Technologies Pvt. Ltd.** *(Supra). The* Delhi High court made reference to various judgments of different High Courts including the judgment of this Court in **Sanjay Gupta** *(Supra)* and held as under:-

> "17. In Ram Chandra Pillai v. Arunschalathammal, (1971) 3 SCC 847 the scope of review in general has been defined and it is stated that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication and no power of review can be exercised in the absence of any express provision conferring this power of review.
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> 18. In Jain Studios Ltd. Through its President v. Shin Satellite Public Co. Ltd., (2006) 5 SCC 501 a reference was made to SBP & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618 and it was made clear that the powers exercised by the Chief Justice of High Court or its Nominee under Sub-section 6 of Section 11 of the Act is judicial. It was further observed that specific power of Review was conferred on the Supreme Court of India by virtue of Article 137 of the Constitution. It

specifically provided that the Supreme Court shall have the power to review any judgment pronounced or order made by it and because of conferring the review power on the Supreme Court, the same can be exercised by the Supreme Court in respect of any judicial Order.

19. In Ankiteros Shipping Corporation v. Adani Enterprises Ltd., Mumbai, (2020) 3 Mah LJ it was explained that unlike the Supreme Court which is vested with power of review under Article 137 of Constitution of India, High Court is not vested with any such similar power of review under the Constitution. The difference between substantive review and procedural review has to be considered in so much as the power of substantive review must be vested in a Court by a Statute and in the absence of any such power, no substantive review can be undertaken by the Court. However, a procedural review inheres in every Court and Tribunal to review its decision and if a procedural fault is found, to undo the same. This was explained by stating that if a party has been proceeded ex-parte or such like orders are made, the Court in exercise of its inherent powers can review such Orders, but any Order given on merit would entail substantial review which cannot be exercised in the absence of specific conferment of the power of review to the Court.

20. In Sanjay Gupta v. Kerala State Industrial Development Corporation Ltd., 2009 SCC OnLine Ker 6361 the Kerala High Court explained this principle by observing that the Review of Order under Section 11 of the Arbitration & Conciliation Act, 1996 does not lie with the High Court. Even when a Judge of the High Court acts as a Nominee of Chief Justice, he acts merely as a Statutory Authority as designated by the Chief Justice in terms of Section 11 of the Act. Therefore, unless the power of review is expressly conferred under the Act itself, general power of review as may be available to the High Court under other

> jurisdictions : civil, criminal or writ, cannot be extended to review the earlier Order issued by the Nominee of the Chief Justice. The Review Petition is, therefore, not maintainable and is liable to be dismissed.
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> 21. Similarly in COBRA-CIPL JV, the High Court of Madhya Pradesh while placing reliance on the observations of the Supreme Court in Jai Singh v. MCD, (2010) 9 SCC 385 observed that while exercising its power under Article 227 of the Constitution, the High Court may exercise its powers to correct any patent perversity in the Order of the Tribunal or the Subordinate Court or where there is manifest failure of justice, but said power cannot be exercised to correct all Orders or Judgment of the Court or Tribunal acting within the limits of this jurisdiction.
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> 22. By way of the present review petition, the petitioner is seeking review of the Order vide which an application under Section 11 of the Arbitration & Conciliation Act, 1996 has been allowed. Since the Order made under Section 11 of the Act is in exercise of the statutory powers as defined under the Arbitration & Conciliation Act, any review of the same can be only within the parameters of the Statute. Since, there is no provision of review in the Arbitration & Conciliation Act, this Court finds itself without any jurisdiction to review the present Order."

13. Another judgment rendered by the same learned Single Judge of the Delhi High Court in **Kush Raj Bhatia** *(Supra)* adopting the same view was also cited by the learned Senior Counsel. It was also pointed out that the SLP filed

against the said judgment was dismissed by the Hon'ble Supreme Court by order dated 4.7.2023. The above two judgments of the learned Single Judge of the Delhi High Court were rendered after the amendment in 2015.

14. Judgment of a seven-judge bench of the Hon'ble Supreme Court in **IN RE Interplay Between Arbitration Agreements Under Arbitration And Conciliation Act, 1996 And Stamp Act, 1899** [(2024) 6 SCC 1], throws light on the background of the amendment to Section 11 of the Arbitration Act. Relevant paragraph of the judgment is extracted hereunder:-

> "153. The decisions of this Court in Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] allowed for greater judicial interference at the pre-arbitral stage. In effect, the Referral Courts were encouraged to conduct mini trials instead of summarily dealing with the preliminary issues. This was also noted by the Law Commission of India, which observed that judicial intervention in the arbitral proceedings is a pervasive problem in India leading to significant delays in the arbitration process. [Law Commission of India, 246th Report (2014).] The Law Commission recognised that one of the problems plaguing implementation of the Arbitration Act was that Section 11 applications

> were kept pending for years by the Courts. To remedy the situation, the Law Commission proposed changing the then existing scheme of the power of appointment being vested in the "Chief Justice" to the "High Court" and the "Supreme Court". It also clarified that the power of appointment of arbitrators ought not to be regarded as a judicial act.

15. The Hon'ble Supreme Court also pointed out that the Law Commission observed that there was a need to reduce judicial intervention at the pre-arbitral stage, i.e., prior to the constitution of the Arbitral Tribunal. The Apex Court noticed insertion of sub-section (6A) under Section 11 with the intention of limiting the scope of judicial intervention at the referral stage and explained its purpose. The Hon'ble Court noticed that sub-section (6A), though was omitted vide Act 33 of 2019, still remains in the statute book as the amendment omitting the provision has not been notified. Therefore, the Hon'ble Supreme Court underscored the intention of the Amendment Act of 2015, i.e., to expedite the proceedings and to limit judicial intervention.

16. It is significant to note that in the above judgment, the Hon'ble Supreme Court explained the nature of the Arbitration and Conciliation Act. The relevant paragraphs are extracted hereunder:-

> "**(iii) The Arbitration Act is a self-contained code.**
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> 90. In Girnar Traders (3) v. State of Maharashtra [(2011) 3 SCC 1 : (2011) 1 SCC (Civ) 578], a Constitution Bench of this Court observed that a self-contained code is a complete legislation with regard to the purpose for which it is enacted. Such a self-contained code provides for a complete machinery to deal with the purpose sought to be achieved by that law and its dependence on other legislations is either absent or minimal.
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> 91. A two-Judge Bench of this Court, in Fuerst Day Lawson Ltd. v. Jindal Exports Ltd. [(2011) 8 SCC 333 : (2011) 4 SCC (Civ) 178], explained the nature of the Arbitration Act in the following terms : (SCC p. 371, para 89)
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> > "89. It is, thus, to be seen that the Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan [P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672]) was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the Uncitral Model must be held only to be more so.

> Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it "a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done" [S.N. Srikantia & Co. v. Union of India, 1965 SCC OnLine Bom 133]. In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded."

92. The Arbitration Act is a self-contained code inter alia with respect to matters dealing with appointment of arbitrators, commencement of arbitration, making of an award and challenges to the arbitral award, as well as execution of such awards. [Pasl Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd., (2021) 7 SCC 1 : (2021) 3 SCC (Civ) 702; Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715 : (2018) 4 SCC (Civ) 664]. When a self-contained code sets out a procedure, the applicability of a general legal procedure would be impliedly excluded. [Subal Paul v. Malina Paul, (2003) 10 SCC 361]. Being a self-contained and exhaustive code on arbitration law, the Arbitration Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise. Accordingly, matters governed by the Arbitration Act such as the arbitration agreement, appointment of arbitrators and competence of the Arbitral Tribunal to rule on its jurisdiction have to be assessed in the manner specified under the law. The corollary is that it is not permissible to do what is not mentioned

> under the Arbitration Act. Therefore, provisions of other statutes cannot interfere with the working of the Arbitration Act, unless specified otherwise."

17. In emphatic terms, the Hon'ble Supreme Court has held that being a self-contained and exhaustive code on arbitration law, the Act carries the imperative that what is permissible under the law ought to be performed only in the manner indicated, and not otherwise. Further, it was held that it is not permissible to do what is not mentioned under the Act.

18. In the same judgment, the Hon'ble Court noted that the law on arbitration has undergone a sea change over the course of a century. It was observed that one of the reasons that business and commercial entities prefer arbitration is because it obviates cumbersome judicial processes, which can often prove expensive, complex and interminable. The Court also observed that it was the duty of the Hon'ble Apex Court to interpret the Arbitration Act in a manner which gives life to the principles of modern arbitration in India.

19. In the light of the enunciation of law in **Re Interplay Between Arbitration Agreements Under Arbitration And Conciliation Act, 1996 And Stamp Act, 1899** [(2024) 6 SCC 1]**,** I am of the view that the contention of the learned counsel for the petitioner, relying on the substitution of the words *'the Chief Justice or any person or institution designated by him'* with '*the Supreme Court or, as the case may be, the High Court or any person or institution designated by such court*' in S.11 cannot be accepted. The objective of the amendment was to expedite the disposal of applications filed under S.11(6) as recommended by the Law Commission. Treating such applications for reference like other constitutional, civil and criminal litigations handled by the Court would defeat the purpose and object of the law of arbitration as well as the amendment made to S.11. Court considering applications under S.11 should bear in mind the policy of minimum and constricted judicial intervention, especially in the reference stage. The expeditious resolution of disputes being a primary objective of

the arbitration law, should not be hindered by the proliferation of avenues for contesting orders issued, thereby delaying the avowed objective of attaining quietus as early as possible. Therefore, even in the post-amendment scenario, the Courts would not be justified in treating the petitions under S.11(6) in the same manner as other litigations.

20. Very recently, the Hon'ble Supreme Court considered the issue regarding maintainability of review in case of proceedings under S.11 of the Arbitration and Conciliation Act in **Hindustan Construction Company Ltd v Bihar Rajya Pul Nirman Nigam Limited and Others** [2025 SCC OnLine SC 2578]. The Apex Court held as under :

> "11.8. While High Courts, as courts of record, do possess a limited power of review, such power is extremely circumscribed in matters governed by the Arbitration Act. It may be exercised only to correct an error apparent on the face of the record or to address a material fact that was overlooked. It cannot be used to revisit findings of law or reappreciate issues already decided.
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> 11.9. In Grindlays Bank Ltd v. Central Government Industrial Tribunal and others, (1980 supp SCC

420) this Court drew a clear distinction between procedural review and review on merits, holding that the latter is impermissible unless expressly provided. Applied to the Arbitration Act, this means that review is available only to cure a patent or procedural error - not to reopen interpretation of the arbitration agreement.

11.10. Referring to the aforesaid decision in Bharat Heavy Electricals Limited v. Jyothi Turbopower Services Private Limited, (2016 SCC OnLine Mad. 4029: 2016 (3) LW 683) in which, one of us (R. Mahadevan, J.) was a member, the Madras High Court held that while a Tribunal has no inherent power to undertake a review on merits, it nonetheless possesses the inherent procedural power to recall an order terminating the proceedings. It cannot be that a constitutional court of record lacks such power, to presume otherwise would amount to a constitutional fallacy. The Court further observed that the A&C Act, 1996 is a complete code in itself and is premised on minimal judicial intervention in arbitral proceedings. The following paragraphs are apposite:

> "18. The learned Arbitrator has also opined that an order under S.25(a) of the said Act cannot be construed to be an award as there is no decision on merit and thus, it may not be possible to maintain an appeal under S.34 of the said Act (reliance was placed on the decision

of the Division Bench of the Delhi High Court in ATV Projects India vs. IOC & another, 2013 (200) DLT 553). The learned Arbitrator thus opined that since a party cannot be without a remedy, what should be the remedy in such a situation needed to be examined. The Tribunal, while accepting that there cannot be any power of review inherent in character, that proposition would apply to decision on merits. However, with respect to procedural review, the implied power is available with the Tribunal to deal with petitions similar to the ones in the present case. The observations made by the Hon'ble Supreme Court in Grindlays Bank Ltd. v. the Central Govt. Industrial Tribunal, reported in AIR 1981 SC 806, in latter part of para 13 were specifically referred to, which are once again extracted as under:

"13.....Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a

review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Patel Narshi Thakershi case (AIR 1970 SC 1273) held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal."

"27. We reject the plea of the learned counsel for the petitioner that on termination of proceedings under S.25(a) of the said Act, the Arbitrator becomes functus officio, as he is a persona designata. Both the methods of appointment of Arbitrator are possible, i.e. by consent or through the process of Court. The position would not be different in the two situations. It is not as if there is a better sanctity to the appointment of an Arbitrator which enlarges the power if he is appointed by mutual consent, while there are abridged powers if he is not appointed by the Court."

> "29. We are also in agreement with the views of both the Calcutta and Delhi High Courts and in view of the aforesaid finding, that the remedy under Art.226 of the Constitution of India is not really available as the aforesaid is the appropriate remedy. The invocation of jurisdiction of this Court by the petitioner is, in turn, predicated on a belief that either of the parties aggrieved have to approach this Court under its extraordinary writ jurisdiction. However, we have already explained the remedy available and any further challenge to an order which may be passed in such application would, in turn, depend on the fate of it. The said Act is a complete code in itself and the basis is that there should not be periodic judicial intervention in arbitration proceedings. Were a favourable order to be passed commencing arbitration proceedings, the option would only be to challenge the award, if so advised, under S.34 of the said Act. Similarly, if the application was to be dismissed, the position would really be no different."

11.11. The decisions such as Municipal Corporation of Greater Mumbai and another v. Pratibha

Industries Ltd. and others, ((2019) 3 SCC 203) and Mohd. Anwar & others v. Pushpalata Jain & others, (SLP (C) No. 4820 of 2021 dated 05.04.2021) illustrate this narrow window, where review was permitted only because the earlier orders had been passed in ignorance of fundamental facts. These cases are confined to procedural lapses, not to re-examining matters of law.

11.12. By contrast, in the present case, the High Court reopened the issue of interpretation of the arbitration clause based solely on a subsequent judgment. Such an exercise falls squarely outside the scope of review jurisdiction. Even assuming that a review was maintainable, it was filed after an unexplained delay of nearly three years and was not founded on any error apparent on the face of the record or any suppression of material fact.

11.13. Once the S.11 order had attained finality, the only remedies available to the respondents were to approach this Court under Art.136 or to raise objections under S.16 before the arbitral tribunal. Having chosen neither route, and having participated in the arbitral proceedings, including joint applications under S.29A, they were estopped from reopening the matter through review. A later judgment cannot revive a concluded cause of action.

11.14. As emphasized in BSNL v. Nortel Networks (India) (P) Ltd (supra), courts must resist "attempts to re–enter through the back door what

> the statute has shut through the front door". S.11 is intended to trigger arbitration, not to create multiple stages of judicial reconsideration.
>
> 11.15. For the reasons discussed above, this Court is of the considered view that the High Court did not have the jurisdiction to reopen or review its earlier order passed under S.11(6) of the A&C Act. Once the appointment was made, the court became functus officio and could not sit in judgment over the very issue it had already settled. The review order cuts against the grain of the Act, undermines the principle of minimal judicial interference, and effectively converts the review into an appeal in disguise. Such an exercise cannot stand. Accordingly, this issue is answered in the negative."

In the light of the judgment of the Hon'ble Apex Court in **Hindustan Construction Company Ltd** (supra), the legal position regarding maintainability of review is no longer res integra. Though the Hon'ble Supreme Court was considering a case arising from a review from an order appointing an arbitrator, the principles would definitely apply in case of rejection of an arbitration request also.

21. The concept of limited judicial engagement with arbitration is adequately addressed in **IN RE Interplay** *(Supra)*

judgment of the seven-judge bench of the Hon'ble Supreme Court. The Arbitration and Conciliation Act is a self-contained code, according to the Hon'ble Supreme Court. The highest court in the land has made it plain that anything beyond what is explicitly stated in the Arbitration Act is not permissible. The principles of modern arbitration were highlighted by the Hon'ble Supreme Court in **IN RE Interplay** *(Supra)*. The legislature has made it a policy to limit the role of courts in arbitration. This policy is reflected in Section 5 of the Act. In addition, the legislature reaffirmed the same policy by adding sub-section (6A) to Section 11. The legislative goal of limiting judicial involvement would be plainly undermined if the proposition that every order issued under Section 11 of the Act is subject to substantive review is accepted. Nevertheless, power for limited procedural review on the basis of well settled principles would be inherently available to the High Court with respect to every order passed. Hence it can be firmly concluded that this Court, even though has inherent plenary powers, would not be justified

in entertaining petitions for substantive review against orders issued under Section 11 of the Act for want of any enabling provision for review under the Act. Judgment of the Hon'ble Apex Court in **Hindustan Construction Company Ltd** (supra) makes the proposition abundantly clear.

To sum up, this review petition is not maintainable and it is accordingly dismissed.

Sd/-

S.MANU
JUDGE

skj

APPENDIX OF RP No.1582 OF 2025 IN A.R.No.179 OF 2025

PETITIONER'S ANNEXURES

Annexure A1	**THE CERTIFIED COPY OF THE JUDGMENT PASSED BY THIS COURT IN AR NO 179 OF 2025 DATED 18.11.2025**