

Dispute arising out of an Arbitration settlement must go for Arbitration

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The Supreme Court of India vide its Judgment dated April 8, 2021, while disposing of an appeal arising out of an application seeking to appoint an arbitrator under section 11(5) and (6) of the Arbitration and Conciliation Act 1996, held that any dispute arising out of a frustrated settlement from an arbitration must go for arbitration. It further held that neither Order II Rule 2 of Code of Civil Procedure nor the Principles of Res judicata won't apply in such matters because frustration of settlement gives a new cause of action.

The disputes arose between the parties relating to the Agreement for sale dated 23.03.2006, for the purchase of an immovable property. The said agreement for sale provided for resolution of disputes by way of Arbitration, in the event of any disputes between the parties. The Respondent owner of the property issued a legal notice dated 09.02.2007 seeking balance payment and performance of the sale deed. The Appellant buyer stated certain issues in registering the sale deed in its reply dated 21.02.2007. In response to that the seller Respondent vide its letter dated 17.04.2008 cancelled the agreement for sale dated 23.11.2006 and forfeited the Security Deposit. Hence the Appellant buyer filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 in the High Court of Telangana at Hyderabad.

The Said disputes between the parties settled out of court and as a consequence of the same the above said application seeking appointment of arbitrator filed under s.11(5)&(6) of the Act got disposed off on 05.07.2011. When this was the position an Application was filed by the appellant on 27.06.2014, seeking to restore the same and dispose of on merits. The said Application was placed before the Single judge since the appellant did not comply with certain objections by the Registry. The Single Judge of the High Court dismissed the matter recording that there was a settlement already.

The Supreme Court found that since the settlement entered into between the parties was not honoured by the parties and hence it gave a new rise to the disputes between the parties. The Court also held that there is no material on record to show that the disputes between the parties were settled. The Court held that in the present case it cannot be accepted that that

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there abandonment of any claim nor was there a conclusive adjudication of the dispute between the parties on merits to constitute res judicata. Hence, Supreme Court held that since there is an arbitration clause parties have to resort to arbitration only.

