

Navigating the Abandonment of Claims in International and Domestic Arbitration

Introduction

Arbitration is considered to be one of the most efficient and effective modes of dispute resolution. But one thing is clear from the recent court rulings as to **arbitration in India** i.e., arbitration cannot be treated as a process which can be left as per the will of parties and can be started again from the very beginning.

If a party walks away from the claim, either expressly or by showing the intent by not participating in the

proceedings, the law considers it to be the final call of the party. In many cases, this means that the same dispute cannot be raised again.

There is a basic rule when it comes to abandonment of claims under civil law. As per Order 23 Rule 1 of Code of Civil Procedure, if someone withdraws their case without the permission of the court to file it later, then they are not allowed to bring the same case again.

This concept is applicable to arbitration as well, especially when someone approaches the court for the appointment of an arbitrator under **Section 11 of the Arbitration and Conciliation Act, 1996**. If a party proceeds with arbitration, then it decides to step back without asking permission to come back later, it might lose the right to again start the entire process for the same issue.

What Counts as “Abandonment”?

The judiciary is very careful when it comes to deciding whether a claim has been abandoned.

There are two kinds of abandonment:

1. Express abandonment.

This is basically a situation where a party clearly mentions, using words that it does not want to continue with the claims. For example, if someone writes a formal letter to the arbitrator mentioning that it does not want to take part any further in the proceedings.

2. Implied abandonment.

This is a little more complex. Being silent does not always mean that the claim has been abandoned. Courts are completely aware as to the delays which can occur during the process. In fact, once a claim has been filed by a party, the arbitrator is usually expected to move forward with the process. If a party does not appear, then the arbitrator can still continue and decide the matter based on whatever is available.

In simple terms, abandonment is not assumed to be taken lightly. It must be clear and must be analyzed from the overall conduct of the party.

The Rajiv Gaddh Case

In the case of *Rajiv Gaddh v Subodh Prakash*, the person who raised the dispute refused to participate after alleging that the arbitrator did not act in a neutral manner during the proceedings. Instead of addressing the issue in a proper manner, the claimant simply stepped away from the proceedings. The arbitrator, anyways, moved forward with the matter and passed an award. Following the same, the abandoning party attempted to restart the entire process by issuing fresh notice. The court refused to allow the same and clarified that once a party abandons the procedure without taking proper permission to restart it later, they cannot come back and try again as per their convenience.

This shows that arbitration is not an experiment for a party to test, leave, and then attempt again if the outcome isn't in its favor.

Case as to Delay During Proceedings

Another misunderstanding in arbitration is related to delays in the process. The **arbitration law** in India under Section 29A, provides for extension of an arbitrator's mandate. The parties usually assume that if the mandate expires, they can start the entire process from scratch.

The courts, instead of accepting this as a rule, usually look at the reason behind that delay. If the delay is caused due to the carelessness or inactivity of a party, then it cannot use the delay as an excuse to restart the entire case. Allowing the same would defeat the purpose of Section 29A, creating a “backdoor appeal.” If the delay is caused due to certain reasons which were beyond the control of the parties, such as delay on the part of the tribunal, then the courts might allow the continuation of proceeding to resolve the dispute.

Conclusion and Way Forward

Most issues in arbitration do not arise suddenly. They build up slowly due to smaller lapses such as missing a date, not replying on time, etc. Over time, these small lapses can convert into bigger problems. By the time the parties realize this, their position might already have been weakened.

The safest way to handle such an issue is to stay properly involved from the beginning of the process to the very end. Other precautionary measures such as keeping track of the case, important dates, and the process might help too. The process of arbitration might seem more relaxed than a court proceeding, but the outcome is just as legally enforceable as that of a court. If a party fails to attend the proceeding for some reason, then it must keep the tribunal informed accordingly. Silence in regard to the same can give the impression that a party is no longer interested in the proceedings.

People usually think that if they are discussing settlement, then the arbitration automatically pauses. This is not true. Unless the arbitrator is properly informed and the timelines are adjusted accordingly, the case continues in the background, and any missed deadlines during this time can create serious issues for the parties later.

In simple terms, arbitration shall be treated seriously. The parties must stay active, aware, and they shall think before taking any step, because once a claim is portrayed or seen as abandoned, it is gone for good.