



**Limitation For Filing Of Petition  
For Appointment Of An  
Arbitrator: Delhi High Court**



ARBITRATION AND CONCILIATION

# Limitation For Filing Of Petition For Appointment Of An Arbitrator: Delhi High Court

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The Hon'ble High Court of Delhi in the matter of Smt. Jatinder Kaur and Ors. V. Late Sh. Jagjit Singh and Ors.[1] while dealing with a Petition filed under Section 15 r/w 14 along with Section 9 & 11 of the Arbitration and Conciliation Act, 1996 concluded that the limitation for filing such Petitions will be three years from the date when such right accrues.

## Brief Facts

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The disputes arose between the parties with respect to an Agreement to Sell dated 4<sup>th</sup> July, 2020 for sale of a part of land. Pursuant to filing of an application u/s 11 of the Arbitration and Conciliation Act, 1996 (A&C Act) an Arbitrator was appointed. Before entering reference and initiation of arbitral proceedings, the Original Respondent passed away on 20<sup>th</sup> July, 2021 and the arbitrator passed away on 3<sup>rd</sup> March 2022.

These Petitions were filed seeking appointment of a fresh Arbitrator, furthermore the Petitioner sought relief in the form of injunction from the creation of third-party rights on the said plot of land.

## Contention Of The Parties

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The Petitioner contended that the since the mandate of the Arbitrator stands terminated upon his death it is necessary to appoint a fresh Arbitrator. Also, though the Arbitrator was appointed Arbitration proceedings before him did not commence and there were only some informal communications between the Arbitrator and the parties via text messages.

The Respondent (legal heirs of the Original Respondent) contended that arbitration proceedings were abated since no steps were taken by the arbitrator when he had already entered the reference and a lot of time has lapsed since the initial appointment of the Arbitrator and his passing. The Respondent further contended that no steps were taken by the Petitioner after the Original Respondent expired on July, 2021, therefore the Petition filed by the Petitioner is time barred and hence should be rejected.

## Observation Of The Court

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The court while adjudicating on the limitation period for filing of an application for appointment of an arbitrator relied on the decision of the Hon'ble Supreme Court in Bharat Sanchar Nigam Ltd (BSNL) and Anr v. Nortel Networks India Pvt Ltd[2] and held that in absence of specific timeframe within the Act, the appropriate course of action is to apply the residual provision under Article 137 of the schedule of the Limitation Act and therefore the Petition/Application for appointing an Arbitrator must be filed within a three-year period, starting from the date when the right to apply accrues.

In the present case, the Court opined that such period of three years in the present case is triggered from the date of the demise of the erstwhile Arbitrator; since the said Petitions for appointment of the Arbitrator and his substitution were filed within that period of limitation, the Petitions deserve to be allowed.

The Court observed that the Petitioner has indeed taken valid steps for substitution within the stipulated period of time, hence it cannot be concluded that the Petitioner has not acted with alacrity. Accordingly, the Court appointed Justice R. S. Endlaw (Retd.) as the Sole Arbitrator to decide the disputes between the parties.

With respect to the Section 9 Petition, the Court directed the Petitioners to convert the same to a Section 17 Application and move the same before the Arbitrator now appointed. However, in the interim the Respondent was refrained from creating any third-party rights with respect to the subject property till the Section 17 Application is moved before the Arbitrator.

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[1] ARB.P. 1167/2022 with O.M.P.(I) 10/2022 & O.M.P.(T) 3/2023

[2] (2021) 5 SCC 738