

| SL. No | Date | Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures | COURT'S OR JUDGES'S ORDERS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|        |      |                                                                                                  | <p>WPMS No. 2519 of 2023<br/> <b><u>Hon'ble Sharad Kumar Sharma, J.</u></b></p> <p>Mr. Atul Kumar Bansal, Advocate, for the petitioners.</p> <p>The petitioner has preferred this Writ Petition against an order dated 18<sup>th</sup> August, 2023, which was passed by the Arbitral Tribunal (Sole Arbitrator) in Arbitration Petition No. 39 of 2021, M/s Amar Paper Agency and another Vs. Century Pulp and Paper and another. By virtue of the impugned order, the learned Arbitrator has permitted the respondents to admit certain documents, which have been filed by the opposite party, which has been opposed by the petitioner, that it could not be done after the closure of evidence of the claimants.</p> <p>As against the impugned order, the remedy which would be available to the present petitioner, would be at the stage when the proceedings under Section 34 of the Arbitration Act, are drawn by him, and the aforesaid principle has been laid down by the 7-Judges Bench of the Hon'ble Apex Court in the matter as reported in <b>(2005) 8 SCC 618, SBP &amp; CO. Vs. Patel Engineering Ltd. and another</b>, and the relevant observations have been made by the Hon'ble Apex Court in para 45 of the said judgement, which almost lays down the principle</p> |

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|  |  |  | <p>that a Writ Petition is not remedy under Article 227 of the Constitution of India, rather the remedy would be to raise the question at the stage, when the proceedings under Section 34 of the Arbitration Act, has been preferred. Para 45 is extracted hereunder :-</p> <p><i>“45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.”</i></p> <p>Almost a similar view was taken by the Division Bench of Madhya Pradesh High Court in a judgment as reported in <b>2016 SCC OnLine MP 10787, Indore Development Authority Vs. Arbitral Tribunal</b>, where the Court has held as to what would be the ambit of exercise of powers under Article 227 of the Constitution of India, for the purposes of considering the implications of the</p> |
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|  |  |  | <p>interlocutory orders, which are not amenable to Section 34 of the Arbitration and Conciliation Act. The Division Bench of Madhya Pradesh High Court has taken almost a similar view as that of the judgment of <b>SBP &amp; Co. (Supra)</b>, and has taken a view that Article 227 of the Constitution of India, cannot be invoked to defeat the objective of the Arbitration and Conciliation Act, and the orders passed during the course of the arbitration case, cannot be challenged in the Writ Petition, but rather it could be put to challenge at the stage when the proceedings under Section 34 of the Arbitration and Conciliation Act is drawn against the final adjudication.</p> <p>In view of the aforesaid, while dismissing this Writ Petition, it will be open for the petitioner to raise all the questions, qua the impugned order, which is under challenge at the stage when the proceedings under Section 34 are being taken up.</p> <p>The Writ Petition is accordingly dismissed.</p> <p style="text-align: right;"><b>(Sharad Kumar Sharma, J.)</b></p> <p>Dated 06.09.2023<br/>Shiv</p> |
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