

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2086 OF 2015

M/s. Aswani Builders & Ors.	..	Petitioners
vs.		
M/s. Parmar Realtors	..	Respondent

Mr. Lal N. Aswani - Petitioner No. 2 present in person.
Mr. Rajesh Datar for Respondent.

CORAM : M. S. SONAK, J.
DATE : 26 FEBRUARY, 2015

P.C. :-

1] **Not on Board. Upon production, taken on board.**

2] This petition is directed against the order dated 13 February 2015, by which the Arbitral Tribunal has rejected the petitioners' application dated 8 January 2015 for rejection of the claim.

3] The Hon'ble Apex Court, in the case of *SBP & Co. vs. Patel Engineering Ltd. & Anr.*¹, at paragraphs 45 and 46 has observed thus:

"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. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section

1 (2005) 8 SCC 618

34, the aggrieved party has an avenue for ventilating its 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, a 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 Court 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. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

47.

4] In view of the aforesaid, there is no question of entertaining the present petition. However, it is clarified that this Court has not examined the merits of the matter. Further , if the ultimate Award is against the petitioners, then it shall always be open to the petitioners to challenge not only the final Award, but also the order dated 13 February 2015 by resort to appropriate proceedings under the Arbitration and Conciliation Act, 1996.

5] With the aforesaid observation, the present petition is disposed of. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka