

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7336 OF 2015

Kirloskar Oil Engines Ltd. .. Petitioner
vs.
M/s. Dynamic Logistic Pvt. Ltd. .. Respondent

Mr. G.S. Godbole i/b Ms Pallavi Dabholkar for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 05 OCTOBER 2015.

P.C. :-

1] This petition challenges the orders dated 2 April 2015 and 18 May 2005 made by the Arbitral Tribunal adjudicating the disputes between the Petitioner and Respondent.

2] Mr. Godbole, learned counsel for the Petitioner, submitted that the view taken by the Tribunal is contrary to the decision of the Apex Court in case of *SMS Tea Estates Pvt. Ltd. V/s. Chandmari Tea Co. Pvt. Ltd.*¹. That apart, Mr. Godbole contended that the Tribunal has exceeded its jurisdiction in purporting to impound the document in question and in any case, in observing that the document can be and was being relied upon only for co-lateral purposes. For all these reasons, Mr. Godbole submitted that the impugned orders deserve to be interfered with by this Court in the exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

¹ (2011) 14 SCC 66

3] In the matter of this nature, there is neither any scope nor any reason to enter into the merits of the challenge raised. The impugned orders have been made by the Tribunal during pendency of arbitral proceedings. In the context of exercise of jurisdiction under Article 226 or 227 of the Constitution of India during pendency of arbitral proceedings, the Apex Court in case of **SBP & Co. vs. Patel Engineering Ltd. & anr.**², 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 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, 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 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. Such an intervention by the High Courts is not permissible.*

2 (2005) 8 SCC 618

46. The object of minimizing 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.

4] Therefore, in view of law laid down by the Apex Court as aforesaid, there is no reason to entertain the present petition. Needless to observe that it will be open for the Petitioner to raise all contentions, which have now been raised in this petition, if and when, occasion arises to question the award which may ultimately be made by the Arbitral Tribunal.

5] For the aforesaid reasons and without going into merits of the respective contentions, the present petition is not entertained. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

**“Certified to be true and correct copy of
original signed Judgment/Order.”**