

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.1407 OF 2015

M/s. Etco Zenal Corporation .Petitioner

V/s.

Motinagar Co-operative Housing .Respondents
Society Limited & ors

Mr.Swapnil Bangur i/b. Mr.Jayesh Vyas, Advocate, for the
Petitioner

Mr.Haresh Jagtiani h/f. Mr.Suprabh Jain with Ms Kathleen Lobo,
Advocate, for the Respondent No.1

**CORAM : A.A.SAYED, J.
DATE : 27.11.2015
(IN CHAMBER AT 2.40 P.M.)**

P.C.

. This Petition filed under Article 226 of the
Constitution, impugns the order dated 22.04.2015 passed by the
learned Arbitrator in the Application filed by the Petitioner for
condonation of delay and for taking the Written Statement on
record, which came to be rejected.

2 In light of the judgment of a Bench of seven learned Judges
of the Supreme Court in ***SBP & Co. v/s. Patel Engineering Ltd.
and Anr., (2005) 8 SCC 618***, the Writ Petition would not be
maintainable. In para 45, 46 & 47 of the judgment, the Supreme
Court has held as follows:

“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.

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 of the Constitution of India or under Article

226 of the Constitution of India 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. We therefore, sum up our conclusions as follows:

... ..

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

... ..”

(emphasis supplied)

3. In the circumstances, the Writ Petition is dismissed as not maintainable. No order as to costs.

(A.A.SAYED, J.)