

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT APPEAL NO. 107 OF 2016

- M/s Sunmarg Steels (P) Ltd., through authorised representative Mr. Dilip Patel, S/o Shri Babubhai Patel, Manager of M/s Sunmarg Steels Pvt. Ltd., Ring Road No.2, Gondwara, Industrial Area, Raipur (C.G.)

... Appellant

Versus

1. Micro Small and Medium Enterprises Facilitation Council (MSMEFC), under MSMED Act, 2006, through its Director-cum-President, Udyog Bhawan, Raipur (C.G.)
2. M/s Abha Power & Steel Pvt. Ltd., Hardikala, Silpari Industrial Area, Bilaspur (C.G.)

... Respondents

For Appellant	: Mr. Neeraj Choubey, Advocate.
For Respondent No.1	: Mr. R.K. Gupta, Dy. Advocate General
For Respondent No.2	: Mr. Vivek Chopda, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

Per NAVIN SINHA, C.J.

28/04/2016

1. The present appeal arises from order dated 18.11.2015 dismissing Writ Petition (C) No. 1754 of 2013 as not maintainable in view of the alternative remedy of appeal available under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').
2. Learned Counsel for the Appellant submits that even if he had preferred an appeal under Section 34 of the Act that did not bar the maintainability of a writ petition if statutory procedures prescribed under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the Act of 2006') read with Rule 5(21) of the Chhattisgarh Micro and Small Enterprises Facilitation

Council Rules, 2006 (hereinafter called 'the Rules') had not been followed. This fact had been specifically asserted in the writ petition but there was no denial of the same by Respondent No.1.

3. Learned Counsel for the Respondents submitted that against the impugned order of the Council dated 26.10.2012, the Appellant first preferred an appeal under Section 34 of the Act before the District Judge, Raipur, registered as Arbitration Civil Appeal No. 1A of 2013 on 21.12.2012. On 5.10.2013, the Court ordered him to make necessary deposit of 75% of the awarded amount as required by Section 19 of the Act of 2006. The Appellant did not comply with these statutory requirements, abandoned the appeal and filed the present writ petition soon thereafter on 21.11.2013. Subsequently, the appeal itself had been dismissed on 25.11.2013 for non-deposit of the statutory amount.

4. We have considered the submissions on behalf of the parties.

5. The discussion that an alternative remedy may be an absolute bar to a writ petition when statutory procedures for conciliation prescribed in the law had not been followed need not detain us as the law on this aspect stands well settled with regard to exercise of discretionary powers under Article 226 of the Constitution. When statutory procedures are not followed prejudice is writ large and a writ petition in specified circumstances may be maintainable. The Appellant had asserted non-compliance of procedures prescribed in the statutory rules. No counter-affidavit was filed by Respondent No.1.

6. But the aforesaid discussion becomes irrelevant and redundant in view of the conduct of the Appellant itself in having preferred an appeal under Section 34 of the Act which he appears to have abandoned and opted to file a writ petition only when the Court below required him to

comply with the statutory pre-conditions for institution of the appeal by deposit of the necessary amount provided in the law.

7. The Learned Single Judge declined to interfere in view of the alternative remedy of appeal available. To our mind, the question arising for our consideration is extremely limited. Even if two remedies were available to the Appellant on basis of the submission made on his behalf, one by way of an appeal and the other by way of a writ petition because of non-compliance with statutory procedures as alleged, and the Appellant opted to pursue remedies under one of these two procedures, applying the doctrine of election, the day he instituted the appeal under Section 34 of the Act, the option available to him to come in a writ petition directly came to an end. A party cannot be permitted to vacillate between two remedies available to him, leaving matters in uncertainty both for the Court and his opponent. This principle is based on public policy intended not only to curb frivolous litigations but also to expedite adjudication and bring it to finality.

8. The relief sought for and the grounds urged in the writ petition and the appeal are the same. Therefore the two do not constitute separate proceedings for different reliefs on different cause of action when the doctrine of election may not have applied.

9. In view of the above discussion, though for additional reasons supplemented by us, we find no reason to interfere with the order of the Learned Single Judge. It will be open for the Appellant to pursue such remedy as may be available to him under the law.

10. The appeal is dismissed with the aforesaid observations.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge