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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 332/2016, CM No.1371/2016 (for stay) & CM No.1372/2016
(for exemption).

KRISHNA NAND VERMA

..... Petitioner

Through: Mr. Vipul Pandey & Mr. Rustam
Singh, Advs.

versus

KOTAK MAHINDRA BANK LTD. & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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15.01.2016

1. The petition impugns the *ex parte* arbitration award dated 26th October, 2015 for recovery of money in favour of the respondent no.1 and against the petitioner.
2. At the outset only, it has been enquired from the counsel for the petitioner as to how a writ petition impugning an arbitral award is maintainable.
3. The counsel for the petitioner states that though Section 34 of the Arbitration and Conciliation Act, 1996 provides a remedy thereagainst but the same would not eliminate the constitutional powers of this Court under Article 226 of the Constitution of India and the same ought to be invoked as injustice has been done to the petitioner. Reliance in this regard is placed on para 33 of *Union of India Vs. Tania Construction Pvt. Ltd.* (2011) 5 SCC 697.
4. It is *inter alia* the case of the petitioner that the arbitration proceedings at Delhi are void because no cause of action had accrued to the

Respondent no.1 against the petitioner at Delhi. Reliance in this regard is placed on para 18 of the *Jasmine & Company Vs. State of Nagaland* 2009 (108) DRJ 722.

5. The principle, of lack of territorial jurisdiction rendering the order of Court a nullity, as invoked in *Jasmine & Company* supra is in relation to the suits and not in relation to arbitration proceedings. The Arbitration and Conciliation Act vide Section 20 expressly empowers the parties to choose the venue/place of arbitration.

6. The petition is entirely misconceived. It is the settled position in law that writ petitions with respect to the arbitral proceedings are not maintainable. The seven Judge Bench of the Supreme Court in *S.B.P. and Co. Vs. Patel Engineering Ltd.* (2005) 8 SCC 618 held that there is no warrant for the approach adopted by some of the High Courts 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. It was held, (i) that Section 37 of the Arbitration Act makes certain orders of the Arbitral Tribunal appealable; (ii) under Section 34 the aggrieved party has an avenue for ventilating his grievance against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act; (iii) that 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; (iv) the Arbitral Tribunal is after all, the creature of a contract between the parties i.e. 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; that thus the orders passed by the Arbitral Tribunal are capable of being corrected by the High Court under Article 226 or 227 of the Constitution and such an intervention by the High Courts, is not permissible; (v) that 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; and, (vi) therefore it is necessary 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.

7. A Division Bench of this Court in ***Awasthi Construction Co. Vs. Govt. of NCT of Delhi*** MANU/DE/5926/2012 faced with the same issue was shown a judgment of the High Court of Patna in ***Senbo Engineering Limited v. State of Bihar*** AIR 2004 Patna 33 and noticed that the High Courts of Bombay and Allahabad also have held the writ remedy to be available against an order of the Arbitral Tribunal against which no remedy was available but differed from the same. The same view has been reiterated by the subsequent Division Benches in ***ATV Projects India Ltd. Vs. Indian Oil Corporation Ltd.*** 200 (2013) DLT 553 and in ***Dhanraj Bajaj and Company vs. Navodaya Vidyalaya Samiti*** MANU/DE/2288/2014.

8. The Supreme Court in *Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi* (2014) 7 SCC 255 held that the view taken by the Bombay High Court that against an order of the Arbitral Tribunal jurisdiction of the High Court under Article 226 of the Constitution can be invoked is not in accordance with law laid down in *S.B.P. and Co.* supra.
9. The petition is thus dismissed.
10. I am refraining from imposing any costs.

RAJIV SAHAI ENDLAW, J

JANUARY 15, 2016

‘gsr’..