

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.03.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.619 of 2017
and
C.M.P.No.3180 of 2017

Express Infrastructure Private Limited
No.2, Club House Road
Mount Road, Chennai 600 002.

.. Petitioner

vs

1. B.L.Kashyap and Sons Limited
E-23/B1, Extension

Mohan Co-operative Industrial
Estate, Mathura Road
New Delhi 110 014.

2. Hon'ble Mr.Justice Doraiswamy Raju
(Former Judge, Supreme Court of India)
Presiding Arbitrator
'Kanaka Durga'
20, (Old No.39) Puram Prakash Road
Balaji Nagar, Royapettah
Chennai 600 014.

3. Mr.R.Murari
Senior Advocate, Madras High Court
Member-Arbitrator
No.31, Masilamani Road
Balaji Nagar, Royapettah
Chennai 600 014.

4. Mr.Satnam Singh
 Architect, Member-Arbitrator
 4/3, Chandrika Complex
 Mandapam Cross Road
 Kilpauk, Chennai 600 010.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.12.2016 passed in M.P.No.Nil of 2016 dated 05.10.2016 in Arbitration No.Nil of 2012 by the Hon'ble Arbitral Tribunal.

For Petitioner : Mr.AL.Somayaji
 Senior Counsel for
 Mr.G.Kalyan Jhabakh
 for M/s.Surana & Surana

ORDER

The revision is filed as against the order dated 24.12.2016 passed in unnumbered interlocutory application dated 05.10.2016 in the matter of Arbitration related to the disputes between the parties.

2. The brief facts of the case would run thus:

(i) A Letter of Intent was entered into between the claimant /the first respondent herein and the respondent/petitioner herein

qua works relating to Concrete and Block work package for the project "Express Mall", Chennai. The said Letter of Intent was followed up with the notice of Award dated 01.07.2007 and an articles of agreement dated 20.07.2007. There were also extensions of time as agreed between the parties.

(ii) Since disputes arose between the parties, the Arbitral Tribunal was constituted for adjudication of the disputes. The parties filed their respective claims before the Arbitral Tribunal and both the parties were also examined and documents also marked. On the side of the respondent, who is the petitioner herein, also documents were marked and the parties were examined and cross examined. After the completion of the evidence the matter was posted for arguments on 01.07.2016.

(iii) At that juncture, it was brought to the notice of the Arbitral Tribunal that additional documents have to be filed by the revision petitioner. It was stated that the said documents were to be filed to substantiate the Auditor Certificate and documents, which are already on record. It was further stated that as the

documents were voluminous in nature and the summary was already available on record, it was not marked earlier. Therefore, there was no intentional omission in marking the said documents. Further after the arguments, were commenced, the revision petitioner had sought for permission to file such additional documents with the Tribunal.

3. As stated earlier, the arguments had already commenced. The Tribunal did not entertain the application and proceeded to hear the arguments. In the meanwhile, a counter was also filed in the said application. Thereafter, the application was taken up for hearing and orders were passed dismissing the application and the additional documents sought to be filed by the petitioner herein were refused to be taken up on file.

4. Challenging the said order of dismissal, the above revision is filed.

5. At the outset, this Court is not inclined to entertain the revision as the same is filed as against the order passed by the Arbitral Tribunal in an interlocutory application.

6. Inasmuch as the revision is filed under Article 227 of the Constitution of India, the powers of the High Court, the nature and scope and power of Article 227, which is supervisory in nature can be usefully seen.

7. The powers conferred under Article 227 is to ensure that all Subordinate Courts as well as statutory or Quasi Judicial Tribunal exercise the powers vested in them within the powers of their authority. It is the duty of the High Court to ensure that they all act in accordance with establishments of law. Normally the invocation of Article 227 of the Constitution is done when there is no revision or appeal is provided to the High Court. Therefore, the jurisdiction under Article 227 appears to be wider than the power given under Article 226 of the Constitution of India.

8. In **(2010) 8 SCC 329 [Shalini Shyam Shetty and another vs. Rajendra Shankar Patil]**, the Hon'ble Supreme Court has in detail discussed the jurisdiction of the High Court under Article 227 of the Constitution of India. The relevant paragraph reads as follows:

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under [Article 227](#) of the Constitution may be formulated:

(a) A petition under [Article 226](#) of the Constitution is different from a petition under [Article 227](#). The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under [Article 227](#) cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under [Article 227](#) and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under [Article 227](#) of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of

this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh vs. Amarnath* [AIR 1954 SC 215] and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity

in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under [Article 227](#) cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of [L. Chandra Kumar vs. Union of India](#) reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code ([Amendment](#)) [Act](#), 1999 does not and cannot cut down the ambit of High Court's power under [Article 227](#). At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under [Article 227](#).

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under [Article 227](#), it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas [Article 226](#) is meant for protection of individual grievance. Therefore, the power under [Article 227](#) may be unfettered but its exercise is

subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

9. The exercise of the power under Article 227 of the Constitution can be done only when the Court finds that there was a serious dereliction of duty and blatant violation of abuse of process of law and justice and where the order passed craved injustice and needs to be corrected. The dispute now raised is not for a remedy in public law. It is between private individuals who cannot be equated with State or instrumentalities of State within the meaning of Article 12 of the Constitution of India. A writ can be issued against the person who has some statutory or public duty to perform. Unlike an Arbitrator acting under Section 10A of the Industrial Disputes Act, who though may be a private individual discharges public function, the Arbitral Tribunal, which has passed the impugned order is not connected with a statutory authority or discharge any official duty under a Statute.

10. In the instant case, none of the above features are present. It is a dispute between two individual entities and the order passed is interlocutory in nature. Although the petitioner herein has stated that he was vigilant in conducting the proceedings before the Arbitral Tribunal, had taken a calculated risk of not filing the documents at the relevant point of time, because of its voluminous nature. After the arguments commenced the documents were sought to be filed and that was rightly rejected by the Tribunal. The rejection of the application is interlocutory in nature and in an arbitration proceedings, the maintainability of revision against the said proceeding is discussed elaborately in the judgment of the Hon'ble Supreme Court reported in **2005(8) SCC 618 [S.B.P. & Co vs Patel Engineering Ltd. & Another]**. The relevant paragraphs are as under:

"44. 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.

45. 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."

11. As indicated in the above judgment, the party aggrieved by any order of the Arbitral Tribunal unless the right of appeal is provided under Section 37 of the Act, which are appealable, from original decrees of the Court or a recourse against the award under Section 34, other orders have to wait until the Award is passed by the Tribunal to be challenged under Section 34. It is made very clear that in-between orders passed in any kind of Arbitral proceedings can be challenged only under Section 34 along with the Award.

12. Section 5 of the Arbitration and Conciliation Act, 1996 brings so clearly the object of the Act, viz., encouraging the resolution of the disputes expeditiously and less expensively when there is an arbitration agreement indicating that the intervention of the Courts should be minimal. When the intervention of the judicial authorities is restricted under Section 5, the revision cannot be entertained by this Court, against an order passed by the Tribunal, which is interlocutory in nature.

13. Accordingly, the revision fails as the same is not maintainable. No costs. Consequently, the connected miscellaneous petition is closed.

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Internet: Yes

To

The Arbitral Tribunal, Chennai

PUSHPA SATHYANARAYANA,J.,

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