

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WRIT PETITION No.7088 of 2017

ORDER: (Per Justice Sanjay Kumar)

The petitioner company seeks to maintain a challenge against the order dated 13.09.2013 passed by the Hon'ble The Chief Justice of this Court in Arbitration Application No.59 of 2013, whereby an Arbitrator was appointed in relation to the disputes between the petitioner company and the first respondent company herein, upon an opinion being formed that the Arbitration Agreement was valid and satisfied the tests required under the provisions of Section 7 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') and overruling the contention of the respondent company, the petitioner company herein, to the contrary.

Having heard Sri Harinder Toor, learned counsel appearing for Sri Gopal Govind Naik, learned counsel for the petitioner company, and Sri J.Prabhakar, learned counsel for the first respondent company, we are of the opinion that this writ petition is not maintainable for the reasons set out hereunder.

After the impugned order dated 13.09.2013 was passed, the petitioner company filed Review Application No.974 of 2013 in Arbitration Application No.59 of 2013 before the then Hon'ble The Chief Justice of this Court seeking review of the said order. The said Review Application was dismissed as not maintainable by order dated 01.11.2013. The petitioner company thereafter approached the Supreme Court under Article 136 of the Constitution assailing the order dated 13.09.2013 passed in Arbitration Application No.59 of 2013, *vide* SLP No.271 of 2014. This SLP was thereafter taken on record as Civil Appeal No.908 of 2014.

The petitioner company also filed SLP No.272 of 2014 before the Supreme Court challenging the dismissal of its Review Application No.974 of 2013 by order dated 01.11.2013 and the same was taken on record as Civil Appeal No.909 of 2014. This Civil Appeal was allowed by the Supreme Court *vide* order dated 03.02.2014 requiring the then Hon'ble The Chief Justice of this Court to entertain the Review Application. However, after consideration of the Review Application on merits, the then Hon'ble The Chief Justice dismissed the same by order dated 04.04.2014. No steps were taken in relation to this order and in the meanwhile, Civil Appeal No.908 of 2014 filed by the petitioner company against the original order dated 13.09.2013 in Arbitration Application No.59 of 2013 came up for consideration before the Supreme Court. The order passed by the Supreme Court in this Civil Appeal is significant and reads as under:

“Heard Mr.Vikas Mehta, learned counsel for the appellant, and Mr.G.V.R.Choudary, learned counsel for the respondent. Learned counsel for the appellant states, that the instant appeal has been rendered infructuous, and that the same be disposed of as such.

The appeal is accordingly disposed of as having been rendered infructuous.”

Having chosen, in its own wisdom, to report before the Supreme Court that its appeal directed against the order dated 13.09.2013 passed in Arbitration Application No.59 of 2013 had become infructuous, the petitioner company now seeks to assail the very same order before this Court under Article 226 of the Constitution. Be it noted that the petitioner company did not merely withdraw the Civil Appeal but reported in clear terms that the appeal had been rendered infructuous and prayed that the same be disposed of as such. Acting upon this request, the Supreme Court affixed its imprimatur, recording that the appeal was disposed of as

having been rendered infructuous. Therefore, on the one hand, the petitioner company reported before the Supreme Court that the challenge laid by it to the order dated 13.09.2013 passed in Arbitration Application No.59 of 2013 has been rendered infructuous but, on the other, it seeks to challenge the very same order before us by way of this writ petition. Permitting the petitioner company to do so would be nothing short of an abuse of process. This is one aspect of the matter.

The second issue that weighs against the maintainability of this writ petition is as to whether the petitioner company can maintain a challenge under Article 226 of the Constitution against the order passed by the then Hon'ble The Chief Justice of this Court under Section 11(6) of the Act of 1996.

A Constitution Bench of Seven Judges of the Supreme Court in *SBP & CO. v. PATEL ENGINEERING LTD.*¹ answered this question in the negative. In para 46 of the judgment, while observing that the order of the Chief Justice under Section 11(6) of the Act of 1996 is a judicial order, the Constitution Bench categorically stated that once it is a judicial order, the same, as far as the High Court is concerned, would be final and the only avenue to a party feeling aggrieved by the said order would be to approach the Supreme Court under Article 136 of the Constitution. This principle was again affirmed in *PUNJAB AGRO INDUSTRIES CORPORATION LIMITED v. KEWAL SINGH DHILLON*².

Though Sri Harinder Toor, learned counsel, would rely upon a plethora of case law in relation to maintainability of a writ petition before this Court under Article 226 of the Constitution, viz., *M.S.AHLAWAT v.*

¹ (2005) 8 SCC 618

² (2008) 10 SCC 128

STATE OF HARYANA³, SUPREME COURT BAR ASSOCIATION v. UNION OF INDIA⁴, HARBANS SINGH v. STATE OF U.P.⁵, S.NAGARAJ v. STATE OF KARNATAKA⁶, RUPA ASHOK HURRA v. ASHOK HURRA⁷, KASHI NATH MISRA v. ALLAHABAD UNIVERSITY⁸, M.S.GREWAL V. DEEP CHAND SOOD⁹, BHARAT RASIKLAL ASHRA V. GAUTAM RASIKLAL ASHRA¹⁰, DURO FELGUERA S.A. v. GANGAVARAM PORT LTD.¹¹, A.AYYASAMY v. A.PARAMASIVAM¹², SHUBH SHANTI SERVICES LTD. v. MANJULA S. AGARWALLA¹³ and STATE BANK OF TRAVANCORE v. KINGSTON COMPUTERS (I) PVT. LTD.¹⁴, we are of the opinion that in the light of the ratio laid down by the Supreme Court squarely on the point, the general observations sought to be relied upon in the said judgments would not come to the aid of the petitioner company.

On both the aforesaid counts, we find that the writ petition is not maintainable and the same is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 27.12.2017
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³ AIR 2000 SC 168

⁴ AIR 1998 SC 1895

⁵ AIR 1982 SC 849

⁶ 1993 Supp (4) SCC 595

⁷ AIR 2002 SC 1771

⁸ AIR 1967 ALLAHABAD 101

⁹ AIR 2001 SC 3660

¹⁰ (2012) 2 SCC 144

¹¹ 2017 (12) SCALE 433

¹² AIR 2016 SC 4675

¹³ AIR 2005 SC 2506

¹⁴ LAWS (SC) 2011 2 109