

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

CIVIL REVISION PETITION No.3774 of 2017

ORDER: (per Justice Sanjay Kumar)

This civil revision petition under Article 227 of the Constitution arises out of the order dated 05.06.2017 passed by the sole Arbitrator, the first respondent herein, in I.A.No.1 of 2017 in Arbitration Case No.62 of 2015. The said order was passed by the first respondent refusing the request of the petitioners herein, respondents in the Arbitration Case, to cross-examine P.W.1.

In the light of the authoritative pronouncement of the Supreme Court in SBP & CO. v. PATEL ENGINEERING LTD.¹ as to maintainability of a petition under Article 227 of the Constitution against an interlocutory order passed by the Arbitral Tribunal, this civil revision petition cannot be entertained. The relevant extract of the said decision reads as under:

“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. 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 its 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, a creature of a contract between the parties, the arbitration

¹ (2005) 8 SCC 618

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. Such an intervention by the High Courts is not permissible.

46. 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. 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.”

In that view of the matter, the civil revision petition is dismissed on the ground of maintainability.

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

No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

Date: 14.11.2017

Note:-

Registry is directed to return the certified copy of the order under challenge.

B/o

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