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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 1257/2017**

SHRIRAM TRANSPORT FINANCE COMPANY LTD..... Petitioner

Through: Mr. Shankar Kumar Jha, Advocate

Versus

AZAD SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 07.11.2017

CM No.39955/2017 (exemption)

1. Allowed subject to all just exceptions.
2. The application is disposed of.

CM (M) No.1257/2017 & CM No.39954/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns:
 - (i) the order [dated 30th September, 2016 in Arbitration Case No. 33/2015 of the Court of ADJ, Central District, Tis Hazari Courts, Delhi] allowing the appeal preferred by the respondent under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') against the order dated 19th February, 2015 of the Arbitral Tribunal under Section 17 of the Arbitration Act; and,
 - (ii) the order [dated 28th July, 2017 in M.No. 13/2017 of the Court of ADJ-12, Central District, Tis Hazari Courts, Delhi] dismissing the application filed by the petitioner for review of the order dated 30th September, 2016.

4. The petitioner had earlier preferred C.M. (M) No.154/2017 impugning the order dated 30th September, 2016 supra and which petition was, vide order dated 8th February, 2017, disposed of without issuing notice to the respondent and with liberty to the petitioner to file an application for review and which review application was directed to be dealt with in accordance with law.

5. I have at the outset enquired from the counsel for the petitioner about the maintainability of this petition under Article 227 of the Constitution of India against an order under Section 37(2)(b) of the Arbitration Act. Section 37(3) of the Arbitration Act prohibits a second appeal from an order passed in appeal under Section 37 and saves only the right to appeal to the Supreme Court. The said provision has been interpreted by the Division Bench of this Court in ***CREF Finance Ltd. Vs. Puri Construction Ltd.*** ILR (2001) 1 Delhi 360 to be prohibiting even a Letters Patent Appeal.

6. Though the prohibition against an appeal does not bar the constitutional remedy under Article 227 of the Constitution of India, but Supreme Court in ***SBP & Co. Vs. Patel Engineering Ltd.*** (2005) 8 SCC 618 has held that constitutional remedies under Articles 226 or 227 of the Constitution are also not available against the orders of the Arbitral Tribunal. Owing thereto, it appears that interference in exercise of powers under Article 227 with orders in appeal permitted from orders of Arbitral Tribunal, cannot be on the same parameters as with respect to appellate orders of the Courts in supervisory jurisdiction of this Court.

7. Though the counsel for the petitioner states that the earlier petition under Article 227 of the Constitution of India being CM (Main) No. 154/2017 aforesaid was entertained by this Court but the same would be of

no avail inasmuch as neither was the said aspect considered in the order dated 8th February, 2017 nor is any finding returned with respect thereto.

8. I have further enquired from the counsel for the petitioner as to what has happened in the arbitral proceedings.

9. The counsel for the petitioner states that the learned Additional District Judge, during the consideration of the appeal under Section 37(2)(b), had requisitioned the arbitral record to the Court and, while allowing the appeal, has ordered the arbitral record to be tagged with the main appeal file which has been consigned to the record room.

10. A perusal of the order dated 30th September, 2016 confirms the aforesaid position.

11. I am surprised at the said part of the order dated 30th September, 2016. The Court, while exercising appellate jurisdiction under Section 37 of the Arbitration Act, should not ordinarily call for the arbitral record and which would result in the arbitral proceedings underway, coming to a standstill. The Legislature, in Section 37 of the Act, has provided for an appeal only against orders of the Arbitral Tribunal accepting the plea referred in sub-section (2) or sub-section (3) of Section 16 or granting or refusing to grant an interim measure under Section 17. An order granting or refusing interim measure under Section 17 would ordinarily not put a closure to the arbitral proceedings which would still continue. If the record of the Arbitral Tribunal is requisitioned in the Court, the same would affect the expeditious disposal of the arbitral proceedings and for which, by amendment of the year 2015 to the Arbitration Act, timelines have been prescribed. It is thus deemed appropriate to caution the courts, while exercising appellate jurisdiction under Section 37 of the Arbitration Act, to not, as a matter of

course, call for the arbitral record.

12. Not only so, no explanation is found in the impugned order for the learned Additional District Judge to have specifically ordered the arbitral record to be tagged with the appeal file while consigning the appeal file to the record room. The same has had the result, of not only allowing the appeal under Section 37(2)(b), but also of terminating the arbitral proceedings and which was not in the domain of the learned Additional District Judge while exercising jurisdiction under Section 37(2)(b) of the Arbitration Act. Owing to the said part of the impugned order, for the last more than one year, the arbitral proceedings have not moved forward.

13. The observations of the learned Additional District Judge in the impugned order suggest that the learned Additional District Judge, while considering the appeal, was also not satisfied with the manner in which the arbitral proceedings were being conducted. However, even if that be so, that would still not entitle the learned Additional District Judge to, though not entitled to directly, indirectly terminate the arbitral proceedings. The learned Additional District Judge ought to have left it to the respondent, to in accordance with the Arbitration Act, seek termination of the mandate of the Arbitral Tribunal, if the respondent was entitled to the said relief.

14. In this view of the matter, it is also deemed appropriate to caution the appellate courts exercising jurisdiction under Section 37(2) of the Arbitration Act to, even if have requisitioned the arbitral record, ensure that the same is returned immediately to the Arbitral Tribunal.

15. The counsel for the petitioner states that the petitioner would be satisfied if this Court were to clarify that the arbitral record requisitioned and tagged in the appeal aforesaid is to be returned to the Arbitral Tribunal

and would not press the petition for setting aside of the order dated 30th September, 2016 and would file a fresh application under Section 17 of the Arbitration Act before the Arbitral Tribunal.

16. For issuing the aforesaid clarification, need to issue notice to the respondent is not felt.

17. Needless to state that the respondent shall be entitled to contest the fresh application, if any filed by the petitioners, under Section 17 of the Arbitration Act.

18. This petition is thus allowed, setting aside the part of para 21 of the impugned order dated 30th September, 2016 directing the arbitral record to be tagged with the main appeal file. The arbitral record is directed to be de-linked from the appeal file and to be returned to the Arbitral Tribunal forthwith.

Dasti under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J

NOVEMBER 07, 2017

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