

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.2940 OF 2018

Smt. Suchitra Chavan

..Petitioner

Versus

Axis Bank Asset Sales Centre

..Respondent

Mr. Uday P. Warunjikar, Advocate for the Petitioner.

**Mr. Mayur Khandeparkar a/w Mr. Murlidhar Kale I/by M/s. O.
M. Gujar Law Chambers, Advocate for the Respondent.**

CORAM : B. R. GAVAI &

M. S. KARNIK, JJ.

DATE : 10th SEPTEMBER, 2018

ORAL JUDGMENT (Per B. R. Gavai, J)

1] The Petition challenges the order passed by the learned sole Arbitrator dated 3rd July 2018, thereby rejecting the application filed by the present Petitioner challenging the arbitration proceedings.

2] Undisputedly, in view of the agreement between the parties, the arbitration proceedings were proceeded with the sole arbitrator R. S. Bhandurge. However, after a period of one year, said R. S. Bhandurge discontinued to act as arbitrator and present arbitrator came to be appointed by the Respondent No.1.

3] The Petitioner had filed an application contending therein that the continuation of the arbitration proceedings by the present arbitrator was not permissible in law. The said application is rejected by the learned arbitrator. Being aggrieved thereby the present Petition.

4] Mr. Mayur Khandeparkar, learned counsel appearing on behalf of the Respondent has raised two fold objections with regard to the tenability of the Writ Petition. Firstly, it is stated that in view of the judgment of the Constitutional Bench of the Hon'ble Apex Court in the case of SBP & Co. Vs. Patel Engineering Ltd. And another reported in (2005) 8 SCC 618, which has been subsequently referred in many cases, the Petition is not tenable. Secondly, he states that the Respondent being a private bank, Petition under Article 226 of the Constitution of India would not lie.

5] Mr. Uday Warunjikar, learned counsel appearing on behalf of the Petitioner in reply to the preliminary objections submitted that law laid down by the Hon'ble Apex Court would have to be constructed to be applicable, only when the eventualities as contemplated under Section 29A of the Arbitration and Conciliation

Act, 1996 (for short “the said Act”) has not arisen. He submits that clause (6) of Section 29A of the said Act reveals that while extending the period as referred in Sub Section (4), the period for conclusion of arbitration proceedings has not been extended by the Court and as such, the order is amenable to the writ jurisdiction of this Court.

6] We find that the contention as raised on behalf of the Petitioner is without substance.

7] It will be relevant to refer to paragraphs 45 and 46 of the Hon'ble Apex Court judgment in *SBP & Co. (supra)* :-

“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 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.”

Perusal of the judgment would reveal that the Hon'ble Apex Court has clearly held that once the arbitration proceedings have commenced, the parties will have to wait until the award is pronounced unless, a right of the Appeal is available under Section 37 of the said Act at the earlier stage.

8] The Hon'ble Apex Court has clearly held that this Court while exercising its power under Section 226 or 227 of the Constitution of India will not entertain any Petition challenging the

interlocutory orders passed in the arbitration proceedings. In that view of the matter, we find that preliminary objections needs to be upheld. The Petition is therefore rejected in view of the law laid down by the Hon'ble Apex Court in the case of *SBP & Co. (supra)*.

9] Since the Petition is dismissed on these grounds, we do not find it necessary to refer to the other objections raised by Mr. Mayur Khandeparkar.

Balaji
Govindrao
Panchal

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[M. S. KARNIK, J.]

[B. R. GAVAI, J.]