

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3380 OF 2018

Team Interventure Exports (India) Pvt.Ltd. & ors. .. Petitioners
Vs.
SBI Global Factors Ltd. .. Respondent

Mr.Vedchetan Patil, for the Petitioners.
Ms.Sneha Phene a/w Ms.Bhagashree Lembhe I/b M/s.HSA
Advocates, for Respondent.

**CORAM : B.R.GAVAI &
M.S.KARNIK, JJ.
DATE : 08th OCTOBER, 2018**

P.C. :

. The Petitioner by way of the present Petition has challenged the order dated 27/04/2018 vide which the part of the application of the Petitioner for seeking amendment to the Statement of Defence stands rejected. The Petitioner also challenges the order dated 02/08/2018 passed by the learned Arbitrator on the application filed by the original claimant whereby the permission to file additional documents has been granted.

2. Learned Counsel for the Petitioner submits that the learned Arbitrator has acted diagonally opposite while rejecting the application of the Petitioner and granting the application for the original claimant. He submits that part of the application of the Petitioner has been rejected on the ground that there is no reference in the original Statement of Defence of the ground sought to be incorporated by way of amendment. However, in the similar facts, the application of the original claimant has been allowed.

3. In this context we may make a useful reference to the decision of the Hon'ble Apex Court in the case of **SBP & Co. Vs. Patel Engineering Ltd and anr. reported in (2005) 8 Supreme Court Cases 618**. The Apex Court in paragraph 46 has observed thus :

“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.”

4. Learned Counsel for the Petitioner however submits that the said judgment would not be applicable to the facts of the present case. He submits that what is considered in the said judgment by the Hon'ble Apex Court was exercise of powers by this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short 'Act'). He therefore submits that in the facts of the case when the learned Arbitrator has acted patently illegal, this Court would have powers under Article 226 of the Constitution of India to interfere. He submits that the issue which arises in the present Petition is not an issue before the Hon'ble Supreme Court and as such, the judgment of the Apex Court can be distinguished.

5. It is now settled law that even an Obiter of the Hon'ble Supreme Court binds this Court. The Hon'ble Supreme

Court has observed 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 our opinion, therefore, it would not be permissible for us to entertain any Writ Petition at an interlocutory stage.

6. In this view of the matter, we are not inclined to exercise our extra ordinary writ jurisdiction under Article 226 of the Constitution of India. Writ Petition is therefore rejected.

(M.S.KARNIK, J.)

(B.R.GAVAI, J.)