

27th January,
2022
(AK)
96

**CO 2046 of 2019
With
RVW 187 of 2019
IA No: CAN 1 of 2019
(Old No: CAN 7880 of 2019)**

M/s. Maa Construction Company & others.
Vs.
Sri Krishna Singh & Others.

(Via Video Conference)

Mr. Kushal Chatterjee
...for the review petitioners.

Mr. Gopal Chandra Ghosh
...for the opposite parties.

Learned counsel for the review applicant submits that although the review applicant had erroneously participated in the hearing of CO 2046 of 2019 when the matter was disposed of vide order dated July 5, 2019, under the amended provisions of the Arbitration and Conciliation Act 1996 (as amended in 2015), an appeal was maintainable against the order passed under Section 8 of the 1996 Act, which was impugned in the said revisional application.

Learned counsel places reliance on the amended provision of the statute in support of his contention.

Learned counsel for the opposite parties in the review application submits that the review applicant participated in the proceeding and cannot now resile from

the position that this court had the jurisdiction to decide the matter.

Even if there is substance in the contention of the review applicant as regards an appeal being provided for under the amended law against the order challenged in the civil revisional application, such availability of an alternative remedy, as is well-settled, is not an absolute bar to the exercise the Constitutional power of judicial review under Article 226 and/or Article 227 of the Constitution of India, as exercised by the High Courts.

Since the review applicant not only failed to take any objection as regards maintainability but also participating full-fledged in the hearing of the review application, it does not now lie in the mouth of the review applicant to resile from such position and seek review of the application on the preliminary ground of maintainability.

In such view of the matter, there is no scope of allowing the review application and/or entertaining the same at this belated juncture.

Accordingly, RVW 187 of 2019, along with CAN 1 of 2019 (Old No: CAN 7880 of 2019), is dismissed on contest without, however, any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)