

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.09.2021

PRONOUNCED ON : 13.09.2021

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

**CRP(NPD).No.1441 of 2021 &
CMP.No.11291 of 2021**

P.Krishnan

... Petitioner

..Vs..

1.M.Ramachandran

2.Inbavijayan

Advocate

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the arbitral award in ACP (MR & PK) 1 of 2019 dated 15.07.2021 on the file of the Sole Arbitrator, Mr.Inbavijayan, Advocate.

For Petitioner : Mr.V.Raghavachari,
for Mr.Abhinav Parthasarathy

For Respondent 1 : Mr.P.H.Arvinth Pandian, Senior counsel
for Mr.D.Srinivasaraghavan

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JUDGMENT

This civil revision petition has been filed under Article 227 of the Constitution of India on the ground that without there being an arbitration agreement, the second respondent Arbitrator has exercised jurisdiction under a memorandum of understanding allegedly entered into between the petitioner and the first respondent on 28.12.2017.

2. It is the case of the petitioner that there is no arbitration clause under the aforementioned memorandum of understanding dated 28.12.2017 and despite the same, the second respondent has acted without authority as an Arbitrator to adjudicate disputes under the memorandum of understanding. This civil revision petition has been filed also aggrieved by the impugned arbitral award dated 15.07.2021 passed by the second respondent Arbitrator in favour of the first respondent against the petitioner directing him to pay the following:

(a) The amount of excess amount drawn by Respondent beyond his share (41.8%) = Rs.2,39,40,980/-;

(b) Interest calculation from 01.01.2013 to 30.09.2020 (2830 days)
is Rs.4,45,49,860/-;

(c) The amount of Rs.54 Lakh borrowed amount to redeem the
Respondent Chettiyapatti Village Agricultural Land from Axis Bank =
Rs.54,00,000/-;

(d) Interest calculation from 01.11.2010 to 30.09.2020 (3622 days)
is Rs.1,28,58,100/-;

(e) Interest calculation for the total claim amount of Rs.8,9,21,856/-
from 01.10.2020 to 30.06.2021 at the rate of 12% (273 days) is
Rs.77,85,960/-;

(f) No award on the additional prayed dated 05.03.2021 sought by
the Claimant;

(g) Interest at the rate of 8% will be applicable post publishing the
award till the award is subjected for realisation.

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3. Heard Mr.V.Raghavachari, learned counsel representing
Mr.Abhinav Parthasarathy, learned counsel for the petitioner and
Mr.P.H.Arvinth Pandian, learned Senior Counsel representing

Mr.D.Srinivasaraghavan, learned counsel for the first respondent.

4. Mr.V.Raghavachari, learned counsel for the petitioner drew the attention of this Court to the following documents which have been filed in the typed set of documents filed along with this civil revision petition namely:

(a) Memorandum of Understanding entered into between the Petitioner and the first respondent dated 28.12.2017;

(b) Consent letter dated 08.08.2019 issued by the second respondent giving his consent to act as an Arbitrator in respect of the disputes arising out of the memorandum of understanding;

(c) Letter dated 20.08.2019 sent by the petitioner's counsel to the second respondent denying the existence of any arbitration clause under the memorandum of understanding and requesting the second respondent to refrain from acting as an Arbitrator in respect of the alleged disputes under the memorandum of understanding;

(d) Email dated 05.02.2020 sent by the petitioner's counsel to the

second respondent Arbitrator requesting him to pass orders in the application filed by the petitioner under section 16 of the arbitration and conciliation act questioning his authority to act as an Arbitrator;

(e) Order dated 07.02.2020 passed by the second respondent Arbitrator under section 16 of the Arbitration and Conciliation Act rejecting the application filed by the petitioner under the said provision.

(f) Arbitral award dated 15.07.2021 passed by the second respondent in the alleged dispute between the petitioner and the first respondent under the memorandum of understanding dated 28.12.2017, wherein the petitioner was directed to pay the aforesaid sum mentioned in paragraph-2 supra.

5. After referring to the aforementioned documents, Mr.V.Raghavachari, learned counsel for the petitioner would submit that without the existence of any arbitration clause, the second respondent has acted as an Arbitrator and has conducted a Kangaroo Court and has brought down his position as a lawyer to abject ridicule. Hence according to him, since the first respondent has circumvented the legal proceedings

under the guise of conducting arbitration and the second respondent having passed an illegal arbitral award against the petitioner, this civil revision petition under Article 227 of the Constitution of India is maintainable.

6. Learned counsel for the petitioner also drew the attention of this Court to section 7 of the Arbitration and Conciliation Act, 1996 and would submit that since there is no arbitration clause under the memorandum of understanding which satisfies the requirement of section 7 of the Act, the initiation of arbitral proceedings by the second respondent is void as there is no arbitration agreement. He would submit that despite the same, the second respondent has gone ahead and passed a collusive and fraudulent arbitral award dated 15.07.2021 against the petitioner for a huge sum of Rs.9,45,34,900/-.

7. In support of his submission that a revision under Article 227 of the Constitution of India is maintainable for the issue on hand, learned counsel for the petitioner drew the attention of this Court to the following authorities:

(a) A Judgment of the Hon'ble Supreme Court in the case of ***SREI Infrastructure Finance Limited vs. Tuff Drilling Private Limited*** reported in ***(2018) 11 SCC 470***;

(b) A Judgment of the Hon'ble Supreme Court in the case of ***Punjab State Power Corporation Limited vs. Emta Coal Limited and Another*** reported in ***2020 SCC Online SC 1165***;

(c) A single bench judgment of the ***Delhi High Court*** in the case of ***Surender Kumar Singhal and Others vs. Arun Kumar Bhalotia and Others*** reported in ***2021 SCC Online Del 3708***;

(d) An unreported judgment dated 21.06.2021 of the Madras High Court in the case of ***T.S.Gowrama and another vs. Nithin K. Chariyan*** in ***CRP.No.1603 of 2019***; &

(e) An unreported judgment dated 27.02.2020 of the Madurai Bench of Madras High Court in the case of ***T.P.Kathiresan (died) and seven others vs. R.Ramadass (died) and five others*** in ***CRP.(NPD)(MD).No.2275 of 2011 & CRP (PD) (MD).No.2368 of 2010***.

8. Per contra Mr.P.H.Arvinth Pandian, learned Senior Counsel

representing Mr.D.Srinivasaraghavan, learned counsel for the first respondent would submit that a civil revision petition under Article 227 of the Constitution of India filed by the petitioner for the subject issue is not maintainable. According to him, there being an alternate remedy and an inbuilt mechanism provided under section 16 of the Arbitration and Conciliation Act with regard to the issues raised by the petitioner in this civil revision petition, the present Civil revision under Article 227 of the Constitution is not maintainable. According to him, the second respondent Arbitrator having rejected the application filed by the petitioner under section 16 of the Arbitration and Conciliation Act, wherein the petitioner had questioned the jurisdiction of the Arbitral Tribunal to adjudicate the dispute, the only remedy for the petitioner is to challenge the final arbitral award passed against him in favour of the first respondent as per the provisions of Section 34 of the Arbitration and Conciliation Act.

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9. Mr.Arvinth Pandian, learned Senior Counsel also drew the attention of this court to the arbitral award dated 15.07.2021 passed by the second respondent Arbitrator in favour of the first respondent and would

submit that even without challenging the said arbitral award by filing an application under section 34 of the Arbitration and Conciliation Act, the petitioner has now approached this Court under Article 227 of the Constitution of India which according to him is not maintainable. In support of his submissions, he drew the attention of this Court to the following authorities namely:

(a) A Division Bench Judgment of the Hon'ble Supreme Court in the case of ***Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and Another*** reported in ***(2020) 15 SCC 706***; and

(b) A Division Bench Judgment of the Hon'ble Supreme Court in the case of ***Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., and other*** reported in ***2021 (1) CTC 450***.

10. Relying upon the aforesaid decisions, Mr.Arvind Pandian, learned Senior Counsel for the first respondent would submit that in both the aforesaid decisions, the Hon'ble Supreme Court held that when alternate statutory remedies are available under the Arbitration and Conciliation Act, to challenge the orders passed by the Arbitral Tribunal,

the inherent powers of the High Court under Article 227 of the Constitution of India should not be exercised.

Discussion:

11. Section 16 of the Arbitration and Conciliation Act, 1996 reads as follows:

16. Competence of Arbitral Tribunal to rule on its jurisdiction.— (1) The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because

that he has appointed, or participated in the appointment of, an Arbitrator.

(3) A plea that the Arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The Arbitral Tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The Arbitral Tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the Arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

12. By order dated 07.02.2019, the second respondent Arbitrator has dismissed the application filed by the petitioner challenging the jurisdiction of the Arbitral Tribunal on the ground that there exists an arbitration agreement between the parties. Infact, as seen from the order

dated 07.02.2019, the second respondent Arbitrator took the objection of the petitioner with regard to the Arbitral Tribunal's jurisdiction on account of non-existence of arbitration clause and treated the same as an application under section 16 of the Arbitration and Conciliation Act, 1996 and by the aforesaid order, dismissed the said application. In the order dated 07.02.2019, the Arbitral Tribunal has also observed that the Tribunal initiated settlement talks invoking section 30 of the Arbitration and Conciliation Act, 1996 based on the mutual consent of the parties and their counsel. The receipt of the order dated 07.02.2019 passed by the second respondent Arbitrator under section 16 of the Arbitration and Conciliation Act, 1996 has also not been disputed by the petitioner as he himself has filed the same in the typed set of documents filed along with this civil revision petition under Article 227 of the Constitution of India.

13. As seen from Section 16(5) of the Act, where the Arbitral Tribunal takes the decision rejecting the plea questioning its jurisdiction to decide the dispute, the arbitral proceedings shall continue and there is no prohibition for the Tribunal to pass an arbitral award.

14. Section 16 of the Arbitration and Conciliation Act, 1996, is based on the doctrine of kompetenz – kompetenz which indicates that an Arbitral Tribunal is empowered and has the competence to rule on its own jurisdiction, including determining all jurisdiction issues, and the existence or validity of an arbitration agreement. The underlying object of this doctrine is to minimize judicial intervention in order to ensure that the arbitral process is not thwarted at the very threshold, merely because a preliminary objection is raised by one of the parties.

15. Section 37 of the Arbitration and Conciliation Act, 1996 which deals with appealable orders also does not permit any appeal rejecting an application filed under section 16 of the Arbitration and Conciliation Act, questioning the jurisdiction of the Arbitral Tribunal. The remedy for an aggrieved party is only to challenge the arbitral award, in case it is passed against him or her in the near future, as seen from section 16(6) of the Arbitration and Conciliation Act, 1996.

16. Under section 16(6) of the Arbitration and Conciliation Act,

1996, it is made clear that a party aggrieved by the rejection of application filed under section 16 of the Arbitration and Conciliation Act questioning the jurisdiction of the Arbitral Tribunal can only challenge the award which may be passed against him or her in the near future under section 34 of the Arbitration and Conciliation Act. Subsequent to the passing of the order dated 07.02.2019 dismissing the application filed under section 16 of the Arbitration and Conciliation Act, 1996, an Arbitral Award dated 15.07.2021 has also been passed in favour of the first respondent against the petitioner by the Arbitral Tribunal. Admittedly, till date, no application has been filed by the petitioner under section 34 of the Arbitration and Conciliation Act to challenge the said award. Under the Arbitral Award dated 15.07.2021, the Arbitral Tribunal has directed the petitioner to pay the following amounts to the first respondent:

(a) The amount of excess amount drawn by Respondent beyond his share (41.8%) = Rs.2,39,40,980/-;

(b) Interest calculation from 01.01.2013 to 30.09.2020 (2830 days) is Rs.4,45,49,860/-;

(c) The amount of Rs.54 Lakh borrowed amount to redeem the Respondent Chettiyapatti Village Agricultural Land from Axis Bank = Rs.54,00,000/-;

(d) Interest calculation from 01.11.2010 to 30.09.2020 (3622 days) is Rs.1,28,58,100/-;

(e) Interest calculation for the total claim amount of Rs.8,9,21,856/- from 01.10.2020 to 30.06.2021 at the rate of 12% (273 days) is Rs.77,85,960/-;

(f) No award on the additional prayed dated 05.03.2021 sought by the Claimant;

(g) Interest at the rate of 8% will be applicable post publishing the award till the award is subjected for realisation.

17. Under section 34 of the Arbitration and Conciliation Act, 1996, a party aggrieved by an arbitral award can challenge the same within three months from the date of receipt of a copy of the said arbitral award and one month grace period thereafter is alone permissible that too with sufficient reasons which satisfies the competent court. In the case on hand,

the procedure prescribed under section 16 as well as under section 34 of the Arbitration and Conciliation Act, 1996 has admittedly not been followed by the petitioner. But instead, he has circumvented the well established procedure by filing this revision under Article 227 of the Constitution of India challenging the arbitral proceedings on the ground that there is no arbitration clause. Infact, under section 16(1) of the Arbitration and Conciliation Act, the Arbitral Tribunal has got the power to rule on its own jurisdiction and adjudicate on the existence or non-existence of an arbitration agreement, which in the instant case it has been done by the Arbitral Tribunal.

18. Section 7 of the Arbitration and Conciliation Act, 1996 defines an arbitration agreement which reads as follows:

*“7. **Arbitration agreement.**—(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication 1 [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

As seen from Section 7 of the Arbitration and Conciliation Act, 1996, even though the arbitration agreement should be in writing, various circumstances have been given under the said section for the purpose of deciding as to whether there is an arbitration agreement between the

parties or not. Infact, as seen from the order dated 07.02.2019 passed by the Arbitrator under section 16 of the Arbitration and Conciliation Act, the second respondent Arbitrator has observed that the Arbitral Tribunal initiated settlement talks invoking section 30 of the Arbitration and Conciliation Act, 1996, based on the mutual consent of the parties and their counsels. Therefore, there is a possibility that the petitioner may have acquiesced to the jurisdiction of the Arbitrator, even though there may not be a separate arbitration clause under the memorandum of understanding dated 28.12.2017 between the parties. The acquiescence to the jurisdiction Arbitral Tribunal will also enable the second respondent Arbitrator to adjudicate the arbitral dispute between the parties. Rightly or wrongly, the second respondent Arbitrator may have passed the order dated 07.02.2019 under section 16 of the Arbitration and Conciliation Act, 1996 rejecting the petitioner's application questioning the Arbitral Tribunal's jurisdiction to decide the dispute between the parties. Admittedly, the petitioner has not disputed the contractual relationship between him and the first respondent, though he may dispute the existence of an arbitration clause under the memorandum of understanding dated

28.12.2017 and his liability to pay.

19. The Arbitral Award passed thereafter on 15.07.2021 in favour of the first respondent against the petitioner has also not been challenged by the petitioner under section 34 of the Arbitration and Conciliation Act which is the settled and well established procedure contemplated under the Act.

20. The Arbitration and Conciliation Act, 1996 is a special enactment. The purpose of arbitration is to adjudicate the dispute between the parties expeditiously. The scope for interference by courts is very minimal and is restricted only to the extent provided under the provisions of the Arbitration and Conciliation Act, 1996.

21. Section 5 of the Arbitration and Conciliation Act, 1996 also makes it clear that no judicial authority shall intervene except where so provided in Part-I of the Act. Section 5 of the Arbitration and Conciliation Act, 1996 reads as follows:

5. *Extent of judicial intervention.*—Notwithstanding

anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

22. In the case on hand, the procedure as contemplated under section 16(6) as well as under section 34 of the Arbitration and Conciliation Act, 1996 is for the petitioner to challenge the arbitral award dated 15.07.2021 passed against him by raising all the grounds including the ground raised by him in this civil revision petition namely questioning the jurisdiction of the Arbitral Tribunal, due to the alleged non-existence of arbitration clause. Instead of following the settled and well established procedure, the petitioner has chosen to file this revision under Article 227 of the Constitution of India.

23. The Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty & Another vs. Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329*** has discussed at length, the scope and ambit of supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India and they are as follows:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard, the High Court must be guided by the principles laid down by the Constitution Bench of the Hon'ble Supreme Court in **Waryam Singh**

and Another vs. Amarnath and another reported in **1954 AIR 215** and the principles in *Waryam Singh's* case referred to supra have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh's* case referred to supra, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere only in order to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested with them and by not declining to exercise the jurisdiction which is vested with them.

(g) Apart from the situations pointed out in (e) and (f), High Court can interfere in exercise of its power of superintendence, when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence, High Court cannot interfere to correct mere errors of law or fact or just because another view

than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of the Hon'ble Supreme Court in the case of ***L.Chandra Kumar vs. Union of India & others***, reported in ***(1997) 3 SCC 261*** and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code (by the Civil Procedure Code (Amendment) Act, 1999) does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases, but should be directed for promotion of public confidence in the administration of justice in the larger public interest. Whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be

unfettered, but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

24. The instant case does not fall under any of the aforementioned parameters, wherein the power under Article 227 of the Constitution of India can be exercised. When the Hon'ble Supreme Court while dealing with civil suits has time and again said that power under Article 227 of the Constitution of India has to be sparingly exercised only in exceptional cases, the scope for interference under Article 227 in Arbitration matters has to be naturally much more stringent as it is settled law that there should be minimal interference by Courts in Arbitration matters. Admittedly, there is an alternate statutory remedy available to the petitioner namely by filing an application under section 34 of the Arbitration and Conciliation Act, 1996 challenging the arbitral award dated 15.07.2021 raising the very same grounds that have been raised in this civil revision petition filed

under Article 227 of the Constitution of India. The Arbitration and Conciliation Act, 1996 is a special enactment which enables the Courts to intervene only in the cases provided for under the said special statute. Only in rarest of rare cases, where on the face of it there is patent illegality on the part of the Arbitral tribunal or there is no alternate statutory remedy, the High court can exercise power under Article 227 of the constitution of India. The case on hand is not one such case which requires interference under Article 227 of the Constitution.

25. Section 5 of the Arbitration and Conciliation Act, 1996 also makes it clear that no judicial authority shall intervene except where so provided in Part-I of the Act. The petitioner has chosen a jurisdiction which has to be very sparingly exercised instead of availing the statutory remedy as provided under the special enactment namely the Arbitration and Conciliation Act, 1996.

26. The decisions relied upon by the learned counsel for the

petitioner namely: (a) judgment of the Hon'ble Supreme Court in the case of ***SREI Infrastructure Finance Limited vs. Tuff Drilling Private Limited*** reported in ***(2018) 11 SCC 470***; (b) Judgment of the Hon'ble Supreme Court in the case of ***Punjab State Power Corporation Limited vs. Emta Coal Limited and Another*** reported in ***2020 SCC Online SC 1165***; (c) A single bench judgment of the ***Delhi High Court*** in the case of ***Surender Kumar Singhal and Others vs. Arun Kumar Bhalotia and Others*** reported in ***2021 SCC Online Del 3708***; (d) An unreported judgment dated 21.06.2021 of the Madras High Court in the case of ***T.S.Gowrama and another vs. Nithin K. Chariyan in CRP.No.1603 of 2019***; & (e) An unreported judgment dated 27.02.2020 of the Madurai Bench of the Madras High Court in the case of ***T.P.Kathiresan (died) and seven others vs. R.Ramadass (died) and five others in CRP.(NPD)(MD).No.2275 of 2011 & CRP (PD) (MD).No.2368 of 2010*** are all cases wherein the High Court exercised power under Article 227 of the Constitution of India. However, exercise of such power depends on the facts and circumstance of each case. Even as per the decisions relied upon by the learned counsel for the petitioner referred to supra, it is clear that

there will have to be exceptional circumstances for interference under Article 227 of the Constitution of India and the lack of jurisdiction of the Arbitral Tribunal must be absolutely certain. In the case on hand, the lack of jurisdiction of the arbitral tribunal is not absolutely certain as seen from the order dated 7.2.2019 as well as the Arbitral Award dated 15.07.2021. Therefore, it can be tested only Section 34 of the Arbitration and Conciliation Act and not otherwise.

27. As laid down by the Hon'ble Supreme Court in *Shalini Shyam Shetty & Another vs. Rajendra Shankar Patil* reported in (2010) 8 SCC 329, the High Courts cannot, on the drop of the hat, exercise its power under Article 227 of the Constitution of India in cases where an alternate statutory mode of redressal is provided.

28. In the case on hand, the petitioner has appeared before the second respondent Arbitrator and has also filled a written objection questioning his jurisdiction to decide the dispute between the parties which has also been rejected by the Arbitrator in his order dated 07.02.2019 and

thereafter the Arbitrator has also passed the arbitral award against the petitioner on 15.07.2021. The petitioner has also not challenged till date the said arbitral award dated 15.07.2021 under section 34 of the Arbitration and Conciliation Act, 1996. Therefore, this Court is of the considered view that this is not a fit case for interference under Article 227 of the Constitution of India.

29. In the case of ***Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and Another*** reported in (2020) 15 SCC 706; and (b) In the case of ***Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., and other*** reported in 2021 (1) CTC 450, referred to supra, the Hon'ble Supreme Court has held that when an application under section 16 of the Arbitration and Conciliation Act, challenging the jurisdiction of the Arbitral Tribunal has been dismissed by the Arbitral Tribunal, the only remedy for the aggrieved party is to challenge the Arbitral award as and when passed under section 34 of the Arbitration and Conciliation Act.

30. The relevant paragraph of ***Deep Industries Limited case*** referred to *supra* are as follows:

22. One other feature of this case is of some importance. As stated hereinabove, on 09.05.2018, a section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. What the High Court has done in the present case is to invert this statutory scheme by going into exactly the same matter as was gone into by the Arbitrator in the Section 16 application, and then decided that the two year ban was no part of the notice for arbitration issued on 02.11.2017, a finding which is directly contrary to the finding of the learned Arbitrator dismissing the Section 16 application. For this reason alone, the judgment under appeal needs to be set aside. Even otherwise, as has been correctly

pointed out by Mr. Rohatgi, the judgment under appeal goes into the merits of the case and states that the action of putting the Contractor and his Directors “on holiday” is not a consequence of the termination of the agreement. This is wholly incorrect as it is only because of the termination that the show cause notice dated 18.10.2017 proposing to impose a two year ban/blacklisting was sent. Even otherwise, entering into the general thicket of disputes between the parties does not behove a court exercising jurisdiction under Article 227, where only jurisdictional errors can be corrected. Therefore to state that the ban order was passed under a General Contract Manual and not Clause 18 of the Agreement, besides being incorrect, would also be incorrect for the reason that the General Contract Manual does not mean that such order was issued as an administrative order invoking the executive power, but was only as an order which emanated from the contract itself. Further to state that “serious disputes” as to jurisdiction seem to have cropped up is not the same thing as saying that the Arbitral Tribunal lacked inherent jurisdiction in going into and deciding the

Section 17 application. In point of fact, the Arbitral Tribunal was well within its jurisdiction in referring to the contract and the ban order and then applying the law and finally issuing the stay order. Even if it be accepted that the principle laid down by Section 41(e) of the Specific Relief Act was infringed, in that damages could have been granted, as a result of which an injunction ought not to have been issued, is a mere error of law and not an error of jurisdiction, much less an error of inherent jurisdiction going to the root of the matter. Therefore, even otherwise, the High Court judgment cannot be sustained and is set aside.

31. In the aforesaid decision also, the Hon'ble Supreme Court after taking note of the observations made in the decision relied upon by the learned counsel for the petitioner in **Punjab State Power Corporation Limited's** case referred to supra where the power under Article 227 of the Constitution of India was exercised by the High Court in respect of orders passed under section 11 of the Arbitration and Conciliation Act, 1996 distinguished the said decision by holding that the observations were made

in **Punjab State Power Corporation Limited's** case referred to supra for the reason that no provision for appeal had been given by the statute against the orders passed under section 11 of the Arbitration and Conciliation Act, which is why the High Court's supervisory jurisdiction should first be invoked before going to the Supreme Court under Article 136. In **Deep Industries Limited's** case referred to supra, the Hon'ble Supreme Court has made it clear that the facts involved in that case is distinguishable for the reason that in Punjab State Power Corporation Limited case, Article 227 of the Constitution of India was exercised by the High Court only after the first appeal was dismissed under Section 37 of the Arbitration and Conciliation Act, 1996. The relevant portion of the said judgment is extracted hereunder:

“What is important to note is that the observations of this Court in this judgment were for the reason that no provision for appeal had been given by statute against the orders passed under Section 11, which is why the High Court's supervisory jurisdiction should first be invoked before coming to this Court under Article 136. Given the facts of the present case, this case

is equally distinguishable for the reason that in this case the 227 jurisdiction has been exercised by the High Court only after a first appeal was dismissed under Section 37 of the Act.

32. In ***Bhaven Constructions vs. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd., and other*** reported in **2021 (1) CTC 450**, the Hon'ble Supreme Court following the decision rendered in ***Deep Industries Limited***'s case referred to supra has also held that when there is a mechanism provided for challenging the arbitral award under section 34 of the Arbitration and Conciliation Act, no exceptional circumstance has been established to invoke remedy under Article 227 of the Constitution of India for the alleged unilateral appointment of Arbitrator. The relevant paragraph of the aforesaid judgment reads as follows:

“25. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the Court examines the same under Section 34. Respondent No. 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In Deep Industries case (supra), this Court observed as follows:

“22. One other feature of this case is of some importance. As stated herein above, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34.”

26. In view of the above reasoning, we are of the considered opinion that the High Court erred in utilizing its discretionary power available under Articles 226 and 227 of the Constitution herein. Thus, the appeal is allowed and the impugned Order of the High Court is set aside. There shall be no order as to costs. Before we part, we make it clear that Respondent No. 1 herein is at liberty to raise any legally permissible objections regarding the jurisdictional question in the pending Section 34 proceedings.”

33. In the aforementioned case also, an interpretation of section 16

of the Arbitration and Conciliation Act, 1996 was involved and in that case also, the Hon'ble Supreme Court has categorically held that challenge to an order dismissing the application filed under section 16 of the Arbitration and Conciliation Act, 1996 questioning the jurisdiction of the Arbitral Tribunal can be raised only in an application under section 34 of the Arbitration and Conciliation Act and exercising the extraordinary power of the High Court under Article 227 of the Constitution of India is not permissible.

34. For the foregoing reasons, this court is of the considered view that there is no merit in this civil revision petition filed under Article 227 of the Constitution of India. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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Note: Learned counsel for the petitioner after pronouncing of this order seeks for return of the original arbitral award from the Registry, since the petitioner intends to challenge the arbitral award by filing an application under section 34 of the Arbitration and Conciliation Act. Registry is

directed to return the Original Arbitral Award immediately to enable the petitioner to challenge the same under section 34 of the Arbitration and Conciliation Act.

Note: Issue order copy today

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Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order



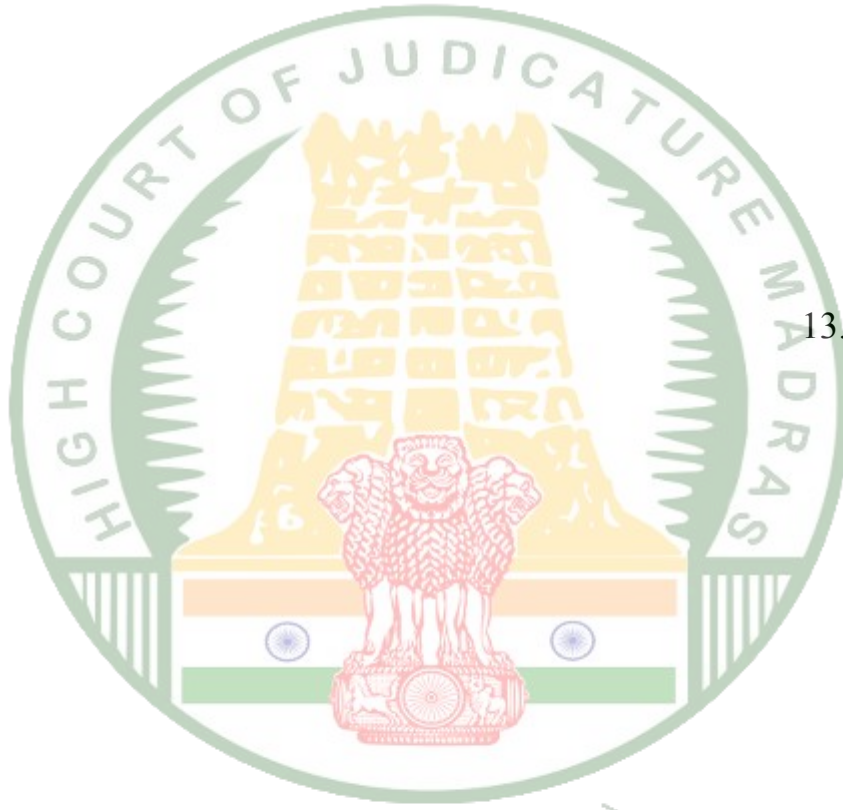
ABDUL QUDDHOSE, J.

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Pre-Delivery Judgment

**CRP(NPD).No.1441 of 2021 &
CMP.No.11291 of 2021**



13.09.2021

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