

29.04.2022
Court No.13
Item No.41
AP

WPA 12236 of 2021
With
CAN 1 of 2022
With
CAN 2 of 2022

Kausar Ali
Vs.
Union of India and Ors.

Mr. Dilip Kumar Samanta
Mr. Biswapriya Samanta

... For the Petitioner.

Ms. Sutapa Sanyal
Ms. Susnita Saha

... For the State.

CAN 1 of 2022 has been filed seeking impleadment of an arbitrator appointed by the respondents finance company, under the agreement between the petitioner and the said company, for the purpose of financing purchase of vehicle.

CAN 2 of 2022 has been filed seeking injunction restraining the respondents from proceeding with arbitration, in terms of the notice of appointment of arbitrator, issued by the respondent company.

The grievance of the petitioner in the main writ petition is regarding non-compliance of the guidelines of the Reserve Bank of India, inter alia, contained in a circular dated 22nd August 2007.

It is submitted that the petitioner has indeed obtained loans and advances from the finance company to purchase a vehicle, but has not received a copy of the loan agreement. It is submitted that the

respondents in violation of the guideline of the Reserve Bank of India has not furnished a loan agreement, notwithstanding a request from the petitioner for the same.

Counsel for the petitioner submits that the action of the respondents', in addition to being in violation of the Reserve Bank of India's guidelines, is also in violation of the dicta of the Supreme Court in the case reported in **(2012) C.Cr.LR (SC) 139**. The subject matter of the said decision was a wrongful possession obtained of a vehicle obtained contrary to the hire purchase agreement between the parties.

Counsel for the respondents, however, relies upon a decision of the Supreme Court in the case of **Charanjit Singh Chadha & Ors. Vs. Sudhir Mehra** reported in **(2001) 7 SCC 417**.

It is now well-settled that the writ jurisdiction the High Court under article 226 of the Constitution of India cannot be invoked for the purpose of interference with arbitration proceedings. Reference in this is made to the decision of the Supreme Court in the case of **Deep Industries Ltd. v. ONGC** reported in **(2020) 15 SCC 706**. Paragraphs 16 & 17 of the said decision is set out below.

“16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the

statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

The said decision has been affirmed in the case of ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. & Anr.*** reported in **(2022) 1 SCC 75**, which has also stated as follows:

“18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In *Nivedita Sharma v. COAI* [*Nivedita Sharma v. COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947], this Court referred to several judgments and held : (SCC p. 343, para 11)

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — *L. Chandra Kumar v. Union of India* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ

petition should not be entertained ignoring the statutory dispensation.”

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear “bad faith” shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.”

(emphasis supplied)

Since the possession of the vehicle has not yet been taken, and the respondents have invoked the arbitration clause on the hire purchase agreement against the petitioner, the parties may raise their respective claims and counter-claims in such arbitration, which is the chosen forum under the contract between the parties. The request of the petitioner for provision of the loan agreement may be made before the arbitrator in accordance with the Arbitration and Conciliation Act, 1996.

With the aforesaid observations, the writ petition shall stand disposed of.

In view of the dismissal of the writ petition, connected applications, if any, shall also stand disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)