

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.1013 of 2022

M/s. Hotel Sea Point Pvt. Ltd., Puri* *Appellant

Mr. Gyan Samantray, Advocate

-versus-

***M/s. Blue Line Resorts Pvt. Ltd.,* *Respondent*
Bhubaneswar**

Mr. Avijit Pal, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
14.10.2022**

Order No.

Dr. S.Muralidhar, CJ.

02. 1. The challenge in the present writ appeal is to an order dated 6th July 2022, passed by the learned Single Judge disposing of the W.P.(C) No.3203 of 2022 filed by the Respondent herein.

2. In the writ petition, the challenge was laid by the Respondent to an order dated 27th December, 2021 passed by the Civil Court rejecting an application under Section 29A (5) of the Arbitration and Conciliation Act, 1996 (Act). While not interfering with the said order, the learned Single Judge has in the impugned order observed that the Arbitral Tribunal should to proceed in accordance with law and expeditiously conclude the proceedings. Aggrieved by

this portion of the order, the Appellant has come before this Court in the present writ appeal.

3. A preliminary objection has been raised by Mr. Avijit Pal, learned counsel appearing for the Respondent to the maintainability of the present writ appeal relying on the decision of the Supreme Court in ***Life Insurance Corporation of India v. Nandini J. Shah (2018) 15 SCC 356***. In reply, it is submitted by learned counsel appearing for the Appellant that since the Respondent captioned his writ petition as being under both Articles 226 and 227 of the Constitution of India, the present appeal would be maintainable. He refers to the decision of the Supreme Court dated 6th July, 2015 in Civil Appeal No.2374 of 2015 (***Shri Jogendrasinghji Vijaysinghji v. State of Gujarat***), the decision dated 18th December, 2014 in Civil Appeal No.11604 of 2014 (***Anil v. Rajendra***) and the decision of this Court dated 9th May, 2018 in W.A. No.202 of 2017 (***Jyotshna Mohapatra v. State of Odisha***).

4. There can be no doubt that the application under Section 29A (5) of the Act was dealt with by the Civil Court in exercise of the civil jurisdiction and as pointed out in ***Ram Kishan Fauji v. State of Haryana (2017) 5 SCC 533***, judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. It has been clearly observed that “it is beyond any shadow of doubt that the order of the Civil Court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will

depend upon the other factors as have been enumerated therein”. This has been re-affirmed by the 3-Judge Bench of the Supreme Court in ***Life Insurance Corporation of India v. Nandini J. Shah*** (*supra*).

5. The Court notes that the decisions both in ***Jogendrasinghi Vijaysinghi v. State of Gujarat*** (*supra*) and ***Anil v. Rajendra*** (*supra*) are earlier to the decision in ***Life Insurance Corporation of India v. Nandini J. Shah*** (*supra*) and are by Benches of two learned Judges and, therefore, would have to abide by the larger Bench in ***Life Insurance Corporation of India v. Nandini J. Shah*** (*supra*). Likewise, the decision of this Court in ***Jyotshna Mohapatra v. State of Odisha*** (*supra*) would also have to abide by the decision of the Supreme Court in ***Life Insurance Corporation of India v. Nandini J. Shah*** (*supra*).

6. For the aforementioned reasons, the Court dismisses the present writ appeal on the ground of maintainability.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera