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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 353/2022 and CM 18803/2022

VRS NATARAJAN Petitioner
Through: Mr. Shashank Shekhar, Adv.

versus

OYO HOTELS AND HOMES PVT LTD Respondent
Through: Mr. Sanjoy Ghose, Sr.
Advocate with Mr. Tarun Ballav Panda, Ms.
Shalini S. Prasad, Mr. Satish Padhi, Ms.
Meher Tandon, Mr. Gaurav Sharma, Ms.
Dhriti Mehta, Ms. Urvi Mohan, Mr. Rishabh
Jetley and Mr. Naman Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
31.08.2022

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1. This petition under Article 227 of the Constitution of India assails an interlocutory order dated 25th February 2022, passed by the learned Arbitral Tribunal in seisin of the disputes between the parties in Arbitration Case Reference No. DIAC/2787/08-20. The impugned order rejects an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner, as the claimant before the learned arbitrator, to amend his Statement of Claim (SOC).

2. The original Statement of Claim, as filed by the petitioner before the learned arbitrator, alleged breach, by the respondent, of a Merchant Agreement dated 20th June 2017, executed between the petitioner and the respondent.



3. The various elements of the alleged breach, as set out in the Statement of Claim, are not particularly relevant.

4. During the pendency of the arbitral proceedings, the petitioner moved an application before the learned arbitrator under Order VI Rule 17 of the CPC, which has come to be rejected by the learned arbitrator *vide* the impugned order dated 25th February 2022. Though an amended Statement of Claim was filed with the said application, the application itself does not advert to the amendments that the petitioner had sought to carry out. The application, however, averred that the said amendments “had been necessitated in order to cure some inherent defects that had crept into the Statement of Claim as previously filed” in connection with which certain annexures had erroneously not been filed with the Statement of Claim. As such, the petitioner prayed that leave be granted to the petitioner to amend the Statement of Claim originally filed.

5. Pleadings in the said application were completed. *Vide* the impugned order dated 25th February 2022, the learned arbitrator has rejected the aforesaid application preferred by the petitioner under Order VI Rule 17 of the CPC.

6. The petitioner has approached this Court under Article 227 of the Constitution of India, thereagainst.

7. To my mind, the present petition would not be maintainable under Article 227 of the Constitution of India, following the



judgments of the Supreme Court in *SBP & Co v. Patel Engineering Ltd*¹ and *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited*², both of which have been considered by me in my decision in *Easy Trip Planners Ltd v. One97 Communications Ltd*³.

8. *SBP*¹

8.1 In *SBP & Co v. Patel Engineering Ltd*¹, the Supreme Court held thus, in paras 45 and 46 of the report:

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High

¹ (2005) 8 SCC 618

² (2022) 1 SCC 75

³ 2022 SCC OnLine Del 2186



Courts is not permissible.

46. The object of minimizing 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 of the Constitution of India or under Article 226 of the Constitution of India 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.

(Emphasis supplied)”

8.2 Paras 45 and 46 of *SBP*¹ are clear and unequivocal. They disapprove the approach of High Courts to treat all orders passed by the learned Arbitral Tribunals during arbitration — i.e. interlocutory orders — as amenable to challenge under Articles 226 and 227 of the Constitution of India. The Supreme Court holds that there is “no warrant for such an approach”.

8.3 Thereafter, the Supreme Court has observed that the orders and awards passed by the learned Arbitral Tribunals are statutorily amenable to challenge, in the scheme of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”), under Sections 34 and 37(2) thereof. A challenge under Section 34 would lie against awards passed by the learned Arbitral Tribunal. The expression “arbitral award” is defined, in Section 2(1)(c) of the 1996 Act, as including an “interim award”. The exact scope and ambit of expression “interim award” stands elucidated, by the Supreme Court, in *IFFCO v. Bhadra*



*Products*⁴, as an order which finally decides any issue which could be decided at the final stage. The following passages from *IFFCO*⁴ envisage that the final award as also the interim awards are, therefore amenable to challenge under Section 34 of the 1996 Act.

“7. As can be seen from Section 2(c) and Section 31(6), except for stating that an arbitral award includes an interim award, the Act is silent and does not define what an interim award is. We are, therefore, left with Section 31(6) which delineates the scope of interim arbitral awards and states that the arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.”

8. The language of Section 31(6) is advisedly wide in nature. A reading of the said sub-section makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the Arbitral Tribunal, and that it extends to “any matter” with respect to which it may make a final arbitral award. The expression “matter” is wide in nature, and subsumes issues at which the parties are in dispute. It is clear, therefore, that any point of dispute between the parties which has to be answered by the arbitral tribunal can be the subject matter of an interim arbitral award. However, it is important to add a note of caution. In an appropriate case, the issue of more than one award may be necessitated on the facts of that case. However, by dealing with the matter in a piecemeal fashion, what must be borne in mind is that the resolution of the dispute as a whole will be delayed and parties will be put to additional expense. The arbitral tribunal should, therefore, consider whether there is any real advantage in delivering interim awards or in proceeding with the matter as a whole and delivering one final award, bearing in mind the avoidance of delay and additional expense. Ultimately, a fair means for resolution of all disputes should be uppermost in the mind of the arbitral tribunal.

9. Apart, from the above Section 37(2) of the 1996 Act envisages a direct appeal to the Court against the orders which fall within

⁴ (2018) 2 SCC 534



Clauses (a) and (b) of the said sub-section. Section 37(2)(a) refers to orders which accepts applications under Section 16(2) or Section 16(3). Section 16(2) and 16(3), read thus:

“16(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.

16(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.”

10. Section 16(2) envisages a challenge to the jurisdiction of the learned Arbitral Tribunal to adjudicate on the disputes before it, and Section 16(3) envisages a challenge on the ground that the learned Arbitral Tribunal is exceeding its scope and its authority. The orders *accepting* such challenges are, therefore, amenable to direct challenge before the Court under Section 16(2)(a) of the 1996 Act.

11. Section 16(2)(b) also permits direct challenge to the Court against interlocutory orders passed by the learned Arbitral Tribunal which grant interim measures of protection under Section 17 of the 1996 Act, which reads as under:

“17. Interim measures ordered by arbitral tribunal.—

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to



provide appropriate security in connection with a measure ordered under sub-section (1).”

12. Para 45 of the report in *SBP*¹ which, incidentally, was a decision of seven Hon’ble Judges of the Supreme Court clearly interdicts direct challenges to the High Court against any order or award passed by the Arbitral Tribunal, which does not fall within the contemplation of Section 34 (read with the judgment in *IFFCO*⁴ or Section 37(2) of the 1996 Act).

13. *Bhaven Construction*

13.1 The decision in *Bhaven Construction*² examined the contention, advanced before the Supreme Court, that there could be no statutory curtailment of the constitutional expanse of Article 227 of the Constitution of India. Having noted the said contention, the Supreme Court in paras 18, 19, 20 and 22 of *Bhaven Construction*² held as under:

“18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In *Nivedita Sharma v. Cellular Operators Association of India*⁵, this Court referred to several judgments and held:

“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*

⁵ (2011) 14 SCC 337



Kumar v. Union of India⁶. 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.

19. In this context we may observe **M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited**⁷, wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analyzed as under:

“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,

⁶ (1997) 3 SCC 261

⁷ (2019) SCC Online SC 1602



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 herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

20. In the instant case, Respondent No. 1 has not been able to show exceptional circumstance or ‘bad faith’ on the part of the Appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by the Respondent No. 1 in a separate Section 34 application, which is pending.

22. The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and reasoned that the Appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering the Respondent No. 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the Appellant herein had actually acted in accordance with the



procedure laid down without any mala fides.”

13.2. It would be immediately seen that *Bhaven Construction*² takes into account the earlier decision of the Supreme Court in *Deep Industries*⁷.

13.3 Having thus considered the decision in *Deep Industries*⁷ as well as the contention that there could be no statutory restraint on the constitutional remedy available under Article 227 of the Constitution of India, the Supreme Court holds, in *Bhaven Construction*⁷, that Articles 226 and 227 of the Constitution of India would be available, against the orders passed in arbitral proceedings, only in rare and exceptional cases, and particularly in two exigencies. The first is where the challenger pleads bad faith on the part of the Arbitral Tribunal. The second is where, if the challenge is not permitted, the litigant would be rendered remediless.

13.4 Significantly, in *Bhaven Construction*⁷, the challenge under Article 227 of the Constitution of India, as laid by *Bhaven Construction*⁷, was against an order passed by the arbitrator in that case, rejecting an application filed by Bhaven Construction (“Bhaven” hereinafter) under Section 16(2) of the 1996 Act. Bhaven challenged the jurisdiction of the arbitrator to arbitrate on the dispute, in terms of Section 16(2) of the 1996 Act. The arbitrator rejected the application. The order being one of rejection, no appeal would be maintainable against such an order under Section 37(2)(a). Bhaven, therefore, sought to assail the order under Article 227 of the Constitution of India, before the jurisdictional High Court. The Supreme Court held



that, as the case was not one in which bad faith on the part of the arbitrator was pleaded, and *as a challenge to the jurisdiction of the arbitrator, to arbitrate on the dispute, could also be laid in a Section 34 challenge to the final award which would come to be passed*, the party was not remediless to assail the impugned order and would, therefore, following the law laid down in **SBP^I**, have to await the passing of a final order before ventilating such a challenge.

13.5 *Mutatis mutandis*, this principle would, in my view, also apply to the case at hand. It could well have been argued that, where the very jurisdiction of the arbitrator to arbitrate on the dispute was being assailed, and no provision to maintain such a challenge at the interlocutory stage was envisaged by the 1996 Act, Bhaven ought to have been allowed to maintain its challenge under Article 227 of the Constitution of India. The Supreme Court, however, did not think so. The Supreme Court, in clear and unequivocal terms, held the remedy, available to Bhaven, would be at the stage when the final award came to be passed, as the challenge to the jurisdiction of the arbitrator to arbitrate on the dispute could also be raised as a contention to assail the final award.

14. The challenge that the present petition seeks to lay, to the impugned order dated 25th February 2022, passed by the learned arbitrator, is directed against the rejection, by the learned arbitrator, of an application preferred by the petitioner, as claimant, under Order VI Rule 17 of the CPC, to amend the SOC. No statutory or other legal proscription exists, to the raising of such a contention as a ground to



challenge the final award which may come to be passed in the arbitral proceedings.

15. Mr. Shashank Shekhar, learned Counsel for the petitioner, invited my attention, in this context, to Section 34(2)(a) of the 1996 Act and sought to contend that the challenge that he seeks to raise in the present petition is not available to him against the final award, in view of Section 34(2)(a) of the 1996 Act.

16. *Ex facie*, the submission does not merit acceptance. The proviso to Section 34(2)(a) of the 1996 Act proscribes setting aside of an arbitral award on the ground of erroneous appreciation of the law or re-appreciation of evidence. These are merely statutory interdicts on the grounds on which an arbitral award could be set aside under Section 34 of the 1996 Act. These interdicts apply, equally, if not with greater force, to Article 227 of the Constitution of India. The Article 227 Court is not permitted, in law, to interfere on the ground that the order passed by the hierarchically lower judicial authority is bad on the ground of erroneous appreciation of evidence or that it erroneously appreciates or applies the law, save and except where the error extrapolates to perversity. One may, in this context, advert to the following passage from *Sadhana Lodh v. National Insurance Co. Ltd*⁸:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of

⁸ (2003) 3 SSC 524



law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

17. To the same effect is the following enunciation of the law, to be found in *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁹, rendered on 13th May 2022. The Supreme Court has again reiterated the limited parameters of Article 227 jurisdiction in para 28 of the report thus:

“28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of *Estralla Rubber v. Dass Estate (P) Ltd.*¹⁰, which has been consistently followed by this Court (see the recent decision of this Court in the case of *Garment Craft v. Prakash Chand Goel*¹¹). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”

18. The following passages from the judgments in *Estralla Rubber*¹⁰ and *Garment Craft*¹¹ on which the Supreme Court places reliance in the afore-extracted para 28 of the report in *Ibrat Faizan*⁹, also underscores this legal position:

⁹ 2022 SCC Online SC 620

¹⁰ (2001) 8 SCC 97



Estralla Rubber¹⁰

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*¹² in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case *Waryam Singh v. Amarnath*¹³. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*¹⁴ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.

Garment Craft

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*¹⁵] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [*Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*¹⁶] The jurisdiction exercised is in the nature of

¹¹ 2022 SCC Online SC 29

¹² AIR 1972 SC 1598

¹³ AIR 1954 SC 215

¹⁴ AIR 1975 SC 1297

¹⁵ 2019 SCC OnLine Del 11943

¹⁶ (2010) 1 SCC 217



correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd*⁹ has observed : (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

19. To the same effect are the following words in paras 14 to 16 of



the report in *Puri Investments v. Young Friends and Co.*¹⁷:

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.

¹⁷ 2022 SCC Online SC 283



15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

20. It is, therefore, difficult to envisage a situation in which an order would be vulnerable to challenge under Article 227, but would not be vulnerable to challenge under Section 34 of the 1996 Act, on account of the proviso to Section 2(a) thereof.

21. In any event, that is really an aspect with which this Court cannot seriously concern itself. Mr. Shashank Shekhar has also placed reliance on the judgment of the Supreme Court in *Deep Industries*⁷. *Deep Industries*⁷, as already noted, was considered and noted by *Bhaven Construction*², before laying down the legal principles in that case. It is not possible, therefore, for this Court to read *Deep Industries*⁷ in a manner different from the manner in which *Bhaven Construction*² read and understood the judgment.

22. That apart, the issue before the Supreme Court in *Deep*



*Industries*⁷ was whether a petition under Article 227 would lie against an order passed in appeal by the learned Trial Court under Section 37(2) of the 1996 Act. Fundamentally, therefore, the issue before the Supreme Court in *Deep Industries*⁷ was different with that before the Supreme Court in *SBP*¹ and *Bhaven Construction*². The Supreme Court was not seized with the issue of the vulnerability, to interference under Article 227 of the Constitution of India, of an interlocutory order passed by the Arbitral Tribunal.

23. It is well settled that judgments of the Supreme Court are not to be read as Euclid's theorem's and are to be understood and accorded precedential value in the light of the circumstances and the factual and legal disputes which were before the Supreme Court¹⁸. As *Deep Industries*⁷ was not, therefore, concerned with a challenge to an interlocutory arbitral order or for that matter, with any order passed by an Arbitral Tribunal, as also because *Deep Industries*⁷ was considered and appreciated in *Bhaven Construction*², the judgment in *Deep Industries*⁷ cannot be of serious assistance to the stand that Mr. Shashank Shekhar seeks to canvass.

24. Mr. Shashank Shekhar has drawn particular notice to the following sentences in para 24 of the report in *Deep Industries*⁷:

“Mr. Rohatgi is also correct in pointing out that the legislative policy qua the general revisional jurisdiction that is contained by the amendments made to Section 115 Code of Civil Procedure should also be kept in mind when High Courts dispose of petitions filed Under Article 227. The legislative

¹⁸ Refer *State of Orissa v. Mohd. Illiyas*, (2006) 1 SCC 275; *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani*, (2004) 8 SCC 579



policy is that no revision lies if an alternative remedy of appeal is available. Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. These amendments were considered in ***Tek Singh v. Shashi Verma and Anr***¹⁹. in which this Court adverted to these amendments and then stated

“7. A reading of this proviso will show that, after 1999, revision petitions filed Under Section 115 Code of Civil Procedure are not maintainable against interlocutory orders.

8. Even otherwise, it is well settled that the revisional jurisdiction Under Section 115 Code of Civil Procedure is to be exercised to correct jurisdictional errors only. This is well settled. In ***D.L.F. Housing & Construction Company Private Ltd., New Delhi v. Sarup Singh and Ors.***²⁰ the court held:

5...The position thus seems to be firmly established that while exercising the jurisdiction Under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this Section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this Clause do not cover either errors of

¹⁹ AIR 2019 SC 1047

²⁰ AIR 1971 SC 2324



fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this Clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power Under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision Under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

25. Mr. Shashank Shekhar seeks to contend that, as Section 34(2)(a) of the 1996 Act stands in the way of any challenge by his client, to the impugned order as a ground to challenge any final award that may come to be passed in the arbitral proceedings, ergo, applying the principle enunciated in para 24 of *Deep Industries*⁷, a petition under Article 227 should be maintainable. I have already held that Section 34(2)(a) would not proscribe the grounds urged by the petitioner in the present petition as grounds to challenge any final award which may come to be passed by the learned Arbitral Tribunal. As such, the judgment in *Deep Industries*⁷ can also not come to the aid of the petitioner.



26. For all the aforesaid reasons, this petition is, in my considered opinion, not maintainable, being directed against an interlocutory award passed by the learned Arbitral Tribunal on grounds which would be available to the petitioner against any final award which may come to be passed in the said proceedings.

27. It is made clear that this Court has not expressed any opinion on the merits of the present challenge or on the sustainability, legally or factually, of the order impugned in the present petition.

28. The petition is, therefore, dismissed for want of jurisdiction with no order as to costs.

29. Miscellaneous applications are also disposed of.

AUGUST 31, 2022
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C. HARI SHANKAR, J.