



\$~49 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 914/2022 & CM APPL. 39131/2022, CM APPL. 39132/2022

DHANI LOANS AND SERVICES LTD Petitioner
Through: Mr. Sunil Dalal, Sr. Adv. with
Mr. Ghanisht Bagaria, Ms. Manisha Saroha,
Ms. Pratibha Varun, Mr. Gunraj Bakshi and
Mr. Devashish Bhadauria, Advs.

versus

PANSARI DEVELOPERS LIMITED & ORS Respondents
Through: Ms. Eshna Kumar, Mr. Udit
Gupta, Mr. Akshay Goel, Ms. Prachi Bhatia
and Ms. Misha Kumar, Advs.

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

JUDGEMENT (ORAL)

% **06.09.2022**

1. This petition, under Article 227 of the Constitution of India, assails procedural order dated 22nd July 2022, passed by the learned Arbitrator *in seisin* of Arbitration Case No. 921/2021, between the respondent as the claimant and the petitioner as the respondent.

2. As, in my view, the present petition is not maintainable under Article 227 of the Constitution of India, no detailed allusion to the dispute between the parties is necessary.

3. By order dated 11th April 2022, the right of the petitioner (as Respondent 1 before the learned ADJ) to file statement of defence was



closed under Section 25(B)¹ of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”).

4. The petitioner filed an application on 20th May 2022 seeking recall of the said order. By the impugned order dated 22nd July 2022, the learned Arbitrator has rejected the said application.

5. The impugned order is clearly interlocutory in nature. Mr. Sunil Dalal, learned Senior Counsel for the petitioner candidly acknowledges, in so many words, that the challenge that is raised in the present petition to the impugned order may be available as a ground of challenge to any final award which may come to be passed in the arbitration proceedings, but submits, nonetheless, that no other remedy is available, at this stage, to the petitioner against the impugned order. Thus, according to Mr. Dalal, the petitioner is remediless at this stage and, therefore, a petition under Article 227 would lie against the impugned order dated 22nd July 2022.

6. I have had occasion to examine this position repeatedly, recently in the past, *inter alia*, in the decisions in *Easy Trip Planners Ltd v. One97 Communications Ltd*² and *VRS Natarajan v. OYO Hotels and Homes Pvt Ltd*³.

¹ **25. Default of a party.**— Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant [and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].

² 2022 SCC OnLine Del 2186

³ CM(M) 353/2022 judgement dated 31.08.2022



7. In my considered opinion, on a conjoint reading of the judgments of the Supreme Court, of a Bench of three Hon'ble Judges in *SBP & Co v. Patel Engineering Ltd*⁴ and a Bench of two Hon'ble Judges in *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited*⁵, an interlocutory order, the legality of which is available as a ground of challenge against a final award which may come to be passed in the arbitral proceedings, cannot be assailed under Article 227 of the Constitution of India. The mere fact that, at the time of passing of the interlocutory order, no remedy may be provided thereagainst, under the 1996 Act, cannot be a ground to entertain a writ petition against such order under Article 227. Even if the challenge to the interlocutory order is available as a ground of challenge against a final award which may come to be passed in the arbitral proceedings, *SBP & Co*⁴. and *Bhaven Construction*⁵ would, in my considered opinion, clearly bar a recourse, against such order, under Article 227 of the Constitution of India.

8. Mr. Sunil Dalal has drawn my attention to a recent decision of this Bench in *UOI v. Indian Agro Marketing Cooperative Ltd*⁶, in which this Court entertained a writ petition under Article 227 of the Constitution of India. A bare reading of the said decision would reinforce what I have said hereinabove. That was a case in which the order under challenge had been passed by the learned Arbitrator under Section 25(A)⁷ of the 1996 Act.

⁴ (2005) 8 SCC 618

⁵ (2022) 1 SCC 75

⁶ MANU/DE/1548/2022

⁷ 25.Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—



9. An order under Section 25(A) terminates the arbitral proceedings. No further final award would be passed in the said proceedings, so that there is no remedy available to the party, against such an order, provided under the 1996 Act at any subsequent stage. In such circumstances, the party being remediless, against such an order, Article 277 would be available.

10. As against that, the present order, under Section 25(B) is interlocutory. The grounds urged in this petition may always be taken as grounds on which any final award which may come to be passed in the arbitral proceedings can be challenged.

11. Following, therefore, *SBP & Co*⁴, and *Bhaven Construction*⁴ and my recent decisions in *Easy Trip*² and *VRS Natarajan*³, I am of the considered opinion that this petition would not lie under Article 227 of the Constitution of India.

12. Reserving liberty with the petitioner to take the grounds urged in this petition at the appropriate stage, this petition is accordingly dismissed as not maintainable.

C. HARI SHANKAR, J.

SEPTEMBER 6, 2022

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(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;