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

+ CM(M) 1124/2022 & CM APL.45392/2022

RAM NIWAS YADAV & ANR. Petitioners

Through: Mr.Abhishek Misra, Adv.

versus

SACHIN YADAV & ANR. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGEMENT (O R A L)

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19.10.2022

1. This petition under Article 227 assails an order passed by the learned Arbitral Tribunal, in seisin of arbitral proceedings between the petitioners and the respondents, under Section 16 of the Arbitration and Conciliation Act, 1996. The impugned order rejects the said application.

2. Interlocutory orders in arbitral proceedings, which do not result in termination of the proceedings, are ordinarily not amenable to challenge under Article 227 of the Constitution of India. This is the clear enunciation of the law to be found in the judgment of the Supreme Court in *SBP & Co. v. Patel Engineering Ltd.*¹, which stand

¹ (2005) 8 SCC 618

reiterated in the decision of the Supreme Court in *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd. & Ors.*². The position in law that results from the said decision is that an order passed in arbitral proceedings can become subject matter of challenge under Article 227 of the Constitution of India only where the petitioner has no other remedy available against the said order. Interlocutory orders passed during arbitral proceedings, which can form subject matter of challenge against the final award which may come to be passed in the said proceedings have not been regarded as orders against which no remedy is available. For example, an interlocutory order passed under Section 16 of the 1996 Act, *which allows the application* may be amenable to challenge under Article 227 as, with the allowing of the application, the arbitral proceedings come to an end and no further final award would be passed. If, however, the arbitral proceedings continue beyond the passing of the impugned order, the remedy with the petitioner would only be by way of challenge against the final award which may come to be passed in the proceedings, under Section 34 of the 1996 Act. In the said challenge, the petitioner would be at liberty to urge all contentions, against the interlocutory order as well.

3. Paras 45 and 46 of the report in *SBP & Co.*¹ read thus:

“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,*

² (2022) 1 SCC 75

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 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)

4. The aforesaid sentiment is echoed in paras 18, 20 and 22 of the report in ***Bhaven Construction***², which read 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. COAI***³, this Court referred to several judgments and held:

"11. We have considered the respective arguments/submissions. There cannot be any dispute

³ (2011) 14 SCC 337

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***⁴. 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.

20. In the instant case, Respondent 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 Respondent 1 in a separate

⁴ (1997) 3 SCC 261

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 Respondent 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.”

(Emphasis Supplied)

5. I have adopted the above view in my decisions in *Easy Trip Planners Ltd. v. One97 Communications Ltd.*⁵, *VRS Natarajan v. OYO Hotels & Homes (P) Ltd.*⁶ and *Siddhast Intellectual Property Innovations(P) Ltd. v. Controller General of Patents, Designs and Trademarks*⁷.

6. The challenge in the present case does not make out any case of bad faith on the part of the learned Arbitrator while passing the impugned order.

7. In that view of the matter, the petitioner would necessarily have to bide time and defer the grievance that he has, against the impugned order, till the stage when the arbitral proceedings come to a close and the arbitral award is announced. In case the petitioner is aggrieved by the arbitral award that may finally come to be passed or by any appealable interim award, he would be at liberty to urge the challenge in the present petition as a ground of challenge against such final or interim award, under Section 34 or 37 of the 1996 Act as the case may

⁵ 2022 SCC OnLine Del 2186

⁶ 2022 SCC OnLine Del 2755

⁷ 2022 SCC OnLine Del 2556

be.

8. The present petition is therefore dismissed as not maintainable.
Miscellaneous application also stands disposed of.

C.HARI SHANKAR, J

OCTOBER 19, 2022/kr

