



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10722 OF 2023

M/s. Darshan Developers
through its Partner
Late Hasmita Hitesh Bangari
through her legal heirs 2 minor sons,
Master Jeet Hitesh Bangari and Master
Devansh Hitesh Bangari,
through their natural guardian father
Mr. Hitesh Girish Bangari ...Petitioner
Versus
M/s. Shubh Corporation & Anr. ...Respondents

Mr. Sandeep Phatak, Mr. Suraj Gurav and Mr. Jayashree Mane, for the
Petitioner.

Mr. P. G. Chavan, for Respondent No.1.

Mr. S. D. Rayrikar, AGP, for the State/Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATED : 3rd OCTOBER 2023

P.C. :

1. Heard Mr. Pathak, learned counsel appearing for the Petitioner,
Mr. Chavan, learned counsel appearing for Respondent No.1 and Mr.
S. D. Rayrikar, learned AGP, appearing for the State.
2. The impugned order in the present Writ Petition is the order

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dated 18th August 2023 passed by the learned Sole Arbitrator. By the impugned order, application for intervention dated 27th June 2023 filed by the Intervenor is rejected. The arbitration dispute is between the Claimant-M/s. Shubh Corporation (present Respondent) and Respondent-M/s. Darshan Developers (present Petitioner).

3. It is the contention of Mr. Pathak, learned counsel appearing for the Petitioner that said M/s. Darshan Developers i.e. partnership firm is having two partners namely Hitesh Bangari and Hasmita Bangari. Said Hasmita Bangari passed away on 1st July 2014. Therefore, it is the contention of the Intervenor that legal heirs of deceased Hasmita i.e. Master Jeet and Master Devansh be impleaded through legal guardian Hitesh Bangari as parties to the arbitration proceedings.

4. While rejecting the said application, the learned Sole Arbitrator has observed that admittedly, the application has been filed on behalf of minor sons by their father Hitesh Bangari who is the partner of the firm M/s. Darshan Developers. It is also noted that in the said arbitration proceedings M/s. Darshan Developers is impleaded through its partner said Hitesh Bangari. Learned Sole Arbitrator has also relied on Section 30 of the Indian Partnership Act, 1932 and

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observed that minor may not be a partner in a firm, however minor can be admitted to the benefits of partnership. The submission regarding apprehension expressed by the learned counsel appearing for the Intervenor that interest of the minors is likely to be affected is also considered by the learned Sole Arbitrator. Learned Sole Arbitrator observed that Hitesh Bangari i.e. partner and guardian of said minors is at the helm of affairs of the firm and he has filed application on behalf of the minors. The learned Sole Arbitrator also took into consideration the aspect that no allegations are made against father-Hitesh Bangari. By giving detailed reasons, learned Sole Arbitrator has dismissed the said Intervention Application.

5. It is settled legal position 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[**Ahmedabad Mfg. & Calico Ptg. Co. Ltd. vs. Ram Rahel Ramnand**]¹. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction

1 (1972) 1 SCC 898

of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases that such discretionary relief must be exercised to ensure there is no miscarriage of justice [**Garment Craft vs. Prakash Chand Goel**]². The Supreme Court in the decision of **SBP & Co. v. Patel Engg. Ltd.**³ has held as follows:-

“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. 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 its 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, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based

2 (2022) 4 SCC 181

3 (2005) 8 SCC 618 : 2005 SCC OnLine SC 1553 at page 663

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. Such an intervention by the High Courts is not permissible.**

46. The object of minimising 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 or under Article 226 of the Constitution 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 added)

Further, the Supreme Court in the decision of **Deep Industries Ltd. v.**

ONGC⁴ has reiterated as follows:-

“20. While the learned Additional Solicitor General is correct in stating that this statement of the law does not

4 (2020) 15 SCC 706 : 2019 SCC OnLine SC 1602 at page 717

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directly apply on the facts of the present case, yet it is important to notice that the seven-Judge Bench [*SBP & Co. v. Patel Engg. Ltd.*, (2005) 8 SCC 618] has referred to the **object of the Act being that of minimising judicial intervention and that this important object should always be kept in the forefront when an Article 227 petition is being disposed of against proceedings that are decided under the Act.”**

(Emphasis added)

6. Nothing is pointed out to warrant interference by this Court under Article 227 of the Constitution of India.

7. Accordingly, the Writ Petition is dismissed, however with no order as to costs.

[MADHAV J. JAMDAR, J.]