

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CR-4588-2023 (O&M)
Date of Decision:- 21.8.2023

Haryana State Warehousing Corporation ... Petitioner

Versus

M/s Gupta Tech. and another ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Prateek Mahajan and Mr. Vasu Gupta Advocates
for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner - Haryana State Warehousing Corporation, Panchkula (HSWC), assails order dated 20.7.2023 (Annexure P-3) passed by Arbitral Tribunal to the limited extent insofar as the Arbitrator has granted 15 days time to the petitioner for filing reply to the claim petition and for payment of fees of the Arbitrator. The petitioner seeks to invoke powers of this Court under Article 227 of the Constitution of India so as to lay challenge to the aforesaid impugned order.
2. A few facts necessary to notice for disposal of this petition are that the petitioner had entered into a contract with respondent M/s Gupta Tech. for construction of Godowns. As per the terms of contract, the work was to commence on 19.4.2012 and was to be completed within a period of 240 days but the respondent, however, completed the same on 28.2.2015. A dispute having arisen, respondent filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act')

before this Court seeking appointment of an Arbitrator, which was allowed vide order dated 14.2.2023 (Annexure P-1) and Shri V.K. Bakshi, District & Sessions Judge, Haryana (Retd) was appointed as sole Arbitrator. The aforesaid order dated 14.2.2023 (Annexure P-1) appointing an Arbitrator was, however, challenged by the petitioner by way of filing SLP(C) No. 13575/2023, which was dismissed vide order dated 5.7.2023. The order dated 5.7.2023 (Annexure P-2) reads as follows :-

“Delay condoned.

No case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.

We, however, make it clear that the petitioner can raise all permissible contentions in accordance with Section 16 of the Arbitration and Conciliation Act, 1996 before the learned Arbitrator.

Subject to what is observed above, the Special Leave Petition is dismissed.

Pending applications also stand disposed of.”

3. Thereafter, the petitioner filed an application under Section 16 of the Act during the course of which the impugned order dated 20.7.2023 (Annexure P-3) came to be passed. The said order dated 20.7.2023 (Annexure P-3) reads as under :-

“An application for adjournment has been moved wherein it is mentioned that, SLP filed in Hon’ble Supreme Court has been dismissed on 05-07-2023 and matter regarding fees of the arbitrator is referred to the Govt. so two weeks time is requested for submission of reply to the Claim petition and payment of fees to the Arbitrator. In this connection Sh. Vinay Dheer, J.E. present on behalf of the respondent after consultation with the

XEN, HSWC, on mobile phone has made the following statement:

“It is stated that, two weeks time be given to us for submission of reply to the Claim petition and fee of the Arbitrator failing which our defense shall be deemed as stuck off and arbitrator shall pass any order as permissible under Law.”

An application under Sec-16 of A&C Act-1996, relating to the Jurisdiction of the Arbitrator has been filed by the respondent and the claimant has also submitted some details, regarding SLP and regarding application under Sec-27, of A&C Act-1996, coupled with 4 documents. The copies of the application submitted by the parties have been supplied vice-versa.

In terms of the statement of the representative of the respondent recorded separately with consultation of the XEN on mobile phone, 15 days time is granted to the respondent for submission of reply to the Claim petition and payment of fees of the arbitrator and reply to the respective application moved today. To come up on 12-08-2023, date is given with the convenience of both the parties. Time & venue shall be the same, punctuality is to be observed.”

4. It may here be mentioned that prior to passing of the impugned order, the Arbitrator had directed each of the parties to deposit a part fee of Rs.28,125/-. Pursuant to a detailed statement of claims petition filed by the respondent, the Arbitrator passed order dated 24.4.2023 (Annexure P-7). The total fee payable to the Arbitrator was assessed as Rs. 8,89,568/- to be shared by both the parties and each of the parties was directed to pay an amount of Rs. 4,47,784/- by way of cheque or demand draft and the matter was

adjourned to 8.5.2023. The petitioner was also directed to file written statement to statements of claims.

5. The petitioner moved an application dated 19.7.2023 (Annexure P-4) under Section 16 of the Act wherein the jurisdiction of the Arbitrator was assailed *inter alia* on the following grounds :-

- (i) that the claim was barred by limitation;
- (ii) that the respondent had not complied with the condition of pre-deposit.
- (iii) that the notice invoking arbitration pertained to one claim only in respect of Rs. 9.5 lacs but in the statement of claims some additional claims had been raised and in respect of which no notice under Section 21 of the Act has been issued.

6. It was on the next day i.e. on 20.7.2023 that the impugned order was passed directing the petitioner to file reply to claim petition within 15 days and also to pay fee of the Arbitrator. The respondent was also directed to file reply to the application filed by the petitioner under Section 16 of the Act. The matter was adjourned to 12.8.2023.

7. The learned counsel of the petitioner has assailed the impugned order on the following grounds :-

- (i) that the Arbitrator could not have issued any direction for payment of fees in a time bound manner i.e. within a period of 15 days.
- (ii) that the Arbitrator is required to first pass some order on the application filed by the petitioner under Section 16 of the Act wherein various objections including objection as regards

limitations had been raised, which has to be adjudicated as a preliminary objection at the very outset.

8. The learned counsel submits that such like objections pertained to the very jurisdiction of the Arbitrator. The learned counsel presses into service a judgment of Hon'ble Supreme Court wherein Hon'ble Supreme Court in M/s Indian Farmers Fertilizers Cooperative Limited Versus Bhadra Products reported in (2018) 2 SCC 534 held that the issue of limitation being a jurisdictional issue, the same has to be decided by the tribunal under Section 16, which is based on Article 16 of the UNCITRAL Model law which enshrines the Kompetenz principle. In NTPC Vs. Siemens Atkein Gasell Schaft reported in (2007) 4 SCC 451, the Hon'ble Supreme Court held that the arbitral tribunal would deal with limitation under Section 16 of the 1996 Act.
9. The learned counsel has further submitted that since the Arbitrator is proceeding in a hurried manner, therefore, the petitioner is left with no option but to invoke powers of this Court conferred under Article 227 of the Constitution of India.
10. The learned counsel, in order to support his contention as regards maintainability of this petition under Article 227 of the Constitution of India places reliance upon the following judgments :-
 1. 2022(1) SCC 75 – Bhaven Construction versus Executive Engineer Sarovar Narmada Nigam Ltd.
 2. 2018(11) SCC 470 – Srei Infrastructure Finance Ltd. Versus Tuff Drilling Private Ltd.
 3. 2021 (279) DLT 636 Surender Kumar Singhal versus Arun Kumar Bhalotia and others

4. 2008(6) RCR (Civil) 353 Raj International versus Tripura Jute Mills Ltd.

11. This Court has considered submissions addressed before this Court.
12. Since the instant petition has been filed invoking superintending powers vested in this Court by Article 227 of the Constitution of India, therefore, it is apposite to first of all consider the maintainability of the instant petition under the given circumstances. Article 227 of the Constitution of India reads as under :-

“227. Power of superintendence over all courts by the High Court

- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
- (2) Without prejudice to the generality of the foregoing provision, the High Court may—
 - (a) call for returns from such courts;
 - (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
 - (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.
- (3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:
Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.
- (4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.”

13. A perusal of the above reproduced Article 227 of the Constitution of India shows that the High Court enjoys vested powers of superintendence over all the ‘Courts’ and ‘Tribunals’ situated within the territories over which the High Court exercises its jurisdiction. The material question is as to whether an Arbitrator can be termed as a ‘Court’ or a ‘Tribunal’ within the meaning of

Article 227 of Constitution of India so as to justify invoking of powers under Article 227 of the Constitution of India. The said question first came to be considered in AIR 1963 SC 874 – Anglo American Direct Tea Trading Co. Ltd. v. Their Workmen wherein the scope and comparison of Article 136(1) with Article 133(1) and Article 134(1) of the Constitution of India, particularly with regard to the arbitration proceedings to whom industrial disputes are voluntarily referred. Hon'ble Supreme Court observed that an Arbitrator appointed under the Statute would not be on the same pedestal as an Arbitrator appointed pursuant to a contract between two parties. It went on to observe that an Arbitrator appointed pursuant to a contract between the parties, even if having some trappings of a Court, would lack the basic, the essential and the fundamental requisite in that regard because he would not have been invested with any inherent judicial power and would be exercising powers only pursuant to the contract between the parties to give a decision with respect to their dispute after considering the claims of both the parties. It was further observed therein that the mere fact that a writ under Article 226 would lie against an award pronounced by an Arbitrator acting under Section 10-A of the Industrial Disputes Act, 1947 would not lead to an inference that Arbitrator is a 'Tribunal' within meaning of Article 136(1) of the Constitution of India as power under Article 226 are much wider taking within its ambit even orders passed by any 'Court' or 'Tribunal'. Hon'ble the Apex Court further observed regarding Article 227 of the Constitution of India in the following manner :-

“Like Article 136, Article 227 also refers to courts and Tribunals and what we have said about the character of the Arbitrator appointed under Section 10A by reference to the

requirements of Article 136 may prima facie apply to the requirements of Article 227.”

14. A perusal of the aforesaid judgment would indicate that Hon’ble Apex Court was dealing with a case arising out of Industrial Disputes Act and while observing that the Arbitrator under Section 10-A of the Industrial Disputes Act is not exactly a private Arbitrator but still despite there being some trapping of a Court in respect of arbitration proceedings pursuant to Section 10-A of the Industrial Disputes Act, 1947, he would lack the essential and fundamental requisite and characteristics because he is not invested with such inherent judicial powers. Hon’ble Supreme Court held so *vis-a-vis* the powers of Supreme Court under Article 136(1) of the Constitution of India with regard to maintainability of SLP against award pronounced by such Arbitrator. Hon’ble Supreme Court, however, observed that the powers under Article 226 of the Constitution of India were much wider. Further, Hon’ble Supreme Court also observed that since Article 136 and Article 227 refer to ‘Court’ and ‘Tribunal’, same analogy ‘may’ be applicable to Article 227 of the Constitution of India.
15. The learned counsel has, however, placed reliance upon a subsequent judgment of a three Judges Bench of Hon’ble Supreme Court rendered in 2022(1) SCC 75 – Bhaven Construction versus Executive Engineer Sarovar Narmada Nigam Ltd. wherein Hon’ble Supreme Court while holding that a High Court does have power under Article 227 of the Constitution of India, even in respect of orders passed by Arbitrator but clarified that it is only in exceptional rarity, wherein one part is left remediless under the statute or a clear ‘bad faith’ shown by one of the parties that such power may be exercised. In the cited case, the Arbitrator while dismissing an appeal filed

before it under Section 16 of the Act had held that the sole Arbitrator did have jurisdiction to adjudicate the dispute. The party, aggrieved by the said order, filed a petition before Hon'ble High Court under Articles 226 and 227 of the Constitution of India. Hon'ble the Single Bench dismissed the petition on grounds of maintainability had held that the same was not required to be entertained and that the only remedy available to the petitioner was to wait till the award is passed by the Arbitrator and thereafter to challenge the same under Section 34 of the Act. The petitioner therein preferred LPA against the aforesaid order which was accepted and the order of learned Single Judge was set aside while observing that the petitioner cannot be made to wait till the conclusion of arbitration proceedings so as to challenge the same with the aid of Section 34 of the Act. The opposite party filed SLP before Hon'ble Supreme Court wherein the order passed by the High Court in LPA was set aside. Paras 19, 21 and 22 of the said judgment are reproduced herein-under :-

“19. 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.

21. 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*.

22. Respondent No. 1 did not take legal recourse against the appointment of the sole arbitrator, and rather submitted themselves before the tribunal to adjudicate on the jurisdiction issue as well as on the merits. In this situation, the Respondent No. 1 has to endure the natural consequences of submitting themselves to the jurisdiction of the sole arbitrator, which can be challenged, through an application under Section 34. It may be noted that in the present case, the award has already been passed during the pendency of this appeal, and the Respondent No. 1 has already preferred a challenge under Section 34 to the same. Respondent No. 1 has not been able to show any exceptional circumstance, which mandates the exercise of jurisdiction under Articles 226 and 227 of the Constitution.”

16. A perusal of the aforesaid paras would show that Hon’ble Supreme Court has observed that it was only in an exceptional rarity that powers under Article 227 of the Constitution of India may be exercised to interject arbitral proceedings, particularly when a party is left remediless.

17. The learned counsel for the petitioner also pressed into service 2018(11) SCC 470 – Srei Infrastructure Finance Ltd. Versus Tuff Drilling Private Ltd. to hammer forth his contention as regards maintainability of petition under Article 227 of the Constitution of India so as to challenge an order passed by Arbitrator. In the cited case, the Arbitral Tribunal had terminated the arbitration proceedings as the claimant, despite having been afforded several opportunities had not filed his statement of claim. The claimant had, thereafter, filed an application to recall the said order but the Tribunal declined such application. The claimant, thereafter, filed a petition under

Article 227 of the Constitution of India in the High Court which set aside the order passed by the Tribunal terminating the arbitration proceedings on account of non-filing of claim petition by the claimant. The High Court, while deciding the said application, had held that the arbitral Tribunal enjoys the powers to recall its own orders. The said order passed by High Court was challenged by the opposite party in the Hon'ble Supreme Court wherein it was contended that the arbitral Tribunal having dismissed the case on account of non-filing of statement of claim had become *functus officio* and had no jurisdiction to recall the order. It was further contended that even the High Court has no power under Article 227 of the Constitution of India to set aside the order of the Arbitrator. Hon'ble Supreme Court while discussing the character of arbitral Tribunals took notice of the Tribunals constituted by a Statute and observed as under :-

“12.The arbitration is a quasi judicial proceeding, equitable in nature or character which differs from a litigation in a Court. The power and functions of arbitral tribunal are statutorily regulated. The tribunals are special arbitration with institutional mechanism brought into existence by or under statute to decide dispute arising with reference to that particular statute or to determine controversy referred to it. The tribunal may be a statutory tribunal or tribunal constituted under the provisions of the Constitution of India. Section 9 of the Civil Procedure Code vests into the Civil Court jurisdiction to entertain and determine any civil dispute. The constitution of tribunals has been with intent and purpose to take out different categories of litigation into the special tribunal for speedy and effective determination of disputes in the interest of the society. Whenever, by a legislative enactment jurisdiction exercised by ordinary civil court is transferred or entrusted to tribunals such tribunals are entrusted with statutory power. The arbitral tribunals in the statute of 1996 are no different, they decide the lis between

the parties, follows Rules and procedure conforming to the principle of natural justice, the adjudication has finality subject to remedy provided under the 1996 Act. Section 8 of the 1996 Act obliges a judicial authority in a matter which is a subject of an agreement to refer the parties to arbitration. The reference to arbitral tribunal thus can be made by judicial authority or an arbitrator can be appointed in accordance with the arbitration agreement under Section 11 of the 1996 Act.

20. When the arbitral tribunal without sufficient cause being shown by the claimant to file the claim statement can terminate the proceedings, subsequent to termination of proceedings, if the sufficient cause is shown, we see no impediment in the power of the arbitral tribunal to accept the show-cause and permit the claimant to file the claim. The Scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23(1) has expired. Thus, even after passing the order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the arbitral tribunal by accepting the show-cause and there is no lack of the jurisdiction in the arbitral tribunal to recall the earlier order on sufficient cause being shown.”

18. Hon’ble Supreme Court, however, while holding that Tribunals can recall its order passed under Section 25-A of the Act did not feel necessity to examine the other issues raised therein as regards powers of the High Court under Article 227 of the Constitution of India to assail orders passed by the arbitral Tribunals.

19. However, recently, the said question has been dealt with in detail, while referring to a plethora of judgments, by Hon’ble Delhi High Court in 2021 (279) DLT 636 Surender Kumar Singhal versus Arun Kumar Bhalotia and others. In Surender Kumar Singhal’s case (supra), Hon’ble Delhi High Court

has referred to a judgment of Hon'ble Supreme Court in the foremost with regard to different types of Tribunals. Para 18 of Surender Kumar's case (supra) wherein Hon'ble Supreme Court judgment rendered in (2010) 11 SCC 1 - Union of India versus R. Gandhi, President Madras Bar Association is referred to is reproduced herein-under :-

“18.Dealing with the first aspect, the law is well settled that Arbitral tribunals are a species of tribunals over which the High Court exercises writ jurisdiction. Challenge to an order of an arbitral tribunal can be raised by way of a writ petition. In Union of India v. R. Gandhi, President Madras Bar Association (supra) the Supreme Court observed on the question as to what constitutes 'Courts' and 'Tribunals' as under:

"38.The term 'Courts' refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to Civil Courts, Criminal Courts and High Courts. Tribunals can be either private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or Tribunals authorized by the Constitution (Administrative Tribunals under Article 323A and Tribunals for other matters under Article 323 B) or Statutory Tribunals which are created under a statute (Motor Accident Claims Tribunal, Debt Recovery Tribunals and consumer fora). Some Tribunals are manned exclusively by

Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory Tribunals have Judicial and Technical Members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer fora, Cyber Appellate Tribunal, etc)."

20. Hon'ble Delhi High Court while referring to the judgment rendered in (2018) 11 SCC 470 SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited held as under :-

"19. Thus, the Supreme Court held that arbitral tribunals are private tribunals unlike those tribunals set up under the statute or specialized tribunals under the Constitution of India. Thus, a Petition under Article 227 challenging orders of an Arbitral Tribunal would be maintainable."

21. While the view of Hon'ble Supreme Court is that there is no absolute bar against exercise of powers under Article 227 of the Constitution of India with regard to an order passed by an Arbitrator but Hon'ble Supreme Court has repeatedly held that it is only under exceptional circumstances that the same can be done. A clear pointer to this effect is there in the judgment rendered by Hon'ble Supreme Court in 2022(2) SCC 1 - Punjab State Power Corporation Ltd. v. Emta Coal Ltd. & Anr wherein it is held as under :-

"We are of the view that a foray to the writ Court from a section 16 application being dismissed by the Arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever - it must be the perversity of the order that must stare one in the face. Unfortunately, parties are using this expression which is in our judgment in Deep Industries Ltd., to go to the 227 Court in matters which do not suffer

from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in Deep Industries Ltd. and dismiss the 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things. In any case, now that Shri Vishwanathan has argued this matter and it is clear that this is not a case which falls under the extremely exceptional category, we dismiss this special leave petition with costs of Rs.50,000/- to be paid to the Supreme Court Legal Services Committee within two weeks."

22. In Punjab State Power Corporation Ltd. case (supra), Hon'ble Supreme Court went to the extent of imposing cost of Rs. 50,000/- where a litigant has chosen to file a petition under Article 227 of the Constitution of India without there being anything to suggest that the impugned order was perverse or had been passed due to patent lack of jurisdiction.

23. Hon'ble Delhi High Court in Surender Kumar Singhal's case (supra) consolidated the broad principles crystallised in various judgments pertaining to exercise of powers under Article 227 of the Constitution of India in respect of orders passed by Arbitrator in Para 24 of the judgment, which is reproduced herein-under :-

"24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

- (i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;
- (ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;
- (iii) For interference under Article 226/227, there have to be 'exceptional circumstances';
- (iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;
- (v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;
- vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;
- (vii) Excessive judicial interference in the arbitral process is not encouraged;
- (viii) It is prudent not to exercise jurisdiction under Article 226/227;
- (ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;
- (x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

24. The aforesaid discussion leaves no manner of doubt that power under Article 227 of the Constitution of India can be exercised in case of exceptional rarity. The question before this Court is as to whether the instant case is a case where invoking of powers under Article 227 of the Constitution of India would be justified so as to assail impugned order dated 20.7.2023 (Annexure P-3). A perusal of impugned order would indicate that the order is merely in the nature of directions issued to the parties to file their respective replies to

the statement of claim filed by respondent M/s Gupta Tech. and the application under Section 16 of the Act filed by the petitioner - HSWC. The parties have also been directed to deposit the arbitrator's fee. It is no doubt correct that such an order would not be appealable either in terms of Section 34 or Section 37 of the Act. However, there is nothing in this order to suggest that the same is so perverse or is of exceptional nature leading to gross injustice so as to make out a case of exercise of powers under Article 227 of the Constitution of India. Though, it can well be said that the Arbitrator would be expected to first of all embark upon hearing so as to decide the matters raised in application under Section 16 of the Act, which can conveniently be decided at the initial preliminary stage without any evidence but the Arbitrator, in any case, does have a right to press the parties to pay his fee. In a given case, upon a request made by any of the parties, the Arbitrator may within his discretion permit the parties to pay the fee in instalment but that would be entirely the discretion of the Arbitrator. In the present case, an official of the petitioner – Corporation Shri Vinay Dheer, J.E. had made a statement before the Tribunal on 20.7.2023, to the following effect :-

“It is stated that, two weeks time be given to us for submission of reply to the Claim petition and fee of the Arbitrator failing which our defense shall be deemed as stuck off and arbitrator shall pass any order as permissible under Law.”

25. The impugned order when examined in light of the aforesaid statement certainly cannot be said to be suffering from any infirmity. The Arbitrator, in any case, would be well within his confines to strike off defence in case he is

of the opinion that the reply has not been filed despite sufficient opportunities. Sector 25 of the Act is reproduced herein-under :-

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

- (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;
- (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;
- (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.”

26. The Arbitration and Conciliation Act, 1996 was promulgated with an object to provide for an efficient mechanism for quick adjudication of disputes particularly the commercial disputes. In case the parties are permitted to challenge each and every order passed by the Arbitrator, the entire arbitral process would be derailed and the adjudication would not fructify for decades. Hon’ble Supreme Court in AIR 2003 Supreme Court 3044 Surya Dev Rai v. Ram Chander Rai highlighted the tendencies of the parties to file revision petition at the drop of a hat and observed as under :-

“In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in exercise of its wisdom has deliberately

chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.”

27. The question regarding exercise of powers under Article 227 of the Constitution of India also came to be discussed in a judgment reported as 2008(6) RCR (Civil) 353 Raj International versus Tripura Jute Mills Ltd.

The concluding paragraph of which reads as under :-

“36.Even if this Court considered the case of Patel Engineering (supra) as relied upon by the learned Counsel of the respondents, then also it can be easily said that their lordship in paragraph 46 held that each and every order made by the Tribunal should not be allowed to challenge under Article 227 or 226 of the Constitution for defeating the purpose of arbitration proceeding meaning thereby that in an extra ordinary situation, the Court can exercise the power under Articles 227 and 226 of the Constitution against the order made by the Arbitral Tribunal or Arbitrator, particularly when there is no provisions either for revision or for any appeal and it would not be proper for a Court to force the-party in an arbitral proceeding like the present petitioner to appear before the arbitral tribunal/arbitrator, till the completion of whole proceeding and passing of award though prima facie it appears that the arbitrator did not act in accordance with the mandate of the provisions of the Act and acted as a

purported agent of the appointing authority, herein the Commissioner, (I&C), Government of Tripura while respondent is a Government undertaking.”

28. The consistent view emerging from the above referred judgments is that powers under Article 227 of the Constitution of India should not readily be invoked to interfere with the arbitration proceedings. In case, it is allowed to do so, the very purpose of resolution through arbitration will be defeated. In many places of India, rapid growth has resulted in increasing caseloads for already overburdened courts, resulting in infamously slow adjudication of commercial disputes. The purpose of the the Arbitration and Conciliation Act, 1996 was to develop a quick and cost-effective means of resolving disputes. Arbitration is a effective means of resolving commercial disputes in India, and can't be allowed to be derailed by permitting litigating parties to challenge each and every interim order.
29. This Court is of the firm view that the impugned order cannot be said to be unreasonable much less of a nature of exceptional rarity so as to justify indulgence of this Court. The import of the order is only that the petitioner has been directed to submit his reply to the statement of claim and to make payment of fee of the Arbitrator. Still further, a representative of the petitioner department had himself made a statement before the Arbitrator to a similar effect. As such, no exceptional circumstances exist so as to justify invoking of Article 227 of the Constitution of India.
30. The petition is sans merit and is dismissed.

21.8.2023

kamal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No