



\$~6

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

Date of decision: 29.11.2023

+ CM(M) 1582/2023

SMT MEENA CHAWLA

..... Petitioner

Through: Mr. Shiv Charan Garg and Mr. Imran Khan, Advocates

versus

M/S SDREEN INDIA PVT LTD

..... Respondent

Through: Mr. Narendra M. Sharma and Mr. Veeru Mehra, Advocates

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 12.09.2023 passed by the Sole Arbitrator, Delhi International Arbitration Centre, ('the Tribunal') in DIAC/5211/09-22, dismissing an application filed by the Petitioner herein under Order XII Rule 6 read with Order VIII Rule 5 and Section 151 of Code of Civil Procedure, 1908 ('CPC').

1.1. The Petitioner is the claimant and the Respondent is the opposite party in the arbitral proceedings.

2. Learned counsel for the Respondent states that the present petition filed under Article 227 of the Constitution of India against the order of the



Arbitral Tribunal dismissing an application under Order XII Rule 6 CPC is not maintainable. In this regard he seeks to place reliance on the following judgments:

- i. ***S.B.P and Co. v. Patel Engineering Ltd. and Anr., 2005 SCC OnLine SC 1553***, and more specifically paragraph nos. 45 and 46 therein,
- ii. ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. and Anr, (2022) 1 SCC 75***, and more specifically paragraph no.6 therein; and
- iii. ***Siddhast Intellectual Property Innovations Pvt. Ltd. v. Controller General of Patents, Designs and Trademarks and Anr., 2022 SCC OnLine Del 2556***, and more specifically paragraph nos. 17 and 18 therein

2.1. He states that the arbitral proceedings are at the stage of recording of evidence and claimant witness CW-1 has been extensively cross examined.

2.2. He states that the Respondent has raised a defence of fraud and specific issues have been framed by the Tribunal in this regard.

2.3. He states that the exercise of jurisdiction by the Tribunal under Order XII Rule 6 of CPC is discretionary and the Tribunal has opined that in the facts of this case, no decree of possession can be passed at this interim stage.

2.4. He also relies upon the dismissal of an application filed by the Petitioner under Section 17 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act'), where on similar grounds, the Tribunal has declined the relief for possession sought for in the said application.

3. In reply, learned counsel for the Petitioner states that the maintainability of this petition under Article 227 of the Constitution of India



is no longer res integra in view of the judgment of the Supreme Court in *Deep Industries Ltd. vs. Oil and Natural Gas Corporation Ltd. and Anr.*, (2020) 15 SCC 706, and more specifically paragraph no. 17 therein.

3.1. He states that with respect to maintainability of the petition in these proceedings itself, both the parties on separate occasions have approached this Court by filing CM(M) No. 565/2023 and CM(M) No. 960/2023, wherein directions were issued to the Tribunal by this Court.

3.2. He states that this is a fit case, where the impugned order should be set aside and the Tribunal be directed to consider the Petitioner's application filed under Order XII Rule 6 CPC, afresh.

3.3. He states that the Tribunal has not considered the admitted facts on record and has failed to apply the law, which on the admitted facts would have resulted in a decree of possession.

3.4. He states that with respect to the dismissal of the application under Section 17 of the Arbitration Act, the Petitioner herein has already availed her statutory remedy and has filed an appeal under Section 37 of the Arbitration Act, which will be listed in due course.

3.5. He lastly states that the observations in the impugned order that the Petitioner has delayed the proceedings and took two(2) hearings to conclude the arguments is unwarranted since, the Respondent herein took four (4) hearings to conclude the arguments.

4. This Court has considered the submissions of the parties.

5. This Court is of the view that in the facts of this case, where the Tribunal by its impugned order has dismissed an application filed under Order XII Rule 6 of CPC, this petition filed under Article 227 of Constitution of India for setting aside of the said order and seeking a remand



is not maintainable.

6. The discretion to refuse or grant relief in an application under Order XII Rule 6 of CPC vests in the Tribunal. The Tribunal in the facts of this case, after perusing the evidence on record available before it has come to the conclusion that at this stage of the proceedings, it cannot pass a decree of possession. In this regard it would be instructive to refer to the judgment of Supreme Court in ***S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287***, wherein it was held that power under Order XII Rule 6 of CPC is discretionary and cannot be claimed as a matter of right. The relevant extract of the said judgment reads as under:

“8. The words in Order 12 Rule 6 CPC "may" and "make such order ..." show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 CPC. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.

(Emphasis Supplied)

7. Further, the learned counsel for the Respondent has correctly contended that the appreciation of evidence falls well within the exclusive jurisdiction of the Arbitral Tribunal. It is trite that Arbitral Tribunal is the ultimate master of quality and quantity of evidence (***Re: Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd. and Anr., 2023 SCC OnLine SC 1208***). And therefore, the relief of decree of possession has to be passed by the Tribunal as per its own appreciation of evidence on the record.

8. The Tribunal has also set out the issues framed with the consent of the parties on 18.04.2023 and issue Nos. 1, 2, 3 and 4 therein, specifically,



record the disputes, which arises between the parties with respect to the execution of the lease deed.

9. The grant or non-grant of the decree of possession by the Tribunal will be an order on merits. The said order is final in nature and would therefore be amenable to challenge under Section 34 of the Arbitration Act. However, in the facts of the present case, the Tribunal has not rejected the relief of decree of possession but has only opined that the said relief of possession cannot be adjudicated at this interim stage on the basis of the pleadings and evidence on record. In the opinion of this Court, this decision of the Tribunal falls within the limit of authority of the said Tribunal and is not open to challenge in these proceedings filed under Article 227 of the Constitution.

10. This Court is, therefore, of the opinion that as per the dicta of the Supreme Court in ***S.B.P and Co. (Supra)***, which reads as under, the present petition is not maintainable: -

“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 if 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. 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 availed to them under Section 37 of the Act even at an earlier stage.

47. We, therefore, sum up our conclusions as follow:

XXX XXX XXX

(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(Emphasis supplied)

11. This petition seeking to challenge the dismissal of an application filed under Order XII Rule 6 CPC is not maintainable as the adjudication on the relief of possession has not been finally decided by the Tribunal and the Petitioner herein has not been rendered remediless.

12. The final decision of the Tribunal will decide the issue of relief decree of possession and if the Petitioner is dissatisfied with the said decision, she will have the remedy filed under objection under Section 34 of the Arbitration Act.

13. This Court in its supervisory jurisdiction does not act as an Appellate Court and it therefore, cannot review the evidence upon which the Tribunal based its decision. Since, the impugned order has been passed by the Tribunal in exercise of its jurisdiction vested in it, there is no warrant for interference by this Court in its supervisory jurisdiction.

14. Accordingly, the present petition is dismissed. Pending applications stand disposed of.



15. It is, however, made clear that the observations made in this order will not prejudice the Petitioner in the appeal filed by it under Section 37 of the Arbitration Act against the order dated 17.07.2023.

NOVEMBER 29, 2023/rhc

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any