

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1499 OF 2024

Manilal Commodities Pvt. Ltd.

...Petitioner

Versus

Ramesh Ramji Thakar

...Respondent

Mr. Udayan Jain for Petitioner.

CORAM: MADHAV J. JAMDAR, J.

DATED: 12th June 2024

P. C.

1. The Petitioner in the present Writ Petition preferred under Article 226 of the Constitution of India is challenging the legality and validity of the Order dated 21st January 2023 passed by the learned sole Arbitrator in Arbitration Proceedings between the Petitioner and the Respondent. The said Order is passed on the application filed under Section 16 of the Arbitration and Conciliation Act, 1996.

2. The Supreme Court in *SBP & Co. v. Patel Engg. Ltd.*¹ while dealing with the scope of a Writ Petition preferred under Article 226 of the Constitution of India, challenging an order passed by an Arbitral Tribunal, 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

¹ (2005) 8 SCC 618

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 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)

3. The Supreme Court in *Deep Industries Ltd. v. ONGC*² explained the above statement of law as follows:

“17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision

² (2020) 15 SCC 706

which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

4. Thus, what has been held by the Supreme Court is that High Courts should be very slow in interfering with Orders of an Arbitral Tribunal and the jurisdiction under Article 226 and/or Article 227 of the Constitution of India be exercised only if the Order passed by an Arbitral Tribunal patently lacks inherent jurisdiction. No submission is raised to the effect that the learned Arbitral Tribunal has no jurisdiction to pass the Order which is impugned in the present Writ Petition. Perusal of the impugned Order and material on record do not show that the learned Arbitrator has passed an order patently lacking in inherent jurisdiction.

5. Accordingly, no interference in the impugned Order is warranted and thus the Writ Petition is dismissed.

BHALCHANDRA
GOPAL
DUSANE

[MADHAV J. JAMDAR, J.]

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2024.06.13
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