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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3379-2024
Reserved on:-24.07.2024
Date of Pronouncement:-29.08.2024

Godrej Properties Ltd. & Anr.

...Petitioners

Versus

M/s Orris Infrastructure Pvt. Ltd.

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr.R.S. Rai, Senior Advocate with
Mr.Kunal Dawar, Advocate,
Mr.Kapil Madan, Advocate,
Ms.Rubina Virmani, Advocate,
Ms.Shruti Mandhotra, Advocate,
Ms.Prachi, Advocate,
Mr.Akshit Narula, Advocate and
Ms.Surabhi Kapur, Advocate
for the petitioners.

Mr.Gurminder Singh, Senior Advocate with
Mr.Surjeet Bhadu, Advocate,
Mr.Agam Bansal, Advocate,
Mr.Veer Singh, Advocate,
Ms.Sanya Thakur, Advocate,
Mr.Prabhas Bajaj, Advocate and
Mr.Karmanbir Singh, Advocate
for the respondent.

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SUVIR SEHGAL, J.(ORAL)

1. By way of the present revision petition filed under Article 227 of the Constitution of India, petitioners have approached this Court for setting aside judgment dated 09.05.2024, Annexure P1, passed by the Commercial Court, Gurugram, whereby appeal filed by them challenging order dated 03.05.2024, Annexure P3, passed by the learned

Arbitrator has been dismissed. Petitioners have further sought the setting aside of order, Annexure P3, whereby an application, Annexure P10, filed by them for clarification/modification of an earlier order dated 16.04.2024, Annexure P2, passed by the Arbitrator, was disposed off. Still further, petitioner has prayed that the amount of Rs.16.80 crore, which is to be paid by petitioner No.2 to the respondent, be secured by way of security, bank guarantee etc.

2. Facts leading to the filing of the petition are that petitioner No.1 is a public limited company and is engaged in real estate activities. Petitioner No.2 is a Limited Liability Partnership, which was reconstituted vide deed dated 31.10.2017, Annexure P5, executed between petitioner No.1 and the respondent for the purposes of development of a joint venture project, Godrej AIR and a Development Agreement dated 31.10.2017, Annexure P4, was entered into between the parties. Some disputes arose and on the invokation of the arbitration clause by the respondent, Mr.Justice (Retd.) Badar Durraz Ahmed, Former Chief Justice, High Court of Jammu & Kashmir was appointed as an Arbitrator. An application dated 03.07.2023, Annexure P6, was filed by the respondent under Section 17 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) seeking some ad interim reliefs including the release of an amount of Rs.66.92 crores towards the outstanding payable to it. Application was contested by the petitioners by filing a reply dated 04.8.2023, Annexure P7. During the course of the pendency of the application, petitioners filed an affidavit dated 09.02.2024, Annexure P8, deposing that an amount of Rs.16.80 crore,

subject to final settlement of accounts, is due to the respondent. By its order dated 16.04.2024, Annexure P2, learned Arbitrator directed petitioner No.2 to make the payment of Rs.16.80 crore to the respondent on or before 30.04.2024 as part of the revenue share of 12.60% as on 31.01.2024. An application dated 30.04.2024, Annexure P10, was filed by the petitioners for clarification/modification of order dated 16.04.2024. After contest by the respondent, this application has been disposed off by the learned Arbitrator vide impugned order, Annexure P3, which the petitioners unsuccessfully challenged before the Commercial Court, Gurugram as has been noticed above.

3. On the very first day of hearing of the instant petition, an offer was made, on behalf of the petitioners to deposit an amount of Rs.16.80 crore with the Registrar General of this Court, which was accepted. This Court directed that the amount deposited be kept in a fixed deposit. Learned Senior counsel for the petitioners has urged that the payment of the said amount by petitioner No.2 is without prejudice to the rights and contentions of the petitioners because the final reconciliation of the accounts between the parties is yet to take place. He submits that it is, therefore, necessary that to secure the said payment, respondents be directed to furnish a solvent surety of the like amount to the satisfaction of the learned Arbitrator. He has made a detailed reference to the various clauses of the Development Agreement, Annexure P4, to buttress his argument and submits that the interest of petitioners deserved to be secured, in case the respondent - claimant loses the arbitration proceedings. He has also contended that the

petitioners have filed a separate application, Annexure P9, for directing the respondent to produce the original licence and other documents before the Director Town and Country Planning for renewal as the respondent is not cooperating with the renewal of the licence.

4. *Per contra*, learned Senior counsel representing the respondent has opposed the petition. He submits that the present petition is not maintainable and the petitioners cannot invoke the jurisdiction of this Court under Article 227 of the Constitution of India to circumvent the statutory bar against filing of second appeal. He asserts that order dated 16.04.2024, Annexure P2, passed by the learned Arbitrator has become final and the petitioners failed to deposit the amount within the time granted by the Arbitrator and instead filed an application, Annexure P10, on the last day when the payment was due. He submits that although the learned Arbitrator extended the time for the payment of the amount till 10.05.2024 but the petitioners challenged the order before the Commercial Court, Gurugram. He has instructions to state that the application, Annexure P9, filed by the petitioners is being contested by the respondent and after hearing, the learned Arbitrator has reserved the order. Both the sides have relied upon judicial precedents to support their contentions.

5. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the record.

6. At the outset, this Court deems it imperative to deal with the objection of maintainability raised by the respondent. The import of

Section 5 of the Act as well as the limited jurisdiction available with the Court under Article 227 of the Constitution of India has been discussed in detail by the Supreme Court in a number of judgments. In ***SBP & Co. Versus Patel Engineering Ltd. and Another (2005) 8 SCC 618***, Supreme Court observed as under:

> *"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 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."

7. Discussing the overriding effect given to the Act by virtue of Section 5 thereof, Supreme Court in ***Deep Industries Limited Versus Oil and Natural Gas Corporation Ltd. and another (2020) 15 SCC 706*** observed as under:

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

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 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."*

8. In a challenge to a judgment passed by a Co-ordinate Bench of this Court, the Apex Court in ***Punjab State Power Corporation Limited Versus Emta Coal Limited and another (2020) 17 SCC 93*** held as under:

"4. 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.

5. Unfortunately, the parties are using this expression which is *in our, judgment in <u>Deep Industries Ltd.</u>, to go to the Article 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 <u>Deep Industries Ltd.</u> and dismiss the Article 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."*

9. By order dated 03.05.2024, Anenxure P3, which has been impugned herein, the learned Arbitrator disposed of the application filed by the petitioners whereby they had sought a direction to the respondent to furnish a bank guarantee or any other surety of the like amount and extended the time for the deposit of the amount. This order was passed by the Arbitral Tribunal on the basis of the affidavit, Annexure P8, filed by the petitioners deposing that the amount of Rs.16.80 crore was due to the respondent as its 12.60 % revenue share as on the end of January of 2024. The Tribunal observed that this payment is to be made without prejudice to the rights and contentions of the parties to the present arbitration proceedings. These observations itself are enough to show that the interest of the petitioners has been secured. This order being a purely procedural order, cannot be made a subject matter of challenge under Article 227 of the Constitution of India in view of the settled legal position noticed above. Such an order is within the discretion and

domain of the Arbitral Tribunal and cannot be interfered with in the exercise of the supervisory jurisdiction vested in this Court under the Constitution. Vast powers have been given upon the Arbitral Tribunal under the Act to pass orders on the applications filed by the parties before it and it would not be appropriate for this Court to exercise its powers to interfere with the discretion exercised by the Arbitral Tribunal in the course of its proceedings. No injustice has been caused by the impugned order to either of the parties nor any exceptional circumstance has been made out for warranting interference in the instant revision petition.

10. For the aforegoing reasons, this Court does not find any merit in the petition, which is hereby dismissed.

11. In compliance of order of this Court, an amount of Rs.16.80 crore has been kept in a fixed deposit with a bank. The fixed deposit is ordered to be encashed and the principal amount as well as interest accrued thereon, is ordered to be disbursed to the respondent. In order to avoid any controversy in future, it is clarified that the petitioner will not be entitled to claim any benefit of the interest accrued on the fixed deposit.

12. Pending applications are disposed of.

(SUVIR SEHGAL)
29.08.2024 **JUDGE**
Brij
Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No