

18.06.2025

Court No.1

Item No.2

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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION**

**CO 59 of 2025
IA No.CAN 1 of 2025**

**SRI BIKASH PRASAD & ORS.
versus
SRI BRIJ BIHARI SHAHA**

Mr. Subham Ghosh
Mr. Mayank Roy

....for the Petitioner

Mr. Debanjan Das
Mr. Debabrata Sarkar

. . for opposite party

This revisional application arises out of an order passed by the learned Arbitrator on 4th March, 2025 by which the petitioner’s application for amending the Statement of Claim (in short, ‘SOC’) was rejected.

Before going into the merits of the matter it is necessary to deal with the issue of maintainability of an application under Article 227 of the Constitution of India for assailing an order of rejection of the amendment as raised by the opposite party.

It is the submission of the opposite party that going by the scheme of the Arbitration Act which is a Code in itself, has been promulgated with the main object for speedy disposal of a dispute between the

parties before a chosen forum without much intervention of the Court. This object will get frustrated if applications under Article 227 are allowed to be entertained in respect of each and every order passed by the learned Arbitrator/Arbitral Tribunal including an order rejecting an application for amendment of SOC. The opposite party refers to the provision of Section 37 to submit that the orders passed by the learned Arbitrator which are assailable have been specified therein. An order of rejection of an amendment application does not fall within such category and as such, cannot be assailed before the High Court by invoking the jurisdiction of Article 227 of the Constitution of India. The opposite party in this context relies upon the judgment reported in (2020) 15 SC 706 [*DEEP INDUSTRIES LIMITED Vs. OIL AND NATURAL GAS CORPORATION LIMITED AND ANOTHER*]. By relying upon the said judgment it is submitted that an application under Article 227 in the facts of the instant case is not maintainable.

Responding to this objection on behalf of the petitioner it is urged that the power of superintendence under Article 227 against the orders passed by a domestic Tribunal like an Arbitral Tribunal remains unadumbrated even in view of the provisions of the arbitration act and in particular wording in Section 5 of the Arbitration and Conciliation Act, 1996. The

petitioner has cited a Division Bench judgment of the Karnataka High Court delivered on 2nd September, 2022 in Writ Petition No.14573 of 2022 (*Sri N. S. Nagaraj Reddy Vs. Bren Corporation (Formerly, Sjr Enterprises)*) to contend that an application under Article 227 is maintainable against an order of rejection of an application for amendment of the Statement of Claim. The petitioner has also relied upon a judgment reported in 2024 SCC OnLine Del 7137 (*Kelvin Air Conditioning and Ventilation System Private Limited Vs. Triumph Reality Private Limited*).

On a reading of the judgment in *Deep Industries (supra)* cited by the opposite party and in particular paragraph 17 thereof it has been clearly held that applications under Article 227 are maintainable against judgments allowing or dismissing the appeals under Section 37 of the 1996 Act but the High Court should be extremely circumspect in interfering with the same, taking into account the statutory policy as accepted by the Hon'ble Supreme Court in the said judgment so that interference is restricted to orders that are passed which are patently lacking inherent jurisdiction. Thus, it cannot be said that in *Deep Industries (supra)* the Hon'ble Supreme Court has completely eliminated applications under Article 227 against the orders passed under Section 37 of the 1996 Act arising out of orders passed by the Arbitral Tribunal but has clarified the

restrictive provision thereof. In *Deep Industries*, the Hon'ble Supreme Court has taken note of the previous judgments as also the provisions of the 1996 Act to hold that revisional application does not lie against an order rejecting the application under Section 16 of the said Act after accepting that the powers under Article 227 is a Constitutional power which remains untouched despite there being a non obstante clause in Section 5 of the Arbitration Act. The judgment of the Division Bench of Karnataka High Court though considered a revisional application against an order passed by the Arbitral Tribunal inter alia on the principles of Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short, 'CPC') but has not discussed the maintainability aspect of the application, probably because no objection had been raised for which the Court had no occasion to deal with it. The judgment in *Kelvin Air Conditioning (supra)* holds an application under Article 227 against an order to allow or reject the extension of time to file the Statement of Claim or Statement of Defence is maintainable on the basis of the ratio laid down in 2023 SCC OnLine Del 4052 (*IDFC First Bank Limited Vs. Hitachi MGRM Net Limited*). In paragraph 24 of IDFC (supra) the following has been held which is quoted in *Kelvin Air Conditioning (supra)*. The said paragraph is as follows :

“24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles

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 Articles 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 Articles 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 Articles 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 be allowed to diminish and hence interdicting the arbitral process should be completely avoided."*

On a conjoint reading of the judgments cited by the petitioner and the opposite party as aforesaid, I have no dispute as to the ratio laid down therein. It is true that in an application under Article 227 challenging an order of the Arbitrator one has to make out an exceptional case, particularly the order has to be perverse and patently lacking inherent jurisdiction. The

Delhi High Court in the said judgment has taken note of the caution by the Supreme Court about exercise of jurisdiction under Article 227 of the Constitution of India in *Deep Industries (supra)*. I, however, intend to look into an order passed by the learned Arbitrator either allowing or rejecting the same from a further angle apart from those discussed in the judgments referred to hereinabove. An order rejecting the application for amendment of the Statement of Claim or Statement of Defence or allowing such application is not appealable under the provision of Section 37 of the 1996 Act. However, either by allowing or by rejecting such an application, the rights of the parties are gone into. Moreover, a party cannot be made to wait till the completion of the arbitration proceedings in a case where he is aggrieved by the order allowing the amendment or rejecting the same. If the amendment is allowed, then the trial would commence on the basis of the amended pleadings. At the end of the trial, the party aggrieved by the application being either allowed or rejected will have to challenge the same, while challenging the award. If a party succeeds in its challenge regarding the order allowing or rejecting an amendment at that stage then the entire exercise will become futile and has to be re-done. This in effect will frustrate the object of the 1996 Act for speedy and effective resolution of a dispute. Furthermore, as held by

the Hon'ble Supreme Court in the judgment reported in 1993 Supp (2) SCC 433 [*M. V. ELISABETH AND OTHERS Vs. HARWAN INVESTMENT AND TRADING PVT. LTD., HANOEKAR HOUSE, SWATONTAPETH, VASCO-DE-GAMA, GOA*] in paragraphs 64 and 86 thereof has held "Where statutes are silent and remedy has to be sought by recourse of basic principles, it is the duty of the Court to devise procedural rules by analogy and expediency" and "Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience". The Supreme Court also held in paragraph 84 thereof that "the cause of justice can never be allowed to be thwarted by any procedural technicalities".

It is also held by the Hon'ble Supreme Court in the judgment reported in (2002) 6 SCC 16 [*DHANNALAL VS. KALAWATIBAI AND OTHERS*] in paragraph 25 thereof – "that every wrong must have a remedy and every right to relief must have a forum for enforcement".

In the light of the ratio laid down in the aforesaid two judgments on noticing that no appeal is provided under Section 37 of the 1996 Act against an order rejecting or allowing the amendment to the Statement of Claim or Statement of Defence, though amendment to the Statement of Claim and Statement of Defence is specifically provided under Section 23 of the said Act, a

party, therefore, aggrieved by such order has to have a forum to seek redressal because waiting for the arbitration to conclude or till the passing of the award and challenging such order as a part of the challenge to the arbitral award as discussed hereinabove will frustrate the entire object of the 1996 Act.

In the aforesaid facts and circumstances, I hold that an application under Article 227 of the Constitution of India is maintainable wherein an order either rejecting an application for amendment of the Statement of Claim or Statement of Defence or allowing the same has been challenged but with the caveat that it has been demonstrated that the order is completely perverse or lacking in patent inherent jurisdiction.

Now, coming to the merits of the application, I find that the dispute which is the subject matter of arbitration arises in connection with specific performance of an agreement relating to an immovable property. On a meaningful reading of the SOC which is annexed to this application it is found that the petitioners have stated that they paid an aggregate sum of Rs.30,00,000/- out of the agreed consideration money of Rs.1,15,00,000/- but have not stated about any application having been made to its banker for availing a loan for paying the consideration money or any part thereof. The petitioners in paragraph 17 of the SOC have also stated that they are still ready and willing to

perform their part of the contract by making payment of the balance consideration money of Rs.85,00,000/-. The petitioners as claimants have sought for incorporating an additional portion in paragraph 17 of the SOC. The proposed amendment sought for as stated in the application for amendment of the SOC which is annexed to this application is set out hereunder :

“It is pertinent to be mentioned here in the aforesaid regard that the Claimants, in the meantime have also applied with the State Bank of India, Mini RACPC, Jalpaiguri for sanction of a loan amounting to Rs.75,00,000/- (Rupees Seventy Five Lakhs) only and the same has been duly sanctioned by the concerned bank vide Final Sanction Letter dated 04.01.2025 bearing Ref no. SBI/RACPC/ Proposal ID: 501250103039125, which further fortifies the Claimants’ right for specific performance of the subject agreement dated 07.09.2022, as the same signifies the Claimants’ readiness and willingness to perform their part of the said agreement, and moreover demonstrates the Claimants’ financial capacity to carry forward and execute their part of the said agreement. Copy of the sanction of the sanction letter dated 04.01.2025 is annexed herewith and marked as Annexure “G”. ”

In the proposed amendment, the petitioners have stated *“in the meantime have also applied with the State Bank of India, Mini RACPC, Jalpaiguri for sanction of a loan amounting to Rs.75,00,000/- (Rupees Seventy Five Lakhs) only and the same has been duly sanctioned by the concerned bank vide Final Sanction Letter dated*

04.01.2025". In absence of any pleading in the SOC regarding the application for availing loan and without specifying the date of its application but giving only the date of final sanction was not accepted by the learned arbitrator which has been discussed in the order impugned.

The petitioners as also the opposite party have cited several judgments relating to the way and manner in which an application for amendment of SOC which is analogous to the provisions enumerated under Order VI Rule 17 of CPC should be dealt with to suggest that the proposed amendment should have been allowed or to contend that the proposed amendment has been rightly refused. On considering the ratio laid down in the said judgments which are not discussed separately, I find that the main argument of the petitioners is that a proposed amendment should be considered liberally and unless the same changes the nature and character of the suit/proceedings or amounts to withdrawal of any admission already made or if the same amounts to revive a stale claim should be rejected. The petitioners have also urged that an incident which has occurred subsequent to the filing of the suit/proceedings and is required to be considered for complete justice between the parties or to address the issues involved should also be allowed.

The opposite party on the other hand has contended that in absence of any pleading in the SOC to the effect as to an application for loan a fresh cause of action which is in continuation of an incident which had occurred prior to the filing of the SOC should not be allowed. If the application for the loan had been made prior to filing of the SOC, the same ought to have been pleaded. In such situation, the sanction of the loan after filing of the SOC can or could have been treated as subsequent event. The case of the petitioners are not so. In a proceedings for specific performance of an agreement relating to an immovable property the petitioners are required to prove their continuous readiness and willingness. The proposed amendment sought for after filing of the SOD in the instant case is an attempt by the petitioners to cover up the lacuna already existing in the SOC. The order of the learned Arbitrator refusing the amendment, according to the opposite party, is neither perverse nor an order passed under inherent lack of jurisdiction. The order is well reasoned taking into account the scope of the amendment and the relevant provisions of law.

On a holistic consideration of the SOC, SOD and the amendment application, I find that the proposed amendment is vague inasmuch as it does not specify any date on which the application of the loan was made which is said to have been finally sanctioned on 4th

January, 2025. In absence of the specific pleading regarding the making of the application for loan and in what stage the said application was ought to have been stated in the SOC had the said made prior to filing of the SOC, The use of word “in the meantime” is vague as it does not suggest that the application for loan was made prior to the filing of the SOC, on the contrary suggest a posterior date. In absence thereof the subsequent event i.e. the final sanction of the loan cannot be incorporated by way of amendment. Assuming without admitting that the amendment will not change the nature and character of the arbitration proceedings and that the petitioners as the claimants have to prove their case then also the proposed amendment cannot be allowed as it may affect the defence of the opposite party already taken in the SOD denying and disputing the readiness and willingness on the part of the petitioners. Furthermore, allowing the amendment for filing of the SOD will further delay the arbitration proceedings which goes against the object of the Arbitration Act.

In the light of the aforesaid, I do not find any infirmity in the order impugned, particularly when the learned Arbitrator has considered the nature and character of the proposed amendment in the context of the pleading already contained in the SOC and the SOD.

The revisional application, therefore, fails and is dismissed along with connected application for the reasons as aforesaid.

(Arindam Mukherjee, J.)