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

% ***Date of Decision: 20th February 2025***

+ **CM(M) 252/2025 & CM APPL. 7571/2025 STAY**

PYRAMID FINMART PVT. LTD

.....Petitioner

Through: **Mr. Ravi Kapoor and Mr.
Sameer Dawar, Advocates**

versus

RK SINHA AND ASSOCIATES AND ORS

.....Respondents

Through: **Mr. Sunil Kumar, Sr. Adv. with
Mr. Saurabh S. Sinha, Mr.
Mrigank Prabhakar and Mr
Siddharth Sahu, Advocates.**

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (O R A L)

RAVINDER DUDEJA, J.

1. This is a petition under Article 227 of the Constitution of India, challenging the order dated 29.01.2025, passed by the Sole Arbitrator in arbitration proceedings titled “*M/s. R.K. Sinha & Associates & Anr. Vs. M/s. Pyramid Finmart Pvt. Ltd. & Anr.*”

2. The brief factual background of the matter is that petitioner company being engaged in the business of land sale, purchase and



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construction was approached by the respondents to purchase the land situated at Yamuna Express Highway. Petitioner No. 1 and respondent No. 1 entered into an agreement to sell dated 20.11.2018.

3. During the performance of the contract, certain disputes arose between the parties. Petitioner filed petition under Section 11 (6) of the Arbitration & Conciliation Act for appointment of an Arbitrator before the High Court.

4. Vide order dated 20.01.2022, Sole Arbitrator was appointed to adjudicate the disputes between the parties.

5. Complainant's evidence was closed. Petitioner filed two affidavits as evidence – RW-1 by affidavit dated 14.12.2024 and RW-2 by affidavit dated 12.01.2025. RW-1 is the Senior Manager of petitioner while RW-2 is the Director of the petitioner.

6. Learned counsel for the claimant submitted before the Arbitrator that examination and cross examination of RW-2 be conducted as the first witness.

7. Vide order dated 29.01.2025, the learned Arbitrator was of the view that RW-2 is the main witness in the matter, and therefore, he be examined and cross examined as a first witness. Learned Arbitrator observed that RW-1 was not involved in the transaction. However, direction was issued that both the witnesses shall remain present on the dates fixed for evidence.

8. Learned counsel for the petitioner has argued that it is the sole prerogative of the party to determine the sequence by which it wishes to lead its evidence. It is further submitted that only the petitioner



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company is the signatory to the contract and that respondent No. 3 was neither a party to the contract nor has entered into any arbitration agreement with respondents No. 1 & 2. He merely signed the agreement as the Director of the petitioner company and not in his personal capacity.

9. It is further submitted that there was no occasion for piercing the corporate veil of the petitioner company as the company is a separate and distinct entity. It is also argued that RW-1 Anand Kumar Tiwari had signed the pleadings on behalf of the petitioner company. RW-1 is the authorized signatory of the petitioner company, and therefore, in accordance with provisions of Rule 3-A of Order 18 CPC, it was RW-1 which ought to be examined first and not respondent No. 3.

10. In support of his submissions, learned counsel for the petitioner has placed strong reliance on the following judgments:-

- i) *In Re: Agya Boortmalt Ltd 2012 SCC OnLine CLB 39;*
- ii) *Swardharma Swarajya Sangha v. Indian Commerce & Industries Company, 1997 SCC OnLine Mad 766;*
- iii) *BOC India v. Zinc Products, 1996 SCC OnLine Pat 563;*
- iv) *M/s Nimbro v. National Insurance Co., 1990 SCC OnLine Del 65;*
- v) *United Bank of India v. Naresh Kumar, (1996) 6 SCC 660;*
- vi) *State Bank of Travancore v. Kingston Computers India (2011) 11 SCC 524;*
- vii) *Devarapalli Pattabhi Ramaiah v. D. Lakshmi Prasanna, 1997 SCC OnLine AP 616;*
- viii) *Shaik Rafath Begum v. T. V. R. Anjaneyulu, 2006 SCC OnLine AP 691;*
- ix) *Saidai Sa. Duraisamy v. Stalin M. K., 2016 SCC OnLine Mad 23267;*



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- x) *Sarabjit Singh v. Gurinder Singh Sandhu, 2010 SCC OnLine Del 3881*
- xi) *Kumudini Damodar Magar & Ors vs Bhushan Damodar Magar & Ors., [2004 (3) Mh. LJ]*

11. At the very outset, the learned counsel for respondents No. 1 & 2 has taken strong objection to the maintainability of the petition filed under Article 227 of the Constitution. While referring to Section 5 and Section 19 of the Arbitration & Conciliation Act, it is submitted that the remedy under Article 227 of the Constitution is not available to the petitioner against the order passed by the Arbitral Tribunal. In support of his submissions, the learned counsel placed reliance on the following judgments:-

- i) *Sanj Dainik Lokopchar & Ors v. Gokulchand Govindlal Sananda 2019 (3) Mh.L.J.*
- ii) *Punjab State Power Corpn. Ltd v Emta Coal Ltd & Anr (2020) 17 SCC 93.*
- iii) *SBP & CO v. Patel Engineering Ltd & Anr (2005) 8 SCC 618*
- iv) *Surender Kumar Singhal & Ors. Vs. Arun Kumar Bhalotia & Ors., MANU/DE/0561/2021*

12. On the merits of the petition, it is submitted that RW-2 is the main witness, inasmuch as, it is he who had invoked the arbitration proceedings by filing an application under Section 11 of the Arbitration & Conciliation Act and is also the beneficiary of receipt of money. It is further submitted that the provision of Order 3-A of Order 18 CPC is not mandatory, but directory and the said provision confers discretion to the court to permit for reasons to be recorded, the party to appear as his own witness at a later stage.



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13. The law with regard to the scope of power of the High Court under Article 227 against the orders passed by the Arbitral Tribunal is well settled. It is a well settled law that the High Court can exercise power under Article 227 against the orders passed by the Arbitral Tribunal, but it is equally well settled that judicial interference in such cases has to be mere minimal and recourse to Article 227 has to be only under exceptional circumstances when it is shown that such an order is absolutely perverse.

14. In the case of **IDFC First Bank Limited Vs. Hitachi MGRM Net Limited**, MANU/DE/4418/2023, the Coordinate Bench of this Court has enumerated the circumstances wherein a petition under Article 227 can be entertained. The relevant para of the aforesaid judgment reads as under:-

“24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be “extremely circumspect.”

15. Similarly, in the case of **Surender Kumar Singhal Vs. Arun Kumar Bhalotia**, MANU/DE/0561/2021, after considering the various decisions, this Court laid down certain principles explaining the scope of power of the High Court under Article 227 of the Constitution of India. The relevant para of the judgment reads as under:-

“24. A perusal of the abovementioned 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:



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- (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 to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

16. The Special Leave to Appeal (numbered as 6171/2021) challenging the order passed in Surender Kumar Singhal (*supra*), has been dismissed by the Hon'ble Supreme Court vide order dated 27.04.2021.

17. The learned Single Judge of this Court in **Kelvin Air Conditioning & Ventilation System Private Limited CM (M) 3592/2024, 2024 DHC 4914** held as under:-

"11. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are



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impermissible in law. Reference be made to Puri Investments v. Young Friends and Co., 2022 SCC OnLine SC 283.

12. This Court in order dated 03.10.2024 passed in CM(M) 3265/2024 titled as Agarwal Associates (Promoters) Limited v. Sharda Developers has also observed that the remedy available under Article 227 of the Constitution of India does not stand knocked off by the non-obstante clause of Section 5 of Arbitration & Conciliation Act, 1996 which provides that no judicial authority shall intervene except where so provided and, therefore, though the petition would be maintainable but fact remains that the scope of interference is extremely squeezed.”

18. Similarly, the Hon’ble Supreme Court in the case of **SBP & CO v. Patel Engineering Ltd & Anr (2005) 8 SCC 618**, made following pertinent observations in Para No. 45 & 56, which are reproduced thus:-

“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 of India. 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 his 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, the 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 of India. Such an intervention by the High Courts is not permissible.



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46. The object of minimizing 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 of the Constitution of India or under Article 226 of the Constitution of India 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.”

19. It is not a disputed fact that RW-2 is the one who had invoked Section 11 of the Arbitration & Conciliation Act for the purpose of appointment of the Arbitrator. It has not been disputed during the course of arguments that RW-2 had received the money. The learned Arbitrator vide impugned order has been of the view that RW-2 is the main witness in the matter. Even though, he directed RW-2 to be examined and cross examined as a first witness, he has not discarded the affidavit of RW-1 and in fact directed both the witnesses to remain present on the date fixed for their evidence.

20. The provision contained in Order 18 Rule 3-A of the Code of Civil Procedure, 1908 are directory and not mandatory and exceptions can be made for valid reasons. What those valid reasons are depends upon the facts and circumstances of each case.

21. A perusal of the impugned order clearly reveals that the same does not suffer from any perversity, and therefore, this Court does not find any reason to interfere with the impugned order.

22. In **M/s. Garment Craft Vs. Prakash Chand Goel, Civil Appeal arising out of SLP (C) No. 13941/2021**, the Supreme Court while explaining the scope of Article 227 of the Constitution of India,



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observed that supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The power under Article 227 is exercised sparingly only in appropriate cases.

23. Since in exercise of power under Article 227, this Court does not sit in appeal over the orders of the Arbitral Tribunal, even if the Court was to take a contrary view, impugned order cannot be set aside while exercising supervisory power under Article 227 of the Constitution, and in particular, in the context of arbitral proceedings where the interference has to be bare minimal.

24. In my view, it is not a fit case for the exercise of judicial intervention in the order passed by the learned Arbitral Tribunal.

25. Hence, Court finds no merit in the present petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

February 20, 2025

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