



2025:DHC:937



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

% ***Date of Decision: 12th February 2025***

+ **CM(M) 284/2025**

FIITJEE LTD.

.....Petitioner

Through: **Mr. Mukesh Goyal and Ms.
Ayushi Aggarwal, Advocates.**

versus

MADHULIKA SINGH

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

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

RAVINDER DUDEJA, J.

CM APPL. 8292/2025, CM APPL. 8293/2025 (exemptions)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 284/2025 & CM APPL. 8291/2025 (stay)

1. This is a petition under Article 227 of the Constitution of India impugning the order dated 25.01.2025, passed by the learned Arbitrator in DIAC/7408/01-24, titled “*Madhulika Singh Vs. M/s. FIITJEE Ltd.*”

2. The brief factual background of the matter is that on 20.12.2023, this Court appointed a Sole Arbitrator to adjudicate the disputes between the parties.



2025:DHC:937



3. Respondent filed Claim Petition before the Arbitral Tribunal, seeking recovery of certain money from the petitioner, alleging the same to be her dues on account of salary.
4. Petitioner filed its Statement of Defence, refuting the allegations made in the Statement of Claim. Petitioner took stand before the Arbitrator that respondent left the service without following the procedure prescribed by Service Rules and without handing over the records.
5. After framing the issues, the matter was listed for the evidence of the respondent.
6. On 27.08.2024, respondent filed evidence affidavits of three witnesses namely Ms. Madhulika Singh, Ms. Pallavi Moghe and Ms. Deepika Rathee. Respondent also filed certain documents with the affidavits of Ms. Pallavi Moghe and Ms. Deepika Rathee.
7. On 24.01.2025, petitioner filed an application before the Arbitrator seeking directions to exclude the witnesses cited by the respondent. However, the said application was dismissed by the learned Arbitrator vide order dated 25.01.2025.
8. Learned counsel for the respondent submits that witnesses in their evidence affidavits merely assert their own independent claims or grievances, which are totally unrelated to the present dispute and such depositions do not in any manner contribute to the adjudication of the issues before the Tribunal. It is thus submitted that the cited witnesses being not relevant for the adjudication of the dispute,



2025:DHC:937



affidavits filed by Ms. Pallavi Moghe and Ms. Deepika Rathi be excluded from consideration.

9. Learned counsel further submits that witness Pallavi Moghe is herself the claimant in another arbitration case pending before the same learned Arbitrator. It is stated that her deposition is on the line of her case in her claim petition and therefore if her cross examination is conducted in the present arbitration case, the defence of the petitioner in the other case would be prejudiced.

10. 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 minimal and recourse to Article 227 has to be only under exceptional circumstances when it is shown that such order is absolutely perverse.

11. 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.”

12. Similarly, in the case of **Surender Kumar Singhal Vs. Arun Kumar Bhalotia**, MANU/DE/0561/2021, after considering the



2025:DHC:937



previous decisions, the Supreme 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:

- (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.”

13. 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



2025:DHC:937



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 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.”

14. Learned Arbitral Tribunal while passing the impugned order 25.01.2025 observed that determination of the relevancy of witnesses is inherently linked to the stage of final arguments, where the evidentiary value and applicability of their testimonies can be thoroughly evaluated in the context of the issues. At this preliminary stage, making a conclusive decision regarding the relevance or admissibility of the witnesses would not only be premature but also contrary to the principles of procedural fairness. The learned Arbitrator also took note that it is the prerogative of the claimant to present the witnesses of his choice as he may deem it necessary to substantiate its case and such right forms an integral part of the claimant’s liability to establish their claims comprehensively and the weight and impact of the testimonies of such witnesses can only be assessed during the final adjudication process.



2025:DHC:937



15. A perusal of the aforesaid 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.

16. In the case of **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 observed that the High Court exercising supervisory jurisdiction does not act as a court of first appeal to re-appreciate, reweigh the evidence or facts upon which the determination under challenge is based. 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 in appropriate cases.

17. 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.

18. In the considered view of the Court, it is not a fit case for exercising the judicial intervention in the exercise of discretion by the learned Arbitral Tribunal.

19. Hence, Court finds no merit in the present petition. The same is



2025:DHC:937



accordingly dismissed. However, it is directed that the cross examination of PW Pallavi Moghe in the present arbitration be conducted after the completion of her cross examination in her claim petition.

RAVINDER DUDEJA, J.

February 12, 2025

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