

JPD-03
Ct No.07
11.06.2026
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 59 of 2026

Subhodeep Roy
Vs.
Shyamal Roy and others

Mr. Shib Sankar Banerjee,
Mr. Raja Adhikary,
Ms. Riya Agarwala

.... for the petitioner

Mr. Nirmalya Dasgupta,
Mr. R.L. Mitra,
Ms. Priyanka Dhar,
Ms. D. Datta,
Ms. Nikita Paul

....for the opposite parties

1. The present challenge has been preferred under Article 227 of the Constitution of India against an order passed by a learned Arbitrator.
2. Learned counsel appearing for the opposite parties raises a preliminary objection as to maintainability of the present application. Learned counsel relies on Section 5 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”) to argue that there cannot be any judicial intervention against any order passed by an arbitral tribunal except as provided for in the statute itself.
3. Learned counsel appearing for the petitioner cites a Single Bench judgment of the Delhi High Court

in the matter of *Kelvin Air Conditioning and Ventilation System Private Limited vs. Triumph Reality Private Limited*, reported at 2024 SCC OnLine Del 7137, in support of the proposition that there is no absolute bar to maintainability of an application under Articles 226 or 227 of the Constitution of India and that such remedy of judicial review is not precluded by Section 5 of the 1996 Act.

4. Learned counsel further submits that in the event the impugned order is permitted to subsist, the valuable right of the petitioner to file his counter claim will be taken away, causing irreparable injury to the petitioner.
5. Learned counsel further submits that although the learned Arbitrator placed reliance on certain judgments of the Hon'ble Supreme Court, the said reliance was misplaced in law, which can be demonstrated from a bare perusal of the impugned order.
6. Upon hearing learned counsel for the parties, however, this Court is of the opinion that the present application under Article 227 of the Constitution of India is not maintainable against an order passed by an arbitral tribunal within the trappings of the 1996 Act.

7. The entire scheme of the 1996 Act mandates least judicial interference. Section 5 of the said Act provides as follows:

“Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”.

8. It is relevant to mention that by “this Part”, the Section refers to Part I, dealing with arbitration.
9. It will be relevant to note here that the 1996 Act was promulgated in consonance with the UNCITRAL Model Law on International Commercial Arbitration of 1985, which was adopted by the Indian Legislature. However, the legislature of India deliberately sheared off certain provisions from the UNCITRAL Model Law while partially adopting the same. For example, in the Model Law, there is a provision for challenge even during pendency of the arbitral proceedings if there is an adjudication on jurisdiction of the Arbitrator, which has been deliberately omitted in the Indian Law.
10. Also, from the Objects and Purpose of the 1996 Act, as it stood originally, and its subsequent amendments, it would be evident that the purpose of the enactment is to facilitate expeditious conclusion of the arbitral process and to encourage alternative dispute resolution as well as

to bring up India as a hub of international arbitration.

11. Section 5, thus, contains the spirit of the statute in providing alternative disputes resolution, omitting unnecessary judicial interference as far as possible.
12. Seen in such perspective, although it is correct that the Constitutional remedy of review under Articles 226 and 227 of the Constitution of India cannot be completely cut off by servient statutes operating under the Constitution, including the 1996 Act, still, additional rigours should be imposed by the Court on itself while taking up an application under Article 226 or 227 in respect of a matter specifically barred under Section 5 of the 1996 Act. Otherwise, every order of an arbitral tribunal will be subject to challenge in the garb of judicial review, thus throwing a spanner in the wheels of the arbitral process, which would frustrate the very scheme of the Act.
13. Seen in such context, even in *Kelvin Air Conditioning and Ventilation System Private Limited (supra)*, the learned Single Judge of the Delhi High Court took into account certain safeguards and threw in words of caution while holding that interference under Articles 226/227 is not barred. For example, the learned Single Judge held that such interference shall only be in exceptional

circumstances and unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere. It was further observed that interference is permissible only if the order is completely perverse, that is, the perversity must stare in the face. It was also observed that High Courts ought to discourage litigation which necessarily interferes with the arbitral process and that excessive judicial interference in the arbitral process is not encouraged and it is not prudent to exercise jurisdiction under Articles 226/227. Moreover, such power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown. The learned Single Judge went on to observe that efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.

14. Upon summing up, it was observed by the learned Single Judge of the Delhi High Court that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.
15. The question raised in the present writ petition is whether the interpretation of certain judgments of the Hon'ble Supreme Court, particularly in *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and*

others, reported at (2020) 2 SCC 394, by the learned Arbitrator was correct. Thus, any interference under Article 227 in the present case would take us into the domain of judicial interpretation, involving detailed arguments regarding the law governing the subject, which cannot be termed as an instance of patent perversity or bad faith or perversity so evident that it stares in the face.

16. The question raised by the writ petitioner is one of judicial and legal interpretation, which requires legal arguments to be advanced *in extenso* and is not and does not involve any perversity apparent on the face of the impugned order. The dispute raised in the instant writ petition is one regarding the legality of the impugned order, and does not pertain to any jurisdictional error.
17. Hence, even going by the principle laid down in *Kelvin Air Conditioning and Ventilation System Private Limited (supra)*, no interference is warranted under Article 227 of the Constitution of India.
18. Accordingly, CO 59 of 2026 is dismissed as not maintainable without any order as to costs.
19. Needless to say, this Court has not entered into the merits of the respective contentions of the parties otherwise.

20. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)