

**HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
HON'BLE JUSTICE M.G.PRIYADARSINI**

CIVIL REVISION PETITION No.2243 of 2024

ORDER: (Per Hon'ble Justice Moushumi Bhattacharya)

The present Civil Revision Petition (C.R.P) arises out of an order dated 29.06.2024 passed by the Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District at L.B. Nagar (Commercial Court), in C.O.P.No.18 of 2024 filed by the petitioner under section 37(2)(b) of The Arbitration and Conciliation Act, 1996.

2. The petitioner's Commercial Original Petition (C.O.P.No.18 of 2024) was directed against an order dated 15.05.2024 passed by the respondent No.2 - Telangana Regional Micro and Small Enterprises Facilitation Council (Council) under section 18(3) of The Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). The Council had rejected the petitioner's Interlocutory Application under section 17(1) of the 1996 Act. The petitioner filed C.O.P.No.18 of 2024 before the Commercial Court challenging the order of rejection of the Council. The

proceedings culminated in the order dated 29.06.2024, which is impugned in the present C.R.P.

3. The issue which falls for a decision is whether the Commercial Court could have entertained the C.O.P. under section 37(2) (b) of the 1996 Act.

4. Learned Senior Counsel appearing for the petitioner had initially sought to withdraw the C.R.P. on the ground that the petitioner was wrongly-advised to file an Appeal under section 37 of the 1996 Act before the Commercial Court as the petitioner's Application under section 17(1) of the 1996 Act was not maintainable. Learned Senior Counsel appearing for the respondent No.1 raised a strong objection on the prayer for withdrawal of the C.R.P.

5. The Court hence proceeded to hear the parties on the merits of the case.

6. The facts relevant to the adjudication are as follows:

6.1. The petitioner is the 'Buyer' as defined under section 2(d) of the MSMED Act and opposed a Reference made by the

respondent No.1 (seller) to the Council in respect of the amount allegedly due to the respondent No.1. The Reference under section 18(1) of the MSMED Act progressed to the stage of Arbitration under section 18(3) of the Act. The petitioner filed an Interlocutory Application before the Council seeking reframing of the issues in the Arbitration and for bringing further evidence on record. The petitioner made this Interlocutory Application under section 17(1) of the 1996 Act. The Council dismissed the Interlocutory Application on 15.05.2024 on the ground that the petitioner (respondent before the Council) was given sufficient opportunity to make final submissions but failed to do so and the Council hence proceeded with preparing the Award. The Council noted that the arbitration proceedings cannot be extended on the sole request of the petitioner.

6.2. The petitioner filed C.O.P.No.18 of 2024 before the Commercial Court under section 37(2) (b) of the Arbitration and Conciliation Act, 1996, for setting aside the order passed by the Council dated 15.05.2024. The Council was made a party in the C.O.P. as respondent No.2.

7. The only point taken by learned Senior Counsel appearing for the petitioner (petitioner before the Commercial Court) is that the C.O.P. was not maintainable since the petitioner's application before the Council could not be treated as an application under section 17(1) of the 1996 Act. Counsel submits that the Commercial Court lacked inherent jurisdiction for entertaining the C.O.P. filed under section 37(2) of the 1996 Act.

8. Learned Senior Counsel appearing for the respondent No.1 (claimant before the Council) submits that the petitioner cannot be permitted to take the plea of inherent jurisdiction since the petitioner's only objective is to obliterate the findings and observations of the Commercial Court against the petitioner. Counsel argues against the maintainability of the present C.R.P.

9. We have heard Senior Counsel appearing for the parties on all points.

10. We first wish to deal with the arguments pertaining to the maintainability of the present Civil Revision Petition.

11. We are first of the view that the Commercial Court was not the forum non-judice in lacking competence to entertain the C.O.P/Appeal under section 37 of the 1996 Act. The Commercial Court at Ranga Reddy District is a Court constituted under section 3 of The Commercial Courts Act, 2015 and has been conferred jurisdiction under section 6 of the said Act. There is no dispute that the Commercial Court is the competent Court to hear the C.O.P in terms of specified value , territorial jurisdiction and the nature of the dispute i.e., commercial dispute.

12. We disagree with the contention that the Commercial Court lacked inherent jurisdiction to entertain the C.O.P. There is a difference between maintainability and entertainability of an application. The C.O.P. was maintainable before the Commercial Court regardless of whether the Commercial Court proceeded to pass the impugned order upon entertaining the application. We thus hold that the Commercial Court did not lack inherent jurisdiction to entertain the C.O.P/Appeal.

13. Civil Revision Petitions enumerate from the power conferred upon High Courts under Article 227 of the Constitution

of India in the matter of superintendence over the District Courts and Tribunals within its territorial jurisdiction. While the powers of a High Court are plenary in the sense of calling for records, issue of rules and regulating the practice and proceedings of such Courts, the power is not without limits.

14. A High Court in exercise of the authority under Article 227 of the Constitution should be circumspect in exercising powers within the bounds of their authority. The exercise of jurisdiction must be within the well-recognized limits and the High Court must not act as an appellate court and re-appreciate evidence. It is useful to remember that the High Court under Article 227 of the Constitution is not vested with any unlimited prerogative to correct wrong decisions made by the subordinate Courts. The interference must be restricted to cases of serious dereliction of duty and violation of the fundamental principles of law and justice. The High Court must be certain that grave injustice would occur unless the High Court involves the power under

Article 227 of The Constitution: *Shri Jai Bhagwan Jain v. Municipal Corporation of Delhi*¹.

15. We may add that the High Court should be even more circumspect in interfering with the jurisdictional Courts and Tribunals where the pertinent facts point to irresponsible conduct on the part of the revision petitioner. The facts in the present case fall within such a template.

16. The relevant facts are briefly stated below:

16.1 The respondent No.1 supplier filed its claim before the Council under section 18(1) of the MSMED Act. The petitioner filed a writ petition being W.P.No.27376 of 2021 before the High Court taking the point of maintainability of the Reference by reason of the same being barred by limitation.

16.2 A Single Bench of this Court disposed of the Writ Petition by an order dated 06.03.2023 by directing the Council to decide on the point of limitation.

16.3 The Council decided in favour of the respondent No.1 by its order dated 19.08.2023 - that the Reference was within

¹ 2010 9 SCC 385

the period of limitation. The petitioner has not challenged this order of the Council till date.

- 16.4 The petitioner failed to file the statement of defence in the Arbitration before the Council but filed 2 applications seeking leave of the Council for cross-examination of Expert Witness/Chartered Accountant. The petitioner sought for setting aside of the interim Award passed by the Council on 21.12.2023. The Council rejected both the applications by its order dated 21.12.2023.
- 16.5 The petitioner filed 2 Commercial Original Petitions (C.O.Ps) – C.O.P.Nos.2 and 3 of 2024 for setting aside the order passed by the Council on 21.12.2023. Both these C.O.Ps. were allowed by the Commercial Court, Ranga Reddy District at L.B. Nagar, on 24.02.2024 permitting the petitioner to cross-examine the Expert and directing the Council to adjudicate on the claim as expeditiously as possible and conclude the proceedings within 4 weeks from 24.02.2024.
- 16.6 The petitioner filed another Interlocutory Application for reframing of the issues, bringing further evidence on record, marking of documents and submitting oral and written arguments before the Council. This application was at the stage of final arguments in the Arbitration. The Council rejected the application on 15.05.2024 and the

petitioner filed an Appeal (C.O.P.) under section 37 of the 1996 Act before the Commercial Court for setting aside the order dated 15.05.2024.

16.7 The Commercial Court rejected the petitioner's C.O.P. by the order dated 29.06.2024 which is impugned in the present Civil Revision Petition.

17. Several significant factors would be evident from the above sequence.

- i. The petitioner itself invoked the jurisdiction of the Commercial Court by filing the 2 C.O.Ps. under section 34 of the 1996 Act for setting aside the interim Award passed by the Council. The petitioner hence cannot complain of the Commercial Court lacking inherent jurisdiction to hear the Commercial Original Petitions including C.O.P.No.18 of 2024 which forms the basis of the present Civil Revision Petition.
- ii. The petitioner has filed at least 5 applications including a writ petition against the reference/claim of the respondent No.1. Two of these applications were for nearly identical reliefs. The inescapable conclusion would be that the

petitioner, as the 'Buyer', faced with a claim and an Arbitration from the respondent No.1 supplier, tried every statutory ploy to frustrate and delay the Reference and the Arbitration pending before the Facilitation Council.

- iii. The petitioner has not shown to the Court or in the recordings of any of the proceedings that the petitioner has complied with section 19 of the MSMED Act which requires the applicant to deposit 75% of the amount before the matter is entertained by the Court for setting aside of any award, decree or order made by the Council. The petitioner had filed 2 C.O.Ps under section 34 of the 1996 Act for setting aside the interim Award passed by the Council on 21.12.2023.

18. The conduct of the petitioner by all means is manipulative and in abuse of the process of the Court. The most striking feature of the conduct is that the petitioner, having repeatedly invoked the jurisdiction of the Commercial Court and having invited the Court for a decision, has now turned around to question the jurisdiction of the Court to pass orders, including the

one impugned in the present Civil Revision Petition. If this conduct is not reckless and self-serving, then nothing is.

19. Thus, the principle that 'no man can take advantage of his own wrong' squarely fits in the facts of the present case. The petitioner certainly cannot manipulate the Court process to perpetuate an illegality to the detriment of the respondent: *Mumtaz Yarud Dowla Wakf v. Badam Balakrishna Hotel Pvt. Ltd*². In that case, the Supreme Court noticed a subsequent plea on the part of the party questioning the jurisdiction of the forum after receiving an adverse verdict.

20. The power of superintendence of a High Court not only pertains to orders passed by Courts and Tribunals within its jurisdiction but must also covers the conduct of parties which result in orders which form part of the Civil Revision Petition. The High Court steps in where there has been grave dereliction of duty or flagrant abuse of the fundamental principles of law or justice.

² 2023 SCC OnLine SC 1378

21. The peculiar facts of the present case would actually call for appropriate superintendence over litigants, like the petitioner herein, who take the Court process for granted and try their best to delay and frustrate pending proceedings. The power of superintendence must be informed with equitable considerations. Equity should be exercised in favour of the respondent No.1 and against the appellant in the case before us.

22. The decision of the Single Bench of the High Court of Jammu and Kashmir in *IRCON International Limited v. Union Territory of Jammu & Kashmir*³, relied on by the petitioner, is with regard to the power of the Arbitral Tribunal under section 17 of the 1996 Act, but loses relevance in the light of the C.R.P. not being maintainable. *Hindustan Zinc Limited (HZL) v. Ajmer Vidyut Vitran Nigam Limited*⁴ involved a statutory arbitration under section 86(1)(f) of the Electricity Act, 2003, where the Supreme Court held that the Commission did not have jurisdiction to appoint an Arbitrator under section 86(1)(f) of the Electricity Act

³ 2020 SCC OnLine J&K 29

⁴ 2019 17 SCC 82

since the dispute did not relate to licences and generating companies. This case does not assist the petitioner.

23. Whether the petitioner's Interlocutory Application under section 17 of the 1996 Act was misconceived is a matter of statutory interpretation. The reliefs sought in the said application were, *inter alia*, for reframing of issues, providing reasonable opportunity to the petitioner (respondent before the Council) and to bring additional evidence on record. Section 17(1) of the 1996 Act provides for interim measures in the form of orders passed by the Arbitral Tribunal under various heads from clauses (i) and (ii) (a-e) thereof for the overall preservation of the subject matter of the Arbitration. Section 37(2) (b) provides that an appeal shall also lie from an order of the Arbitral Tribunal granting or refusing to grant an interim measure under section 17 of the 1996 Act. Hence the order appealed from under section 37(2)(b) presupposes the order passed by the arbitral tribunal to be within the contours of section 17(1) of the 1996 Act.

24. We have already concluded that the Commercial Court was statutorily-vested with the power to entertain the C.O.P. and

that the C.O.P. was therefore maintainable before the said Court. The decision of the Commercial Court is not without jurisdiction or in excess of jurisdiction. It cannot also be said that the decision of the Commercial Court resulted in a grave miscarriage of justice.

25. The fundamental issue of the Civil Revision Petition not standing up to the test of maintainability outweighs all other considerations. The impugned order of the Commercial Court upon entertaining the appeal filed by the petitioner may be open to interpretation under the 1996 Act but certainly cannot be an argument which the petitioner can leverage to the continuing detriment of the respondent-claimant.

26. The impugned order contains findings which are justified in the facts of the case. The Trial Court has not committed any illegality, patent or otherwise, in rejecting the C.O.P. (Appeal) filed by the petitioner against the Council's order dated 15.05.2024. Needless to say, there is also no instance of grave injustice warranting correction of the impugned order. We also do not find the order to be perverse or unreasonable so as to

invoke the power under Article 227 of the Constitution for granting the relief claimed in the Civil Revision Petition. In fact, we hold that the Civil Revision Petition is not maintainable at all.

27. C.R.P.No.2243 of 2024, along with all connected applications, is dismissed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

M.G.PRIYADARSINI, J

Date: 14.08.2024

Note: L.R. copy to be marked

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