IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8727 of 2019

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PAHAL ENGINEERS.

Versus

THE GUJARAT WATER SUPPLY AND SEWERAGE BOARD

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Appearance:
MR SANJAY MEHTA with N R MEHTA(7794) for the Petitioner(s) No. 1
MR DG CHAUHAN(218) for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2
RONAK D CHAUHAN(7709) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Date : 14/06/2022

ORAL ORDER

1. The present writ-application is filed under Article 226 of the Constitution of India seeking the following reliefs :-

> *"(A) The Hon'ble Court be pleased to admit and entertain this petition.*
>
> *(B) The Hon'ble Court be pleased to allow this Petition and issue a writ of Certiorari and any other writ, order or direction, as may be deemed proper by this Hon'ble Court quashing and setting aside the order passed by the Respondent No. 2, being Order dated 24.04.2019, in the arbitration proceedings pending before the Respondent No. 2, and direct the Respondent No.2 to take on record the duly affirmed and verified Claim Statement, a copy of which is annexed as "Annexure - B" to the petition and proceed further with the*

Arbitration Proceedings from the stage where the impugned order came to be passed, in accordance with law.

(C) Pending admission, hearing and final disposal of the present petition the Respondent No. 2, be restrained from proceeding further with the Arbitration Proceeding, as notified in the Notice dated 25.04.2019, annexed as "Annexure - C" to the present petition.

(D) Ad - Interim reliefs, in terms of para 'C' above, be granted in favour of the Petitioner.

(E) Any other and further orders that are deemed necessary in the interests of justice may be passed."

2. The facts as stated by the writ-applicant germane to the adjudication of the present writ-application read thus :-

2.1 The writ-applicant herein approached this Court for appointment of an arbitrator to resolve the disputes arising out of the contract bearing No.B-1/83 of 2012-2013, under section 11 of the Arbitration and Conciliation Act, 1996, being I.A.A.P. No. 138 of 2017 whereby by order dated 08.12.2017 the respondent No. 2, Mr. L.C. Kanani, Retd. Member Secretary of the respondent Board came to be appointed as the Sole Arbitrator to resolve the disputes between the parties.

2.2 After preliminary meeting of the Arbitral Tribunal held

on 20.01.2018, wherein, as per mutual agreement between the parties, the sole arbitrator took certain decisions. The minutes of the said meeting dated 10.01.2018 are produced at "Annexure – D" to the petition.

2.3 The writ-applicant filed its Statement of Claim before the learned Tribunal on 09.03.2018, along with supporting documents, as per the directions of the Tribunal. As against that, the respondent No. 1 herein filed its written statement to the Claim statement along with the Counter Claim against the writ-applicant on, 25.04.2018.

2.4 In response to the written statement / counter claim filed by the respondent No.1 the writ-applicant filed its Rejoinder Affidavit to the Written statement and reply to the counter claim on 17.05.2018. The writ-applicant preferred an application on 05.09.2018, for production of documents and for amendment of the claim statement which came to be allowed by the learned sole arbitrator on 22.09.2018.

2.5 Final arguments of the claimants commenced by the learned advocate on or about 27.10.2018 which concluded on 23.02.2019. The learned advocate for the respondent No.1 commenced his arguments on 23.02.2019 and during such course of the said arguments, the learned advocate appearing on behalf of the respondent No.1; for the first time raised an oral objection regarding the maintainability of the claim

statement of the writ-applicant contending that the same is not verified and supported by affidavit and therefore the same is not maintainable in the eyes of law.

2.6 The sole arbitrator gave certain directions whereby, the writ-applicant was directed to file claim statement before the Tribunal with supporting documents and that in such directions the sole arbitrator had not directed any of the parties to submit their pleadings on affidavit. Unless and until so decided as a procedure by the learned Arbitral Tribunal, it would not be necessary or a requirement to submit the pleadings on affidavit or upon verification and under the said understanding, the claim statement would not be submitted along with either Affidavit or Verification.

2.7 The sole arbitrator ignoring the contentions raised by the writ-applicant and ignoring the provisions of law as well as the settled principles of law and ignoring the fact that the writ-applicant rectified the so called irregularity/defect by filing affirmed and verified claim statement on 8.4.2019 and tendered the same by sending by Speed Post to both the respondents, on 9.4.2019 which was received by the respondent No.1 on 10.4.2019 and by the respondent No.2 on 11.4.2019. The arbitrator rejected the claim statement of the writ-applicant and further by order dated 24.4.2019 and by further Minutes dated 25.4.2019 kept the proceedings for respondent's counter claim on 2.5.2019. The impugned order

dated **24.4.2019** reads thus :-

"9. I have gone through the preliminary objection / submission made by the respondent Board; I have also gone through the general rules of procedure and guide lines for conduct of Arbitration proceedings 2016. I have also gone through the reply filed by the claimant, submissions of Mr. Mehta Ld. Advocate and the judgements cited by him. It appears from the record that,

a) The first claim statement was filed by the claimant on 09.03.2018 was not verified and affirmed.
b) The Amended claim statement was filed on 22.09.2018 which was allowed on 27.09.2018 was not verified and affirmed.
c) The last and final 3rd amended statement of claim (as per the order of the tribunal dated 27.09.2018) dated 05.04.2019 presented and filed before the tribunal on 06.04.2019, which was also not verified and affirmed as required under law.

All the three claim statements filed by the claimant are not verified by an affidavit in the manner and form prescribed in the Appendix of the schedule. The claimant is failed to cure the defect in the claim statements at every stage. Thus, it cannot be said to be pleadings or claim statement.

10. It is clear from Rule 15A (4) that if the pleadings are not verified in the manner provided under Sub- Rule (1), the party

shall not be permitted to rely on such pleadings as evidence or any of the matter set out therein. This tribunal has jurisdiction to strikeout a pleading which is not verified by a statement of truth, namely, affidavit set out in appendix of the schedule. The claimant failed to file claim statement on affidavit till the end of hearing on 06.04.2019.

11. It is evidently clear that, for a long period of 15 months the claimant did not care to cure the defects of verifying the pleadings and did not file on affidavit on oath in the manner and form prescribed in appendix. Thus, it is not valid pleading as required under law. Mr. Mehta argued that it is a procedural defect and it can be rectified /cured by filing affidavit in support of the claim at any stage. Even if the contention of Mr. Mehta, Ld. Advocate is accepted then also the claimant is failed to rectify the procedural defect and has not verified and filed affidavit as required under law. The third amended statement of claims filed by the claimant with simply notary stamp and signature correcting the date 05.04.2019 in place of 09.03.2018 is also without verification and without affidavit on oath in support of the pleadings. Thus, there is no valid and legal pleading on record.

ORDER

In my view, there is no pleading in the eyes of law and it is not permissible in law to rely upon such non verified and non affirmed pleadings. I have considered the judgements produced

by Mr. Sanjay Mehta, Ld. Advocate in support of his submission. There is no compliance with Order VI Rule 15 (4) and amended Rule 15A of the Code of Civil Procedure. Under the circumstance, the application filed by the respondent Board raising preliminary submission / objection is allowed. The pleadings of the claimant without verification and affidavit cannot be accepted and is hereby strikeout and the claim statement is rejected.

Date: - 24/04/2019 *(L.C. Kanani)*
Place:Ahmedabad *Sole Arbitrator"*

2.8 Being aggrieved by the impugned order dated 24.4.2019 the writ-applicant is constrained to approach this Court under Article 226 of the Constitution of India.

2.9 By order dated 6.5.2019 while issuing notice interim relief came to be granted in favour of the writ-applicant which reads thus :-

"1. Draft amendment is permitted to be carried out forthwith. Upon the amendment being carried out, NOTICE returnable on 24-06-2019.

2. Learned Advocate for the petitioner submitted that this is regarding settled position of law of curing defect by putting the pleadings on statement of claim on Affidavit, which the petitioner subsequently carried out by even serving the copy of such duly affirmed the statement of claim upon the

respondents. The Arbitrator has proceeded to reject the claim merely on such ground and on one hand, the Arbitrator has complied with the provisions of C.P.C. to the ongoing arbitration proceedings and on the other hand, has not accepted the submission of the petitioner about the curable defect as provided under C.P.C.

3. In view of the aforesaid, by way of interim relief till the returnable date, the respondent No. 2 is restrained from the proceedings, pursuant to the Notice dated 25-04-2019 and subsequent Notice dated 29-04-2019.

Direct service is permitted."

2.10 By order dated 6.1.2020 the interim relief granted earlier came to be confirmed and rule came to be issued.

3. Heard Mr. Sanjay Mehta, the learned advocate appearing for Mr. N. R. Mehta, the learned advocate appearing for the writ-applicant and Mr. D. G. Chauhan, the learned advocate appearing for the respondent No.1. The respondent No.2 though served has not appeared.

Submissions on behalf of the writ-applicant :-

4. Mr. Sanjay Mehta, the learned advocate appearing for Mr. N. R. Mehta, the learned advocate appearing for the writ-applicant relied on the provisions of Section 19 of the Arbitration & Conciliation Act that the Arbitral Tribunal shall

not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 and that the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings.

4.1 Mr. Mehta, the learned advocate further submitted that the respondent No.2 has not even mentioned in the entire impugned order that the respondent No.2 has received the duly affirmed and verified claim statement which was affirmed and verified on 8.4.2019 and received by the respondent No.2 on 9.4.2019 by E-mail and on 11.4.2019 by Speed Post and thus by not acknowledging the same passed the impugned order dated 24.4.2019 that the defect has not been cured by the writ-applicant which is incorrect and that itself results in the impugned order being perverse, arbitrary and illegal.

4.2 Mr. Mehta, the learned advocate submitted that the defect of not affirming or not verifying claim statement is purely an irregularity and curable defect which can be cured at a later stage for which an opportunity has to be given to the party and which has in fact been cured by the respondent by submitting duly affirmed claim statement on 8.4.2019 which was prior to the passing of the impugned order.

4.3 Mr. Mehta, the learned advocate submitted that the respondent No.2 failed to give an opportunity to the writ-applicant to cure the said irregularity/defect in ignorance of

settled principles of law as well as provisions of law and in such ignorance the respondent No.2 rejected the claim statement which is unjust and contrary to the legal principles. He further submitted that the objections raised by the respondent No.1 at a belated stage, could not be tenable, not only because of delay but because objections can be said to be hyper technical and the defect as complained was cured and the said defect could not be said so fatal to result into rejection of the claim statement of the writ-applicant.

4.4 In view of above, it was submitted by Mr. Mehta, the learned advocate that the impugned order dated 24.4.2019 passed by the respondent No.2 be quashed and set aside and further direct the respondent No.2 to take on record the duly affirmed and verified claim statement duly produced at Annexure-B and proceed further with the arbitration proceedings from the stage where the impugned order came to be passed in accordance with law.

4.5 Mr. Mehta, the learned advocate relied on the following decisions :-

(1) 2014 (2) GLR 1161 19, 20 and 21

(2) LPA No.308/2020 Para 17, 7, 35 and 36

(3) (2006) 2 SCC 777 Para-49

(4) (2014) 11 SCC 366 Para-9

(5) 1996 (1) GLH 977 Para 11, 14, 22 and 25

(6) AIR 1997 SC Para 11, 12 and 13

Submissions on behalf of the respondent No.1 :-

5. Heard Mr. D. G. Chauhan, the learned advocate appearing for the respondent Board. Mr. Chauhan, the learned advocate submitted that the present writ-application under Article 226/227 of the Constitution of India is not maintainable against the order passed by the respondent No.2 in arbitration proceedings in view of the provisions of Section 34 of the Arbitration & Conciliation Act, 1996. He submitted that this Court may not exercise its extraordinary jurisdiction under Article 227 of the Constitution of India over the order passed by the learned Arbitrator appointed under the provisions of Arbitration & Conciliation Act.

5.1 Mr. Chauhan, the learned advocate submitted that the writ-applicant be relegated to the alternative remedy and not to entertain the present writ-application. He submitted that the writ-applicant has deliberately submitted the relevant and material facts that three different statements of claim produced by the writ-applicant are without verification and without affidavit-in-support of the pleadings and, therefore, they are no pleadings in the eye of law.

5.2 Mr. Chauhan, the learned advocate submitted that the

writ-applicant is trying to mislead this Court and the respondent has shown that an affirmed copy of statement of claim was submitted on 11.4.2019. In fact, the hearing of the arbitration proceedings was concluded on 6.4.2019 and on the same day the matter was kept for orders.

5.3 Mr. Chauhan, the learned advocate has referred to the relevant dates with regard to the proceedings before the Arbitral Tribunal which are produced thus :-

Date	Particulars
08.12.2017	This Hon'ble Court by consent of the parties appointed Shri L. C. Kanani as a Sole Arbitrator.
20.01.2018	The Learned Arbitrator fixed the programme for holding arbitration proceedings.
09.03.2018	The petitioner – orig. claimant filed 1st unverified and unaffirmed claim statement.
25.04.2018	The respondent – Board submitted written statement in reply to claim statement duly verified and affirmed alongwith relevant documents as evidence.
11.08.2018	The Learned Senior Advocate Shri D. D. Vyas appeared for the claimant and argued the matter.
22.09.2018	The petitioner – orig. claimant produced 2nd amended unverified and unaffirmed claim statement.

27.10.2018	The petitioner – orig. claimant started his arguments on invalid and untenable pleadings and the arguments were part heard.
23.02.2019	The arguments of the petitioner – orig. claimant was concluded.
23.02.2019	On 23.02.2019 itself the respondent – Board raised objection about tenability of the statement of claim (pleadings) as the same were not duly verified on affidavit as required under the law.
05.04.2019	The Learned Advocate for the Board submitted an application and raised objection that the claim statement is not tenable in law as the same are not duly verified and affirmed by the petitioner – orig. claimant. It has no legal validity in the eye of law.
06.04.2019	The petitioner – orig. claimant filed reply to the application and both the parties argued the matter and concluded their arguments respectively.
06.04.2019	After conclusion of the arguments, the matter was kept for order by the Learned Arbitrator.
24.04.2019	The order is pronounced by the Learned Arbitrator and the Learned Arbitrator has strike out the pleadings of the claimant.

5.4 Mr. Chauhan, the learned advocate appearing for the respondent No.1 submitted as under on the merits of the

matter :-

(a) Mr. Chauhan, the learned advocate appearing for the respondent No.1 submitted that the Order VI Rule 15(4) read with Rule 15(A) of the Civil Procedure Code contemplates that every pleadings in a commercial dispute shall be verified by the affidavit in the manner and form prescribed in this schedule.

(b) Mr. Chauhan, the learned advocate submitted that the said provision i.e. Order VI Rule 15(4) are mandatory and requires to be complied with by the claimant. He submitted that after considering the provisions of Code of Civil Procedure and general principles of pleadings the learned Arbitrator – respondent No.2 has rightly, legally and validly rejected the pleadings as all the three different statements of claim filed by the writ-applicant on 9.3.2018, 22.9.2018 and 6.4.2019 respectively were not verified by affidavit. No affidavit was filed by the claimant as required under the law and the writ-applicant has cured the defect by affirming the pleadings. Further the Arbitrator had not denied the said pleadings. However, reiterated that the arguments were concluded on 6.4.2019 and after realizing that the claim statement would be rejected as it was not legal and valid, a separate defective affidavit was affirmed on 8.4.2019 and sent to the learned Arbitrator on 11.4.2019 through Speed Post.

(c) Mr. Chauhan, the learned advocate submitted that this was also defective and not affirmed as required under the law. He submitted that Article 4 of the Gujarat Stamp Act, 1958 provides that affidavit shall be on proper stamp of Rs.20/-. Even today the pleadings are defective and not in accordance with the provisions of law.

5.5 Mr. Chauhan, the learned advocate lastly submitted that the order passed by the learned Arbitrator – the respondent No.2 is legal valid and in accordance with the provisions of law.

5.6 Mr. Chauhan, the learned advocate submitted that Section 19 of the Arbitration and Conciliation Act provides for "determination or rules of procedure". The said section does not say that Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1972. The section does not say that the pleadings shall be verified by an affidavit. He submitted that the respondent No.2 is legally bound to take judicial notice of substantive laws, recognize legal principle, practice of civil law, natural justice, fair play and equity, unless agreed otherwise.

5.7 Mr. Chauhan, the learned advocate submitted that in the present case the learned Arbitrator had not determined the

rules of procedure to conduct the proceedings. Filing of pleadings on verification by an affidavit is mandatory. The Code of Civil Procedure is a substantive law in force in India. Placing reliance on Section 36 of the Arbitration & Conciliation Act Mr. Chauhan, the learned advocate submitted that the award passed by the learned Arbitrator can only be enforced under the provisions of the Civil Procedure Code, 1908 and submitted that it was open for the learned Tribunal to rely on the provisions of the Code.

5.8 Mr. Chauhan, the learned advocate relied on the following decisions :-

(1) SCA No.12993/2016 with SCA No.12834/2016 Para-19

(2) 2020 (4) GLR 2906 Head Note, Para 14, 15 and 16

(3) (2014) 7 SCC 255 Para 14, 15, 16, 17 and 18

(4) (2015) 5 SCC 423

Analysis :-

6. The writ-applicant and the respondent No.1 entered into the arbitration proceedings to resolve the disputes between the parties arising out of the contract bearing No.B-1/83 of 2012-13 under Section 11 of the Arbitration & Conciliation Act, 1996 being I.A.A.P. No.138 of 2017. By order dated 8.12.2017 the respondent No.2 Mr. L. C. Kanani, Retired Member Secretary of the respondent Board came to be appointed as

Sole Arbitrator to resolve the dispute between the parties. During the course of arbitration proceedings, the writ-applicant filed its statement of claim before the learned Tribunal on 9.3.2018 alongwith all the supporting documents. The respondent No.1 filed written statement to the said claim statement alongwith counter claim against the writ-applicant on 25.4.2018. The writ-applicant filed its rejoinder affidavit to the written statement on 17.5.2018 and reply to counter claim of 17.5.2018. Issues came to be framed by the Arbitral Tribunal. The writ-applicant preferred an application for production of documents and amendment of claim on 5.9.2018 which came to be allowed by the respondent No.2 by order dated 22.9.2018. After the present writ-applicant i.e. the claimant's arguments came to be concluded on 23.2.2019 and the learned advocate for the respondent No.1 commenced his arguments on 23.2.2019, the learned advocate appearing on behalf of the respondent No.1 for the first time raised preliminary objection regarding maintainability of claim petition of the writ-applicant contending that the same was not verified and supported with affidavit and, therefore, the same was not maintainable in eye of law which is duly produced at Annexure-E to the petition.

6.1 The learned Tribunal by the impugned order dated 24.4.2019 passed an order allowing the preliminary objections raised by the respondent Board on the ground that in the

statement of claim of the writ-applicant the pleadings were non-verified and non-affirmed and, therefore, the pleadings were non est in the eye of law. The said pleadings of the claimant being without verification and affidavit could not be accepted and consequently the respondent No.2 – Arbitrator proceeded to strike out the same and the claim statement came to be rejected.

6.2 The respondent No.1 herein has produced on record the Minutes of the 12th meeting held on 5.4.2019, wherein the respondent No.1 raised preliminary objection before the learned Tribunal in the 11th hearing on 23.2.2019 raising preliminary objection against the maintainability of the claim statement under the provisions of Order VI, more particularly Rule 54 that there is no verification of pleadings and the pleadings are not supported by affidavit on oath and thus the claim statement of the claimant is legally not maintainable.

6.3 It also transpires from the Minutes produced on record at page-123, the learned advocate appearing for the claimant submitted reply to the said application raising preliminary objection as regards maintainability of the claim alongwith amended claim statement, which was submitted by the claimant before the learned Arbitral Tribunal on 22.10.2018 requesting the learned Arbitral Tribunal to take the same on record. It also appears that the learned advocate appearing for

the writ-applicant/claimant opposed the application filed by the respondent No.1 based on decision/authorities of respective Courts on interpretation of Order VI Rule 54 of the Code and on Section 28 of the Arbitration & Conciliation Act, 1996. Consequently by the impugned order dated 24.4.2019 the Arbitral Tribunal rejected the claim statement of the writ-applicant accepting the preliminary objection/submission on the ground that the pleadings of the claimant being without verification and affidavit cannot be accepted and, therefore, struck down and the claim statement came to be rejected.

7. **Position of Law** :-

(a) In the case of **Union of India Versus M/s. Varindera Constructions Ltd. Etc.** reported in **JT 2018 (4) SC 550, the Hon'ble Supreme Court held thus :-**

> *"8) The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996. In order to make arbitration process more effective, legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as*

provided by this Act, the court is entitled to intervene in the dispute which is subject matter of arbitration. Such intervention may be before, at or after the arbitration proceeding, as the case may be. In short, court shall not intervene with the subject matter of arbitration unless injustice is caused to either of the parties."

(b) In the case of **S.B.P. and Company versus Patel Engineering Ltd. and others** reported in **(2005) 8 SCC 618**, the scope of power of jurisdiction of High Court under Article **226** and **227** of the Constitution of India has been analysed wherein the Hon'ble Supreme Court has observed in paragraph No.**47** which reads thus :-

47. We, therefore, sum up our conclusions as follows:

i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.

ii) The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court.

(iii) In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated, judge would be that of the Chief Justice as

conferred by the statute.

(iv) The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the
request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the judge designated would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the judge designate.

(v) Designation of a district judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(vii) Since an order passed by the Chief Justice of the High Court or by the designated judge of that court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.

(ix) In a case where an arbitral tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the arbitral tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.

(x) Since all were guided by the decision of this Court in Konkan Railway Corporation Ltd. and Anr. v. Rani Construction Pvt. Ltd. and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or arbitral tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending Page 1824 before them as on this date will stand transferred, to be dealt with by the Chief Justice of the concerned High Court or a Judge of that court designated by the Chief Justice.

(xii) The decision in Konkan Railway Corporation Ltd. and Anr. v. Rani Construction Pvt. Ltd. is overruled."

(c) In the case of **Lalitkumar V. Sanghavi (D) Th. LRs Neeta Lalit Kumar Sanghavi & Anr. Versus Dharamdas V. Sanghavi & Ors.** reported in **2014 (7) SCC 255,** the Hon'ble Supreme Court observed in paragraph No.8 which reads thus :-

"8. Within a couple of weeks thereafter, the original applicant died on 7.10.2012. The question is whether the High Court is right in dismissing the application as not maintainable. By the judgment under appeal, the Bombay High Court opined that the remedy of the appellant lies in invoking the jurisdiction of the High Court under Article 226 of the Constitution. In our view, such a view is not in accordance with the law declared by this Court in S.B.P. & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618. The relevant portion of the judgment reads as under:

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. That need not, however, necessarily mean

that the application such as the one on hand is maintainable under Section 11 of the Act."

(d) In the case of **Bhaven Construction through Authorized Signatory Premjibhai K. Shah V/s. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr.** reported in **2021 (1) Scale 327 paragraph nos.17.1 and 18 reads thus :-**

"17.1 It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear bad faith shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

18. In this context we may observe M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited, (2019) SCC Online SC 1602, wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analyzed as under:

"15. Most significant of all is the non- obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the

Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)

16. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

(e) This Court has also followed the above referred principles laid down by the Hon'ble Supreme Court in **GTPL Hathway Ltd. Versus Strategic Marketing Pvt. Ltd.** in paragraph Nos.14 and 15, which reads thus :-

> *"14. In view of aforesaid conspectus of law, and considering the provisions of the Act, 1996, the order passed by the Arbitration Tribunal during the course of Arbitration cannot be challenged by the petitioner under Articles 226 and/or 227 of the Constitution of India when the constitution bench of the Apex Court in case of M/s. S.B.P. and Co. v. M/s. Patel Engineering Ltd. and Anr.(supra) has disapproved the stand that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Articles 226 and 227 of the Constitution of India and has categorically held that such intervention by the High Court is not permissible. The Apex Court in case of M/s. Deep Industries Limited v. Oil and Natural Gas Corporation (supra) has held that it is also important to notice that the seven–Judge Bench has referred to the object of the Act being that of minimizing judicial intervention and that this important object should always be kept in the forefront when a 227 petition is being disposed of against proceedings that are decided under the Act,1996 and that the policy of the Act is speedy disposal of arbitration cases as the Act,1996 is 'self–contained' Code and deals with all the cases.*

> *15. In view of aforesaid settled legal proposition, considering the policy, object and the provisions of the Act,1996, an order passed during arbitration proceedings by the Arbitration Tribunal cannot be challenged under Articles 226 and 227 of the Constitution of India as the Act,1996 is a special act and a self−contained code dealing with arbitration. Therefore, the impugned order of the Arbitration Tribunal deciding the preliminary objection raised by the petitioner cannot be challenged under Article 226 or 227 of the Constitution of India."*

(f) In the case of Kelkar & Kelkar vs. Hotel Pride Executive Pvt. Ltd., Civil Appeal No.3479 of 2022 decided on 4.5.2022 paragraphs 1, 1.1, 1.2, 1.3 and 2 read thus :-

> *"1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.08.2015 passed by the High Court of Judicature at Bombay in Writ Petition No.4442 of 1999 by which the High Court, in exercise of Articles 226 and 227 of the Constitution of India, has allowed the said writ petition preferred by the respondent herein and has quashed and set aside the award passed by the Signature Not Verified Digitally signed by learned Arbitrator and has remanded the matter for de novo consideration, the original claimant has preferred the present appeal.*

1.1 The dispute arose between the parties which was the subject matter of arbitration before the learned Arbitrator. On the learned Arbitrator declaring the award, on an application filed by the original claimant – original plaintiff vide order passed in Exhibit 10 in Regular Civil Suit No.1022/1996, passed a decree in terms of the award made by the learned Arbitrator. By the said award the original respondents were directed to pay to the original claimants Rs.12,46,663/.

1.2 Feeling aggrieved and dissatisfied with the award made by the learned Arbitrator as well as the order passed by the learned trial Court passed as per Exhibit 10 in making the award a decree, instead of preferring appeals under the Arbitration Act, 1940 (hereinafter referred to as 'the Act'), preferred a writ petition before the High Court under Articles 226 and 227 of the Constitution of India mainly on the ground that, before the learned Arbitrator was appointed, there was non-compliance of Clause 56 of the Articles of Agreement and the procedure as required under Clause 56 was not followed. By the impugned judgment and order the High Court has set aside the award made by the learned Arbitrator on the ground that the procedure as required under Clause 56 had not been followed. Consequently, the High Court has remanded the matter for de novo consideration.

1.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original claimant has preferred the present appeal.

2. Having heard learned counsel appearing on behalf of the respective parties and considering the impugned judgment and order passed by the High Court, we are of the opinion that against the award made by the learned Arbitrator made under the Act and against an order passed by the learned trial Court making the award a decree and without availing the alternative statutory remedy available by way of appeal under the provisions of the Act, the High Court ought not to have entertained the writ petition under Articles 226 and 227 of the Constitution of India. When the statute provides a further remedy by way of appeal against the award and even against the order passed by the learned trial Court making the award a decree of the court, the High Court ought not to have entertained the writ petition and ought not to have set aside the award, in a writ petition under Articles 226 and 227 of the Constitution of India. In that view of the matter the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside."

7.1 In view of the ratio as laid down by the Honourable Apex Court as well as this Court the interference in arbitration proceedings at any stage is impermissible in view of the self-

sufficiency of the Arbitration Act. In the case of **Bhaven Corporation (Supra)** wherein also the Apex Court has been pleased to observe that the interference in arbitration proceedings at any stage is absolutely unwarranted and the remedies as available under the Arbitration Act are the ones which are required to be availed and exhausted by the parties rather than deviating to writ or any other jurisdiction.

7.2 From the impugned order dated 24.04.2019 it clearly transpires that the statement of claim of the writ-applicant has been rejected which essentially means the claim of the claimant/writ applicant stands closed and gives final closure to his claim. The claim as claimed for by the writ-applicant stands rejected. The nature of order and the consequence it entails is important to determine the remedy against such an order. The impugned order in the present case is an order which concludes the claim of the claimant/writ-applicant against the respondent No.1.

7.3 This Court has also taken into consideration the provisions of Section 2(1)(c) which defines "award" and also the provisions of Section 25 and 32 of the Act. On harmonious reading of the same it can be clearly concluded that any order which ends to the claim of the claimant is clearly an order which is assailable under the provisions of Arbitration and Conciliation Act and the remedy lies by availing statutory

remedy under the Arbitration and Conciliation Act.

7.4 The writ applicant has raised the contention that the rejection of claim on such ground of procedural irregularity is not covered under the arbitration act and hence the remedy as to challenge the award under Section 34 of the Act is not available to the writ-applicant. The said contention cannot be accepted as the proceedings so far as the writ-applicant is concerned has attained finality by the impugned order dated 24.4.2019 passed by the learned Arbitrator and the claim of the writ applicant stands rejected. The proceedings having attained finality the only recourse available to the writ applicant is by challenging the impugned order by availing statutory remedy under the provisions of the Arbitration Act. The contention of the writ applicant that non-interference by this Court under Article 226/227 would render the writ-applicant remedy-less is not acceptable in view of the fact that this Court is inclined to relegate the writ-applicant to avail statutory remedy under the Act and it is open for the writ-applicant to challenge the same before the appropriate forum.

7.5 In view of the settled legal position with regards to non-interference in arbitration proceedings, this Court is not inclined to assess the writ application on merits in view of the fact that by the impugned order dated 24.4.2019, the statement of claim of the writ applicant has been rejected and

the aforesaid can be challenged by availing statutory remedy under the provisions of Arbitration Act.

7.6 This Court is also conscious of the fact that the proceedings have remained pending for such time before this Court and hence the said period of pendency shall stand excluded for the purpose of counting the period of limitation if the writ-applicant were to challenge the impugned order before the appropriate forum.

7.7 The reliance placed by the learned advocate appearing for the writ-applicant on the judgments as referred to above are not dealt with in view of the fact that the ratio as laid down in all the judgments under Order VI Rule 14 of Civil Procedure Code deal with the defects in signing, verification of pleadings are procedural irregularity and the same can be cured and would not be fatal. The said submission is not dealt with in view of the fact that this Court has otherwise not assessed the writ-application on merits in view of the fact that writ-applicant has availability of statutory efficacious alternative remedy. However, it is open for the writ-applicant to raise the aforesaid contentions before appropriate forum.

7.8 It is open for the writ-applicant as also the respondent to raise all the contentions as may be available under the law before the appropriate forum.

8. The present writ-application stands disposed of. Rule is discharged. Interim relief stands vacated.

(VAIBHAVI D. NANAVATI,J)

After pronouncement of this order Mr. N. R. Mehta, the learned advocate for the writ-applicant requested to stay this order for two weeks. Request as prayed for is declined.

(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED