

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:68529

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 4762 of 2024

Petitioner :- U.P. Awas Evam Vikas Parishad, Thru. Housing
Commissioner, Lucknow And 2 Others

Respondent :- M/S Universal Contractors And Engineers Ltd., G.B.
Nagar Thru. Authorized Signatory

Counsel for Petitioner :- Puneet Chandra

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Puneet Chandra, the learned counsel for the petitioner and perused the records.
2. By means of the instant petition under Article 227 of the Constitution of India the petitioners have challenged the validity of an order dated 29.08.2024, passed by the Arbitral Tribunal consisting of a Sole Arbitrator in an arbitration case between M/s Universal Contractors and Engineers Pvt. Ltd. Vs. U.P. Awas Evam Vikas Parishad, whereby an application filed by the opposite party (M/s Universal Contractors and Engineers Pvt. Ltd.) for being provided with copy of the complete contract bond and that of final bill, has been allowed. Further, the prayer for change of name of the claimant from 'M/s Universal Contractors and Engineers Private Limited' to 'M/s Universal Contractors and Engineers Limited' has also been allowed, as the claimant company was previously having the status of private limited entity but subsequently its status has changed to a public limited company. Thereafter, the petitioners filed an application for recall of this order which request has been rejected by means of an order dated 21.09.2024 and the petitioners have challenged validity of the said order also.

3. In ***SBP & Company Vs. Patel Engineering Ltd. and another: (2005) 8 SCC 618*** a Constitution Bench of Hon'ble Supreme Court has held as follows:

"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.

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."

4. The above mentioned law laid down by a Constitution Bench of the Hon'ble Supreme Court has been followed in ***Deep Industries Limited Vs. Oil and Natural Gas Corporation Limited and another: (2020) 15 SCC 706***, in which the Hon'ble Supreme Court referred to the statutory provisions contained in Sections 5 and 37 of Arbitration and Conciliation Act, which provide as follows:

"5. Extent of judicial intervention.- 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.

37. Appealable orders.- (1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.-

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

5. The Hon'ble Supreme Court in the case of ***Deep Industries (Supra)*** held as under:

"16. 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).

17. 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.

...

23. We reiterate that the policy of the Act is speedy disposal of arbitration cases. The Arbitration Act is a special act and a self contained code dealing with arbitration. This Court in Fuerst Day Lawson Limited (supra), has specifically held as follows:

89. It is, thus, to be seen that Arbitration Act, 1940, from its inception and right through to 2004 (in P.S. Sathappan v. Andha Bank Ltd., (2004) 11 SCC 672 was held to be a self-contained code. Now, if the Arbitration Act, 1940 was held to be a self-contained code, on matters pertaining to arbitration, the Arbitration and Conciliation Act, 1996, which consolidates, amends and designs the law relating to arbitration to bring it, as much as possible, in harmony with the UNCITRAL Model must be held only to be more so. Once it is held that the Arbitration Act is a self-contained code and exhaustive, then it must also be held, using the lucid expression of Tulzapurkar, J., that it carries with it

"19....a negative import that only such acts as are mentioned in the Act are permissible to be done and acts or things not mentioned therein are not permissible to be done".

In other words, a letters patent appeal would be excluded by the application of one of the general principles that where the special Act sets out a self-contained code the applicability of the general law procedure would be impliedly excluded."

What becomes clear is that had the High Court itself disposed of the first appeal in the present case, no article 227 petition could possibly lie - all that could perhaps have been done was to file an LPA before a Division Bench of the same High Court. This, as we have seen, has specifically been interdicted by Fuerst Day Lawson Limited (supra). Merely because, on the facts of this case, the first appeal was disposed of by a court subordinate to the High Court, an article 227 petition ought not to have been entertained.

24. Mr. Rohatgi is also correct in pointing out that the legislative policy qua the general revisional jurisdiction that

is contained by the amendments made to Section 115 C.P.C. should also be kept in mind when High Courts dispose of petitions filed under under article 227. The legislative policy is that no revision lies if an alternative remedy of appeal is available. Further, even when a revision does lie, it lies only against a final disposal of the entire matter and not against interlocutory orders. These amendments were considered in Tek Singh vs. Shashi Verma and Another, 2019 SCC OnLine SC 168 in which this Court adverted to these amendments and then stated:

"5..... A reading of this proviso will show that, after 1999, revision petitions filed under Section 115 CPC are not maintainable against interlocutory orders.

6..... Even otherwise, it is well settled that the revisional jurisdiction under Section 115 CPC is to be exercised to correct jurisdictional errors only. This is well settled. In D.L.F. Housing & Construction Company Private Ltd., New Delhi v. Sarup Singh and Others (1970) 2 SCR 368 this Court held:

"5.....The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words "illegally" and "with material irregularity" as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on

the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal." SCR at Pg.373)."

6. In view of the aforesaid law laid down by the Hon'ble Supreme Court the petition filed under Article 227 of the Constitution of India challenging the order passed by the Arbitral Tribunal directing the petitioners to provide a copy of the contract between the parties and the final bill to the claimant, cannot be entertained. For the same reason, the order regarding change of name of the claimant also cannot be challenged by filing a petition under Article 227 of the Constitution of India.

7. In view of the aforesaid discussion, the petition is not maintainable and the same is ***dismissed*** as such. In case any occasion arises for the petitioner for filing an application under Section 34 of Arbitration and Conciliation Act, all the pleas will be upon for the petitioner to be taken in that application.

[Subhash Vidyarthi, J.]

Order Date :- 3.10.2024
Ram.