

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

AA No. 2/2023
CM No. 1510/2023

Mahant Subash Shah

....Appellant(s)/ Petitioner(s)

Through :- Mr. U K Jalali, Sr. Advocate with
Ms. Shivani Jalali, Advocate

V/s

Kulbir Singh &Anr

....Respondent(s)

Through :- None

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT
31.05.2023

(ORAL)

1. The instant appeal has been filed by the appellant herein, against order dated 15.02.2023, under an in terms of Section 37 of the Arbitration and Conciliation Act 1996(for short '**the Act**') for setting aside of order dated 15.02.2023 (for short '**the impugned order**') passed by the Court of Additional District Judge, Jammu (for short '**the Court below**') in case titled as "*Kulbir Singh vs Mahant Subah Shah.*"
2. Upon coming up this appeal for consideration, the counsel for the appellant came to be directed to address on the question of maintainability of the appeal in the first instance.
3. Mr. U. K. Jalali, Senior Advocate appearing for the appellant, in response to the question of maintainability of the instant appeal would contend that though the order under challenge in the instant appeal is not provided to be an

appealable order under Section 37 of the Act of 1996, yet the same can be treated and converted either into a revision petition or else a petition under Article 227 of the Constitution. The counsel for the appellant in support of his submissions relied upon to the judgments of the Apex Court passed in case titled as “*(Col.) Anil Kak (Retd.) vs Municipal Corporation, Indore, reported in 2005 (12) SCC 734*” and in case titled as “*Kiran Devi vs The Bihar State Sunni Wakf Board & Ors, reported in AIR 2021 SC 195*”. Besides the aforesaid judgments, the judgment passed by this Court in case titled as “*President D.A.V College Managing Committee vs Poonam Mahajan and Ors., reported in Jammu Kashmir Law Times, 2018 (3) 646*” also came to be relied upon by the counsel.

4. Before proceeding to deal with the submissions made by Mr. Jalali, a brief background of the case hereunder becomes imperative.

5. The parties herein for resolving their disputes with respect to various properties, appointed respondent 2 herein as Sole Arbitrator on the basis of an Arbitration Clause contained in an agreement having been entered into between the parties. The nominated Arbitrator passed an Award on 10.02.2013. Aggrieved of the said Award, the respondent-1 herein filed an application under Section 34 of the Act accompanied with an application for condonation of delay before the court below.

6. The Court below upon considering the aforesaid application for condonation of delay and taking into consideration response thereto from the non-applicant appellant herein, condoned the delay in terms of the impugned order allowing the application for condonation of delay.

7. Having regard to the nature of issue being dealt with by this Court, a reference to Section 37 and Section 5 of the Act becomes necessary.

“S.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) Granting or refusing to grant any measure under Section 6:

(b) 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 of the arbitral tribunal-

(a) Accepting the plea referred to 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.”

What emanates from a plain reading of Section 37 of the Act is that the legislature by using expression an appeal shall lie from the orders provided therein ‘**and from no others**’ has taken away the right to appeal against all orders except specified in Section 37 (1) and (2) and the words ‘**and from no others**’ although not present in sub-section (2) of Section 37 also qualify the scope of appeals against the orders of the arbitral Tribunal under Section 37 (2).

“S.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.”

What emerges from Section 5 supra is that the extent of judicial intervention has been circumscribed to the extent as provided in the Act itself or in other words judicial intervention is prohibited except as provided for in the Act. Therefore, judicial intervention having been circumscribed, the Courts cannot interfere at any or every stage or on a ground other than those available

in the Act itself. The object behind this prohibition is to reduce the time and avoid the procedural hazards of an ordinary litigation before a Court.

Thus a conjoint reading of Section 37 read with Section 5 of the Act would seem to indicate that with respect to the matters where there does not exist any further right of appeal under the Act, a party will not be allowed to invoke a remedy other than one provided under the Act and to defeat the object of minimizing judicial intervention either at pre-award stage or post award stage.

A reference hereunder to the judgment of the Apex Court in case titled as ***“S.B.P & Co. vs Patel Engineering Ltd and Another, reported in (2005) 8 SCC 618”*** also would be advantageous wherein at paras 45 and 46 following has been held:-

“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. 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 its 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 s, after all, a 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. 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 or under Article 226 of the Constitution 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 time under Section 37 of the Act even at an earlier state.”

In the light of the aforesaid position of law qua the Act being special legislation governing the disputes arising out of arbitration proceedings and as legislature having in its wisdom not provided any appeal or revision against an order allowing an application for condonation of delay accompanying an application filed under section 34 of the Act, this Court sees no reason to entertain the instant appeal against such an order having being filed under Section 37 of the Act or else to convert the same into a revision petition, as such, revisional jurisdiction cannot be exercised for correcting wrong decisions of the Court below as a matter of course inasmuch as, to interfere with such a discretionary order of condoning of delay. Furthermore, the instant appeal could not even be converted into a petition under Article 227 of the Constitution in the light of the principles of law laid down by the Apex Court in “*S.B.P & Co.*” case supra as also in view of the ambit and scope of supervisory jurisdiction enshrined under Article 227 of the Constitution laid down by the Apex Court in case titled as “*Shalini Shyam Shetty vs Rajendra Shankar Patil, reported in (2010) 8 SCC 329.*”

8. Having regard to the aforesaid position of law laid down by the Apex Court, the judgments supra relied upon by Mr. Jalali, do not lend any support to the case of the appellant and same pale into insignificance

9. Viewed thus, what has been observed, considered and analyzed, the instant appeal is held to be not maintainable and further the prayer of the counsel of the appellant for conversion of the appeal either into a revision

petition under Section 115 CPC or else a petition under Article 227 of the Constitution is rejected.

10. The appeal is, accordingly, **dismissed** along with all connected application(s).

(Javed Iqbal Wani)
Judge

Jammu:
31.05.2023
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes

