



**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA
ON THE 21st DAY OF JUNE, 2022**

**BEFORE
HON'BLE MR. JUSTICE SATYEN VAIDYA**

**CIVIL MISC. PETITION MAIN (ORIGINAL) NO. 130 OF
2022.**

Between:-

- 1. M/S V. KARE BIOTECH, VILLAGE DHANG NIHALI, TEHSIL NALAGARH, DISTRICT SOLAN, H.P. THROUGH ITS PARTNER GURCHARAN SINGH KAPOOR SON OF SH. SARDAR SINGH KAPOOR, RESIDENT OF GURUNANAK MOHALLA NABHA, DISTRICT PATIALA, PUNBJAB.**
- 2. SH. GURCHARAN SINGH KAPOOR SON OF SH. SARDAR SINGH KAPOOR, AGED 62.**
- 3. INDERJOT SINGH SON OF S. GURCHARAN SINGH KAPOOR, AGE 39.**
- 4. SH. RUPINDERJOT SINGH KAPOOR SON OF GURCHARAN SINGH KAPOOR, AGE 33.**

ALL RESIDENTS OF GURUNANAK MOHALLA, NABHA, DISTRICT PATIALA, PUNJAB

....PETITIONERS.

(BY MR. SUBHASH SHARMA, ADVOCATE)

AND

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1. **HEMANT AGGARWAL SONOF SH. MAHESH RAI AGGARWAL, RESIDENT OF HOUSE NO. 1571, SECTOR 38-B, CHANDIGARH.160036.**
2. **ARVIND AGGARWAL SON OF SH. V. P. AGGARWAL, RESIDENT OF HOUSE NO. 1560, SECTOR 38-B, CHANDIGARH.**

....RESPONDENTS.

**(MR. SANJEEV KUTHIALA, SR. ADVOCATE
WITH MS. ANAIDA KUTHIALA, ADVOCATE)**

**RESERVED ON : 17th JUNE, 2022.
DECIDED ON : 21st JUNE, 2022.**

*This petition coming on for orders this day, the
Court passed the following: -*

ORDER

By way of instant petition, the petitioners have assailed order dated 18.12.2021 passed by the learned Arbitrator, whereby the application of the petitioners herein under Order 11, Rules 1 & 2 read with Section 151 of the Code of Civil Procedure (for short "CPC) was dismissed.

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2. Respondents herein are the claimants before the learned Arbitrator, who have already submitted their claim. Before entering into defence, petitioners herein moved an application under Order 11, Rules 1 & 2 read with Section 151 of the CPC seeking reply of the respondents herein to the interrogatories formulated on behalf of the non-claimants/petitioners herein.

3. Impugned order reveals that the above noted application of the petitioners herein was rejected by the learned Arbitrator broadly on two grounds. Firstly, that the application was not maintainable before filing of written statement and secondly, that without the written statement of the petitioners herein on record, the application was premature as the relevance of the interrogatories could not be adjudged.

4. The first question that arises in the case is, whether an order passed on miscellaneous application during arbitral proceeding will be open to challenge

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before this court under Article 227 of the Constitution of India?

5. I have heard learned counsel for parties and have also perused the available records.

6. Petitioners herein at the very out set and in the first instance have submitted that the Arbitration and Conciliation Act, 1996 (for short "1996 Act") does not provide for any remedy to challenge the impugned order and thus faced with the situation, petitioners had no other alternative efficacious remedy except to approach this Court by way of instant petition. Additionally, it has been submitted that Article 227 of the Constitution of India vests this Court with power of superintendence over all courts and tribunals. The forum of Arbitrator is also a tribunal and hence the jurisdiction of this Court under Article 227 of the Constitution of India cannot be said to be ousted.

7. On the other hand, Shri Sanjeev Kuthiala, Senior Advocate, assisted by Ms. Anaida Kuthiala,

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Advocate, representing the respondents has opposed the contention so raised on behalf of the petitioners with all vehemence.

8. It will be gainful to summarize the framework of 1996 Act for the purposes of finding answer as to maintainability of this petition.

9. The preamble of 1996 Act reads as under: -

“PREAMBLE.

WHEREAS the United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985;

AND WHEREAS the General Assembly of the United Nations has recommended that all countries give due consideration to the said Model Law, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

AND WHEREAS the UNCITRAL has adopted the UNCITRAL Conciliation Rules in 1980;

AND WHEREAS the General Assembly of the United Nations has recommended the use of the said Rules in cases where a dispute arises in the context of international commercial relations and

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the parties seek an amicable settlement of that dispute by recourse to conciliation;

AND WHEREAS the said Model Law and Rules make significant contribution to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations;

AND WHEREAS it is expedient to make law respecting arbitration and conciliation, taking into account the aforesaid Model Law and Rules;"

10. United Nations Commission on International Trade Law (UNCITRAL) adopted a Model Law in 1985 on International Commercial Arbitration. The General Assembly of the United Nations recommended member states to give due consideration to the model law to have uniformity in arbitration procedure which resulted in passing of the 1996 Act. The Act is a complete Code in itself and consolidates and amends the law relating to Domestic Arbitration, International Commercial Arbitrations and enforcement of foreign arbitral award. Part-I of 1996 Act contains Sections 2 to 43. Section 5

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thereof starts with a *non obstante* clause and strictly prohibits intervention by any judicial authority in matters governed by Part-I of 1996 Act except where so provided in such part. The intent of legislature is loud and clear. By making the 1996 Act as a complete Code and incorporation of provision like Section 5 thereof arbitral proceedings were not only kept independent but free from any unnecessary delays also.

11. That being the backdrop, powers of this court under Article 227 of the Constitution of India have to be evaluated. Though section 5 of "1996 Act" cannot be a clog on powers of constitutional courts, nevertheless such powers may also not be readily available.

12. In **Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and Another**, (2020)15 SCC 706, Hon'ble Supreme Court of India while dealing with a slightly different fact situation, where proceedings under Article 227 of the Constitution were

instituted assailing the order passed in first appeal under Section 37 of 1996 Act, it was 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

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passed which are patently lacking in inherent jurisdiction.”

13. Recently, in **Bhaven Construction through authorised Signatory Premjibhai K. Shah vs. Executing Engineer, Sardar Sarovar Narmada Nigam Limited and Another, (2022)1 SCC 75**, a three Judges Bench of Supreme Court has reiterated the same principle.

14. However, the answer to question posed hereinabove, in the fact situation of instant case, finds complete answer in **SBP & Co. vs. Patel Engineering Ltd. and another, (2005)8 SCC 618**, wherein the Constitutional Bench of Supreme Court of India in has observed 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.

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.”

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15. Thus, the contention raised on behalf of the petitioners that they are remediless under the 1996 Act is liable to be rejected. A party to arbitration proceedings has a remedy to challenge the award passed in such proceedings under Section 34 of the 1996 Act. One of the grounds for assailing arbitral award under the aforesaid provision is that such award is in conflict with public policy of India. The term "public policy of India" carries within it innumerable facets. It is altogether a different thing to say that there is no immediate remedy available to the petitioners than to say that they have no remedy at all.

16. In any case, the interdict of law as articulated by Supreme Court in *SBP& Co. (supra)* is luminous and admits of no exception, therefore, the learned arbitrator though having trappings of tribunal, yet the impugned order will not be amenable to challenge under Article 227 of the Constitution of India.

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17. In view of the aforesaid exposition, it is held that the petition under Article 227 of the Constitution of India in the instant case is not maintainable and hence this Court will refrain itself from adjudicating upon the merits of the order impugned by way of instant petition.

18. The petition is accordingly disposed of, so also the pending miscellaneous applications. Parties are directed to appear before the learned Arbitrator on 30th June, 2022.

(Satyen Vaidya)
Judge

21st June, 2022.
(jai)