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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA
ON THE 24th OF JANUARY, 2024
WRIT PETITION No. 15848 of 2023**

BETWEEN:-

1. M/S MASTER POINT THROUGH PARTNER JAGDISH CHOUHAN S/O LATE SHRI MANIRAM CHOUHAN, AGED 64 YEARS, OCCUPATION: BUSINESS 140 READYMADE GARMENTS COMPLEX DISTRICT INDORE (MADHYA PRADESH)
2. MASTER POINT (PROPRIETOR FIRM) THROUGH PROPRIETOR JAGDISH CHOUHAN S/O LATE SHRI MANIRAM CHOUHAN, AGED ABOUT 64 YEARS, OCCUPATION: BUSINESS 140 READYMADE GARMENTS COMPLEX DISTRICT INDORE (MADHYA PRADESH)

.....PETITIONERS

(SHRI ABHINAV DHANODKAR, COUNSEL FOR THE PETITIONERS).

AND

SMT. SANDHYA CHOUHAN W/O SHRI RAJENDRA CHOUHAN, AGED 51 YEARS, OCCUPATION: BUSINESS RESIDING AT 138 GH SCHEME NO. 54 DISTRICT INDORE (MADHYA PRADESH)

.....RESPONDENT

(SHRI PARESH JOSHI, COUNSEL FOR THE RESPONDENT).

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This petition coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:

ORDER

Heard on the question of admission.

In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the validity, propriety and legality of the order dated 30.06.2023 passed in Arbitration Case by the Sole Arbitrator wherein the application under Section 16(3) read with Section 32 of the Arbitration and Conciliation Act of 1996 (hereinafter referred to as the 'Act of 1996') was dismissed.

2. Brief facts of the case are that the respondent and petitioner No. 2 entered into partnership vide agreement dated 07.01.2010 for carrying out business and for the said purpose, they had purchased an under-constructed shed in the year 2005 and the entire consideration for the purchase of the land was allegedly made by respondent (claimant). A dispute arose between the petitioner No.2 and respondent due to dissolution of the partnership firm M/s Master Point (petitioner No.1). It is alleged that petitioner No.2 in collusion with his sons malafidely took signatures of the respondent and her husband under pretext of obtaining credit facility and thereafter executed Deed of Dissolution of partnership firm dated 27.04.2017. Thereafter, respondent filed an application A.C.No. 40/2021 under Section 11 of the Act of 1996 before this Court seeking appointment of the Arbitrator. The said application was allowed vide order dated 28.10.2022 appointing Hon'ble Shri Justice I.S.Shrivastava (Retd.) as the Arbitrator.

3. Before the Arbitral Tribunal, the petitioners filed an application under Section 16(3) read with Section 32 of the Act of 1996 contending that as per the respondent/claimant, the entire case is based on the alleged fraud and forged deed of Dissolution of Partnership dated 27.04.2017, therefore, the matter is non-arbitrable in nature.

4 . Vide impugned order dated 30.06.2023, while dealing with the

application under Section 16(3) read with Section 32 of the Act of 1996, the Arbitrator observed that the mere allegation of fraud was not sufficient to detract from the obligation of parties to submit their dispute to arbitration. It was further held that the petitioners have failed to raise the objection on the latest opportunity under Section 4 of the Act of 1996 therefore, their right to raise the objection has been waived. Being aggrieved, the petitioners have approached this Court by filing the present writ petition

5. Learned counsel for petitioners contended that the Arbitrator has failed to consider the fact that from the very initial stage, the respondent/claimant has raised the issue pertaining to fraud and forgery and has reportedly specified the same before adjudicating authority stating that her right in rem got affected. Learned Tribunal has also failed to considered the objections raised by the petitioners in Statement of Defense and application under Section 16(3) read with Section 32 of the Act of 1996 that the subject matter cannot be adjudicated before the learned Arbitral Tribunal. In support of his contention, learned counsel for the petitioners has relied upon the judgment of the Apex Court in case of **A.Ayyasamy vs. A.Parmasivam & Ors. AIR 2016 SC 4675**, wherein it has been held that :

"In view of our aforesaid discussions, we are of the opinion that mere allegation of fraud simplicitor may not be a ground to nullify the effect of arbitration agreement between the parties. It is only in those cases where the Court, while dealing with Section 8 of the Act, finds that there are very serious allegations of fraud which make a virtual case of criminal offence or where allegations of fraud are so complicated that it becomes absolutely essential that such complex issues can be decided only by civil court on the appreciation of the voluminous evidence that needs to be produced, the Court can sidetrack the agreement by dismissing application under Section 8 and proceed with the suit on merits. It can be so done also in those cases where there are serious allegations of forgery/fabrication of documents in support of the plea of fraud or where fraud is alleged against the arbitration provision itself or is of such a nature that permeates the entire contract, including the agreement to arbitrate, meaning thereby in those cases where fraud goes to the validity of the contract itself of the entire contract which contains the

arbitration clause or the validity of the arbitration clause itself."

6 . Learned counsel for the petitioners contended that the Arbitral Tribunal has failed in considering the fact that the subject matter of dispute prior to settlement of account of the partnership firm, is the manner in which the deed of dissolution of partnership has been executed or the manner in which the partnership firm M/s Master Point got dissolved. The adjudication as to the manner of dissolution of partnership firm by fraud and forgery can only be exercised by a civil court. In view of the aforesaid, it is prayed that the petition may be allowed, impugned order be quashed and the Arbitral Tribunal be directed to terminate the arbitration proceedings as the same is not arbitrable.

7. *Per contra*, learned counsel for the respondent contended that the present petition has been filed by the petitioners being aggrieved by the dismissal of their application under Section 16(3) of the Act of 1996. There is no remedy under the Act of 1996 against dismissal of the application under Section 16(3). It is only after passing of the final award that the issue can be raised in appeal under Section 34 of the Act of 1996. In support of his contention, learned counsel for the respondent relied on the judgment of the Apex Court in case of **Deep Industries Ltd. vs. Oil and Natural Gas Corporation Ltd. & Anr., (2020) 15 SCC 706** wherein the aforesaid position has been settled as follows:

"The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. What the High Court has done in the present case is to invert this statutory scheme by going into exactly the same matter as was gone into by the arbitrator in the Section 16 application, and then decided that the two year ban was no part of the notice for arbitration issued on 02.11.2017, a finding which is directly contrary to the finding of the learned Arbitrator dismissing the Section 16 application. For this reason alone, the judgment under appeal needs to be set aside. Even otherwise, as has been correctly pointed out by Mr. Rohatgi, the judgment under appeal goes into the merits of the case and states that the action of putting the Contractor and his Directors "on holiday" is not a consequence of the termination of

the agreement. This is wholly incorrect as it is only because of the termination that the show cause notice dated 18.10.2017 proposing to impose a two year ban was sent. Even otherwise, entering into the general thicket of disputes between the parties does not behove a court exercising jurisdiction under Article 227, where only jurisdictional errors can be corrected."

8. Learned counsel for the respondent also relied on the judgment in case of **SBP & Co. vs. Patel Engineering Ltd. and Another, (2005) 8 SCC 618**, wherein the Apex Court in paragraph 45 and 46 has categorically dealt with the aspect as to whether a petition under Article 226 or 227 of the Constitution against rejection of application under Section 16 of the Act of 1996 would be maintainable or not. Hence, it is prayed that the impugned order passed by the Arbitral Tribunal does not suffer from any illegality and therefore, this petition deserves to be dismissed.

9. Heard learned counsel for the parties.

10. The Apex court in case of **Bhaven Construction Through Authorised Signatory Premjibhai K. Shah vs. Executive Engineers Sardar Sarovar Narmada Nigam Ltd. & Anr., (2002) 1 SCC** referring to the aforesaid observation in **Deep Industries Ltd. vs. Oil & Natural Gas Corporation Ltd. & Anr., (2020) 15 SCC 706** has held as follows :

"20. In the instant case, Respondent No. 1 has not been able to show exceptional circumstance or 'bad faith' on the part of the Appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by the Respondent No.1 in a separate Section 34 application, which is pending."

11. A petition under Article 226 or 227 of the Constitution of India can be filed challenging the order of the arbitral tribunal dismissing application under Section 16 of the Act, only if the possible conclusion is that there is a patent lack in inherent jurisdiction. Nothing has been indicated in the present case showing patent inherent lack of jurisdiction.

12. This Court while dealing with similar issue in case of **Suncity Dhoot Colonizers Pvt. Ltd. vs. Ram Chandra Patidar, in W.P.No. 28151/2023 dated 16.01.2024** has held as under:

"25. The principle which culls out from the aforesaid decisions of the Hon'ble Court is that petition under Article 226 or 227 of the Constitution of India can be invoked on the ground of patent lack in inherent jurisdiction or exceptional circumstances or 'bad faith' of the opposite party. It is already found that none of the aforesaid grounds exist so far as the present case is concerned. Since the petitioner is not left remediless and has a chance of appeal under Section 34 of the Act, we find substance in the submissions of the learned counsel for the respondent. Hence the petition under Article 226 or 227 of the Constitution of India is not maintainable.

26. Bearing in mind the principles laid down by the Apex Court **Deep Industries Ltd. (supra)** and **Bhaven Construction (supra)** specifying the extent of application of provisions under Article 226 or 227 of the Constitution of India to proceedings under Arbitration Act, are not maintainable.

27. In view of the aforesaid reasons, we allow the preliminary objection raised by the respondent in the light of the judgment in case of **SBP & Co. (supra)** and hold that the writ petition under Article 226 or 227 of the Constitution of India is not maintainable against every order passed by arbitral tribunal or sole arbitrator until and unless exceptional circumstances or 'bad faith' of the opposite party has been shown in the petition."

13. In view of the aforesaid pronouncement of law and in the light of the principle laid down by the Apex Court in the aforementioned cases as well as by this Court in case of **Suncity Dhoot (supra)**, this Court does not find any ground to intervene with the impugned order by exercising powers under Article 226 or 227 of the Constitution of India.

14. However, the petitioners would be at liberty to wait until the final award is pronounced and thereafter, avail the remedy of appeal as available to them under the Act of 1996 raising all these questions, as the case may be.

15. Accordingly, this petition, being devoid of merit and substance stands dismissed.

(S. A. DHARMADHIKARI)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

