

ITEM NO.10 Court 3 (Video Conferencing) SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petitions for Special Leave to Appeal (C) Nos.11404-11405/2020

(Arising out of impugned final judgment and order dated 30-04-2020 in CAP No. 475/2019 30-04-2020 in CAP No. 476/2019 passed by the High Court Of Judicature At Bombay)

RESPONSIVE INDUSTRIES LIMITED Petitioner(s)

VERSUS

BANYAN TREE GROWTH CAPITAL L.L.C. & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.95288/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

SLP(C) No. 11581-11582/2020 (IX)
(IA No.97354/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 11506-11507/2020 (IX)
(FOR ADMISSION and I.R. and IA No.96537/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 12-10-2020 These petitions were called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Suman Jyoti Khaitan, AOR
Mr. Aman Ahluwalia, Adv.
Mr. Vikas Kumar, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Akshat Khetan, Adv.
Ms. Ankita Singhania, Adv.
Mr. Anshuman Srivastava, Adv.

Mr. K.V. Viswanathan, Sr. Adv.
Mr. Suman Jyoti Khaitan, AOR
Mr. Aman Ahluwalia, Adv.
Mr. Vikas Kumar, Adv.

Mr. Mahesh Agarwal, Adv.
Mr. Akshat Khetan, Adv.
Ms. Ankita Singhanian, Adv.
Mr. Anshuman Srivastava, Adv.

Dr. A.M. Singhvi, Sr. Adv.
Mr. Suman Jyoti Khaitan, AOR
Mr. Aman Ahluwalia, Adv.
Mr. Vikas Kumar, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Akshat Khetan, Adv.
Ms. Ankita Singhanian, Adv.
Mr. Anshuman Srivastava, Adv.

For Respondent(s) Mr. Harish Salve, Sr. Adv.
Mr. Amit Sibal, Sr. Adv.
Mr. Rohan Rajadhyaksha, Adv.
Mr. Rajendra barot, Adv.
Ms. Liz Mathew, AOR
Ms. Anshika Misra, Adv.
Ms. Sherna Doongaji, Adv.
Ms. Bhakti Parekh, Adv.
Ms. Sonali Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

We have heard Shri Mukul Rohatgi, Dr. A.M. Singhvi and Shri K.V. Vishwanathan appearing for the respective parties at great length. Even before Mr. Rohatgi started, the Court pointed out paragraph 24 of the judgment in Vijay Karia and Ors. vs. Prysmian Cavi E Sistemi SRL and Ors, (2020 SCC onLine SC 177) The said paragraph reads as follows :

“24. Before referring to the wide ranging arguments on both sides, it is important to emphasise that unlike Section 37 of the Arbitration Act, which is contained in Part I of the said Act, and which provides an appeal against either setting aside or refusing to set aside a ‘domestic’ arbitration award, the

legislative policy so far as recognition and enforcement of foreign awards is that an appeal is provided against a judgment refusing to recognise and enforce a foreign award but not the other way around (i.e. an order recognising and enforcing an award). This is because the policy of the legislature is that there ought to be only one bite at the cherry in a case where objections are made to the foreign award on the extremely narrow grounds contained in Section 48 of the Act and which have been rejected. This is in consonance with the fact that India is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (hereinafter referred to as "New York Convention") and intends through this legislation - to ensure that a person who belongs to a Convention country, and who, in most cases, has gone through a challenge procedure to the said award in the country of its origin, must then be able to get such award recognised and enforced in India as soon as possible. This is so that such person may enjoy the fruits of an award which has been challenged and which challenge has been turned down in the country of its origin, subject to grounds to resist enforcement being made out under Section 48 of the Arbitration Act. Bearing this in mind, it is important to remember that the Supreme Court's jurisdiction under Article 136 should not be used to circumvent the legislative policy so contained. We are saying this because this matter has been argued for several days before us as if it was a first appeal from a judgment recognising and enforcing a foreign award. Given the restricted parameters of Article 136, it is important to note that in cases like the present - where no appeal is granted against a judgment which recognises and enforces a foreign award - this Court should be very slow in interfering with such judgments, and should entertain an appeal only with a view to settle the law if some new or unique point is raised which has not been answered by the Supreme Court before, so that the Supreme Court judgment may then be used to guide the course of future litigation in this regard. Also, it would only be in a very exceptional case of a blatant disregard of Section 48 of the Arbitration Act that the Supreme Court

would interfere with a judgment which recognises and enforces a foreign award however inelegantly drafted the judgment may be. With these prefatory remarks we may now go on to the submissions of counsel."

(emphasis added)

This paragraph makes it clear beyond any doubt that Article 136 cannot be used to circumvent the statutory scheme which is contained in Section 50 of the Arbitration Act of 1996. If an Award is enforced under Section 48 by a learned Single Judge of the High Court, no appeal against such judgment shall lie. Obviously, the statutory scheme indicates that even if there be an incorrect judgment by a learned Single Judge on facts or law, such judgment is not appealable. This being the case, we clearly laid down in paragraph 24 (supra) that an appeal under Article 136 would lie on an extremely narrow ground; only if some new or unique point is raised as to the interpretation of the Arbitration Act which has not been answered by the Supreme Court. Blatant disregard of Section 48 in very exceptional cases is not a mantra to be used indiscriminately. Unfortunately, we find that case after case comes before us attempting to fit a square peg into a round hole. The present case does not remotely contain any feature that would open the gates of our jurisdiction under Article 136 as laid in paragraph

24 (supra). This being the case, we dismiss these matters with costs of Rs. 10,00,000/- each.

(CHARANJEET KAUR)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER