IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 9629 of 2023

MADHYA PRADESH STATE AGRO INDUSTIES DEVELOPMENT CORPORATION LIMITED

Versus

M/S MURLIWALA AGROTECH PRIVATE LIMITED AND OTHERS

Appearance:

Shri Swapnil Ganguly and Arjun Bajpai - Advocates for the Petitioner.

Shri Utkarsh Agrawal - Advocate for the Respondent No.1.

ORDER

(Reserved on 25.02.2025)

(Pronounced on 17.03.2025)

Per*: *Hon'ble Shri Justice Vivek Jain, Judge

The present petition has been filed challenging the Order dated 14.04.2023 Annexure P-13 passed by the Arbitration Tribunal of Sole Arbitrator. By the said Order, the Arbitration Tribunal has rejected the application of the present Petitioner under Order 8 Rule 1-A of CPC and Order 6 Rule 17 of CPC.

2. It is argued by learned counsel for the petitioner that by way of application under Order 8 Rule 1-A of CPC, the petitioner who is respondent in the arbitration proceedings sought to bring on record an

agreement dated 15.06.2012 (Annexure P-3) which has been executed between the present petitioner, who is respondent in arbitration proceedings and the present respondent No.2, who is claimant No.2 in the arbitration proceedings.

3. It is contended that this agreement between the parties ought to have been filed by the claimants themselves but the claimants suppressed the said agreement while filing the claim before the Arbitration Tribunal and the said agreement is necessary to be placed on record for proper adjudication of all the issues that are actually arising between the parties and an agreement which is between the same parties cannot be said to be not relevant for the purpose of adjudication of claim and rival cases of the parties finally and conclusively. Therefore, the Arbitration Tribunal ought to have allowed the application under Order 8 Rule 1-A of CPC.

4. It is further argued that the present petitioner had filed an application under Order 6 Rule 17 of CPC for amendment of the written statement filed by the present petitioner before the Arbitration Tribunal. The said amendment sought to incorporate various pleadings arising from the agreement dated 15.06.2012 (Annexure P-3) which has been sought to be placed on record by separate application under Order 8 Rule 1-A of CPC. It is contended that the arbitral proceedings had not advanced to such a stage where taking the agreement dated 15.06.2012 on record and seeking consequential amendment of pleadings and written statements would have prejudiced the other side irreparably. The said two applications were actually filed only to advance the cause of justice so that the issues arising during the course of arbitration proceedings could be decided once and for all between the parties so that an unnecessary process

of setting aside of arbitral award and starting the arbitration proceedings afresh could be avoided. In the event the concerned Court, during the course of proceedings under Section 34 of Arbitration and Conciliation Act, 1996 (in short, hereinafter referred to as Act of 1996), comes o a conclusion that indeed the said agreement dated 15.06.2012 did go to the route of controversy involved in the matter and that upon consideration of the said agreement, different considerations would arise affecting the rival contentions of the parties against each other, then there would be setting aside of Award leading to multiplicity of proceedings.

5. Learned counsel for the petitioner has further argued that the bar as contained in Section 5 of Arbitration and Conciliation Act cannot be read to exclude the jurisdiction of the High Court under Article 227 of the Constitution of India because judicial review is a part of basic structure of Constitution of India as held by the Supreme Court in the case of ***L. Chandra Kumar Vs. Union of India and Others*** reported in ***(1997) 3 SCC 261***. It is contended that the petitioner is a wholly owned undertaking/company of the State of Madhya Pradesh working for promotion of Agro Industries in the State of Madhya Pradesh and also in the business of production and distribution of Ready to eat meals i.e. "nutritious meals" to Departments of the State under various projects in public interest run by various Departments like Women and Child Development Department.

6. Per contra, it is contended by learned counsel for the respondents that the Writ Petition is not maintainable in view of the bar contained in Section 5 of the Act of 1996 that bars judicial intervention during course of arbitral proceedings and further that the Constitution Bench of the

Supreme Court in the case of ***SBP & Co. Vs. Patel Engineering Ltd. & Another*** reported in ***(2005) 8 SCC 618*** in para 47 (vi) has held that once the matter reaches the Arbitrator, the High Court would not interfere in the Orders passed by the Arbitrator during the course of Arbitration Proceedings and only remedy would lie before the appropriate Court in terms of Section 37 or Section 34 of Act of 1996. Therefore, the reliance on the judgment in the case of **L. Chandra Kumar (supra)** is totally misconceived.

7. Learned counsel for the respondents further submits that the applications were filed by the petitioner after the commencement of trial and as per the provisions of Order 6 Rule 17 of C.P.C. different considerations arise for entertaining an application prior to commencement of trial and after commencement of trial. Even otherwise, the arbitrator is free to device his own procedure and therefore, in terms of Section 19 of the Act of 1996, the Arbitrator is not bound by the provisions of Code of Civil Procedure and the procedure would apply as agreed by the parties or in absence of a agreed procedure, the arbitrator is free to conduct the proceedings in the matter it considers appropriate. Thus, the arbitrator, it is argued, is not bound by any strict rules or procedure of Code of Civil Procedure, which is to achieve the basic purpose of arbitration i.e, timely resolution of disputes between parties. Therefore, the Arbitrator has correctly rejected the two applications submitted by the petitioner.

8. It is further argued by learned counsel for the respondents that even in case the applications are considered as maintainable at the stage after commencement of trial, then also, no due diligence was shown by the petitioner in the said applications. No cogent reason was shown that why

the proposed pleadings could not be incorporated in the written statement and the respondents while contesting the said applications before the arbitrator had rightly raised an objection that the amendment application is devoid of merits and is only a trick played by the present petitioner against the present respondents who are the claimants before the Arbitrator.

9. Heard learned counsel for the parties and perused the record.

10. In the present case, the petitioner is a Company which is a undertaking of Govt. of Madhya Pradesh and incorporated under the provisions of Companies Act, 1956 and is engaged in development of agriculture and agro industries in the State of Madhya Pradesh. It also carries on the business of production and distribution of ready to eat meals supplied to various departments of State Govt. as nutritious food under various projects in public interest. It is the case between the parties that certain shareholding agreements were executed between the present petitioner and respondent No.1 to set up a state of Art ready to eat facility in the State of Madhya Pradesh and the respondent No.1 was chosen as a private partner. Certain memorandums of understanding and shareholding agreements are stated to be executed between the parties. It is also the case of the parties that as per the terms of the Memorandum of Understanding signed between the petitioner and the respondent No.1, the respondent No.2/Company was incorporated to carry out the work provided in the tender and MOU dated 15.04.2004. Initially, the shareholding of petitioner in the respondent No.2/Company was 11% but subsequently, it was increased to 30%. The rest shareholding was held by the respondent No.1.

11. Various disputes arose between the petitioner on one side and respondents No.1 & 2 on the other side in relation to the shareholding

agreements and the MOU executed between the petitioner and the respondent No.1 or by the petitioner with both the respondents. The claims of the respondents before the Arbitrator relate to various amounts arising out of wrongful withholding of rightful payments due to the respondents for the ready to eat meals supplied by the respondent no.2. The claims also relate to deductions made by the petitioner from the payments made to the respondent No.2 or to the respondent No.1 for various financial years. The disputes are also in the matter of the petitioner acquiring additional 19% shareholding in the respondent No.2/Company at concessional prices which was less than the Book value of the shares. In the said manner, various claims have been set up by the respondents against the present petitioner arising out of various transactions in the matter of allotment of shares in the respondent No.2 as well as payment of supplies made by the respondent No.2 to various Departments of the State through the petitioner and outstanding payments and deductions from such payments said to be made by the petitioner. All these claims have been raised in detail and contained in the Statement of claim filed before the Arbitrator.

12. From a perusal of the claim application filed by the respondents before the Arbitrator, it is clear that the claims of the respondents before the Arbitrator relate to the period from 2007-08 till the year 2017-18. The respondents, in their statement of claim have relied on various MOU's and agreements arising out of which the transactions have taken place so also various bills of food supplied by the respondent No.2 to the petitioner.

13. When the disputes between the parties relate to matters of non-payment of various amounts towards the meals supplied by respondent No.2 to the petitioner, then the agreement (Annexure P-3) executed

between the petitioner and the respondent No.2 for supply of such meals effective from 01.10.2012 till 31.03.2017 cannot be said to be a totally irrelevant document not having any bearing on just, effective and complete adjudication of the dispute pending before the Arbitrator. It is a different matter whether upon consideration of such agreement, any positive or negative impact on the claims of rival parties would be made or not but it cannot be said at this stage, that once the disputes between the parties relate to period from 2007-08 till 2017-18 then an agreement between the same parties and valid in some of that period in the matter of supply of mid-day meals is alien to the disputes and claims between the parties. If such an agreement is considered by the Arbitrator, it would be only in the interest of both the parties because subsequent objections and challenges to the arbitral award would be avoided and multiplicity of proceedings would be avoided.

14. Recently, the Supreme Court in the case of **Life Insurance Corporation Vs. Sanjeev Builders reported in 2022 (16) SCC 1** had the occasion to consider this legal position and after considering the legal position held as under:-

> ***71.*** *Our final conclusions may be summed up thus:*
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> ***71.1.*** *Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negatived.*
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> ***71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17CPC.***
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> ***71.3.*** *The prayer for amendment is to be allowed:*

71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.

71.3.2. *To avoid multiplicity of proceedings, provided*

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

71.6. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. *Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

71.10. *Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is*

> *required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897] .)*

15. The Supreme Court therefore, held that amendment has to be construed liberally once it is to avoid multiplicity of proceedings and when it is necessary to adjudicate on the main issue to controversy, it may be allowed and delay alone is not sufficient to discard amendment if it is relevant to the controversy.

16. Another objection was raised that a trial had commenced and therefore, the amendment has to be considered strictly. From a perusal of the proceedings before the Arbitration Tribunal, it is seen that the petitioner filed reply/written statement on 18.11.2022 and on 19.02.2023, the issues were finalized by the Arbitrator. On the next date, after finalization of issues i.e. 11.03.2023, the petitioner submitted before the Arbitrator that they will file application for amendment and another application for taking documents on record. By that date, no evidence affidavits were filed before the Arbitrator and on the next date i.e. 24.03.2024, the petitioner filed applications for amendment of written statement under Order 6 Rule 17 CPC so also for taking additional document on record under Order 8 Rule 1-A CPC. On the same date, affidavits of evidence were filed by both parties.

17. Therefore, it is a case that where submission of affidavits by the claimant before the Tribunal, and the applications for production of documents under Order 8 Rule 1-A and application under Order 6 Rule 17 of CPC, all were filed before the Arbitration Tribunal on the same date. Therefore, it cannot be said that by allowing of the questioned amendment, the position of the parties would be irretrievably altered or prejudiced. The case was then fixed for cross examination vide order dated 14.4.2023 by the Arbitrator.

18. In view of the above we have no hesitation in holding that technically though it may be debatable that there was commencement of trial but since the applications for amendment and for taking additional documents on record were filed on the same date which was the date of submission of affidavit evidence by the claimants, it cannot be said to be the case where some grave prejudice could be caused to the claimants by delay. This is more so when on the previous date, the present petitioner had informed the Arbitration Tribunal that it requires to file an application for amendment and another application for taking additional documents on record and the Arbitration Tribunal gave liberty to the petitioner to file application, if any, before the next date of hearing. The operative part of the order dated 11.03.2023 is as under:-

> *"Both the claimant and the respondent are directed to file affidavit in lieu of evidence three days before next date of hearing. The respondent shall also file applications, if any, three days before the next date of hearing. Subject to the disposal of the applications to be filed by the respondent, if any, additional evidence shall be taken, if need arise. Meanwhile, recording of oral evidence shall not be postponed.*
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> *Put up on 24th March, 2023 at 5:30 PM for compliance of the order."*

19. We have already held above that the amendment was necessary for proper, complete and effective adjudication of all the disputes between the parties.

20. Therefore, in our considered opinion the application for amendment in written statement ought to have been allowed by the Arbitration Tribunal.

21. Coming to application under Order 8 Rule 1-A CPC, a right is given to the defendant to produce a document which ought to be produced by him in earlier stage in evidence at the hearing of the suit, although with leave of this Court. The present case is a fit case where the leave ought to have been granted by the Arbitration Tribunal because the contractual dispute between the parties as already noted above were for the period 2007-08 to 2017-18 and the agreement in question which was sought to be placed on record is of the year 2012 between the same parties and relates to the same set of transactions. Therefore, it was a fit case to exercise the jurisdiction conferred under Order 8 Rule 1-A CPC. Though it is true that the Arbitration Tribunal is not bound by the strict rules of procedure as contained in Code of Civil Procedure, yet if certain rules are engrafted in CPC to give fair chance to the parties then, guidance can been taken from the said rules to do complete justice between the parties.

22. It is the settled law that Rules or procedure are handmaids of justice and not the masters of justice. It is true that the Arbitration Tribunal is given right to devise it own procedure as per Section 19 of Act of 1996, however, the said right cannot be interpreted in the manner to subvert fair chance to the parties for complete

adjudication of the dispute pending before the tribunal. The strict rules of procedure under CPC would be relaxed in arbitration proceedings so as to ensure speedy resolution of dispute without being bound by strict rules of procedure and strict rules of evidence under the evidence Act, however, some rules are engrafted in CPC to give fair chance to the parties, then, the arbitration tribunal can always rely on those rules so as to ensure fair chance to the parties. In ***Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*, (2018) 11 SCC 470**, it was held as under :-

> **26.** There cannot be a dispute that the power exercised by the Arbitral Tribunal is quasi-judicial. In view of the provisions of the 1996 Act, which confers various statutory powers and obligations on the Arbitral Tribunal, we do not find any such distinction between the statutory tribunal constituted under the statutory provisions or Constitution insofar as the power of procedural review is concerned. **We have already noticed that Section 19 provides that the Arbitral Tribunal shall not be bound by the rules of procedure as contained in the Civil Procedure Code. Section 19 cannot be read to mean that the Arbitral Tribunal is incapacitated in drawing sustenance from any provisions of the Code of Civil Procedure**. This was clearly laid down in *Nahar Industrial Enterprises Ltd.* v. *Hong Kong and Shanghai Banking Corpn.* [*Nahar Industrial Enterprises Ltd.* v. *Hong Kong and Shanghai Banking Corpn.*, (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481] . In para 98(*n*), the following was stated: (SCC p. 693)
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> > "(*n*) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. "Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice." (See *ICICI LTD.* v. *Grapco Industries Ltd.* [*ICICI LTD.* v. *Grapco Industries Ltd.*, (1999) 4 SCC 710])
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> **27.** We thus are of the view that principles underlying Order 9 Rule 9 can very well be invoked by the arbitrator. There is nothing on

record to indicate that parties have agreed to the contrary. The issue, which has arisen for consideration has engaged attention of different High Courts from time to time. The Patna High Court in *Senbo Engg. Ltd.* v. *State of Bihar* [*Senbo Engg. Ltd.* v. *State of Bihar*, 2003 SCC OnLine Pat 1189 : AIR 2004 Pat 33] , had occasion to consider the order terminating the proceedings under Section 25(*a*). The Patna High Court after considering the provision has held that the Arbitral Tribunal has power to review on sufficient cause being shown. In para 32, the following has been laid down: (SCC OnLine Pat)

> "*32*. I find the submissions of Mr Chatterjee well founded. Mr Chatterjee has relied upon the provisions of the Act itself (that is to say, the internal aids to interpretation) in support of the point that on sufficient cause being shown, the Arbitral Tribunal has full authority and power to recall an order under Section 25(*a*) of the Act. I think that one would arrive at the same conclusion on the basis of some external aids to interpretation."

(emphasis supplied)

23. Now coming to the vehement objection raised regarding bar under Section 5 of Act of 1996. Reliance has been placed on judgment of Supreme Court in the case of **S.B.P. & Company (supra)** more particularly, para 47 (vi) thereof, wherein it has been held that even the the High Court would not interfere with the orders passed by the Arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the only remedy with the parties would be approaching the Court under Section 37 & 34 of the Act of 1996. It was argued that the said provision has been interpreted by the Supreme Court in the case **S.B.P. & Company (supra)** to mean that even the proceeding under writ jurisdiction are barred. Before dealing with this aspect we deal with the position that if we hold that any judicial intervention even of the Constitutional Court under Article 226/227 is held to be part then the consequences thereof. As

per Section 34(4) of the Act of 1996, the Court hearing challenge to award of the Arbitrator has the power to adjourn the proceedings for a time determine by it in order to give the Arbitral Tribunal an opportunity to resume the proceedings so as to eliminate the grounds for setting aside the Arbitral Award. Section 34(4) is as under:-

> "(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award"

24. The aforesaid provision would imply that if at the time of hearing challenge to the final award the court comes to the conclusion that the Arbitration Tribunal had indeed erroneously rejected an application or had denied fair chance to other side to any of the parties, then, before passing a final order in Section 34 proceeding, court would direct the tribunal to conduct the proceeding in the manner directed by the Court and to pass a fresh order or award so as to eliminate the ground of challenge or the ground of setting aside the award. Therefore, no doubt a remedy is there to the parties to take recourse to Section 34(4) but that will only complicate and multiply the proceedings. In ordinary suits or other cases, the appellate court is always having the power to remand the matter to the Court of first instance if there is failure of justice by any error in procedure or certain additional evidence was required to be taken but has not been taken or any other grounds on which remand can be made as per law. However, under the Scheme of Act of 1996, the Court does not have competence and authority to remand the matter to the same arbitrator unless there is consent of the parties.

25. This issue was recently considered by the Supreme Court in the case of **Mutha Construction Vs. Strategic Brand Solutions (I) Pvt. Ltd. 2022 LiveLaw (SC) 163 (**SLP(C) No. 1105/2022**)**. It has been held by the Supreme Court in the aforesaid case by considering the judgments in the case of **Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328, I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd., (2022) SCC OnLine 4** that with the consent of both the parties the matter can be remanded back to the arbitrator for passing a fresh award, therefore, in the case of erroneous procedure adopted by the Arbitral Tribunal during course of hearing of arbitration proceedings the remedy of remand is not available unless there is consent of parties and the recourse under Section 34(4) would only lead to delay and multiplicity of the proceedings because any order passed under Section 34(4) may also be made subject matter of challenge. It is in the interest of the parties that if the law can be interpreted in the manner that such errors of procedure can be corrected by the High Court in exercise of judicial review then it will be in the interest of justice.

26. The question of jurisdiction under articles 226/227 was considered in the case of ***Deep Industries Ltd.* v. *ONGC* [*Deep Industries Ltd.* v. *ONGC*, (2020) 15 SCC 706**, wherein the Hon'ble Supreme Court 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].*
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> *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 hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."*

(emphasis supplied)

27. The aforesaid issue was also recently raised before the Bombay High Court in the case of **P. Manikandan v. CBI, 2024 SCC OnLine (Bom) 3808** wherein the Division Bench of Bombay High Court has considered the case of **S.B.P. & Company (supra)** so also the earlier Constitution Bench judgment of equal strength in the case of **L. Chandra Kumar (supra)** wherein Constitution Bench has laid down the contours of limits of judicial review under Article 227 of the Constitution of India. The Bombay High Court while dealing with the issue has dwelled on the aspect that in the case of **S.B.P. & Company (supra)** the actual issue before the Hon'ble Supreme Court was not to define the contours of scope of judicial review of the High Court under Article 227 of the Constitution of India but the questions before the Constitution Bench were different and the questions for consideration before the Constitution Bench were the nature of power under Section 11(6) of the Act of 1996 and no issue was posed before the Supreme Court as to exclusion of judicial review of the High Court under Articles 226/227 of Constitution of India at the interlocutory stage of Arbitral proceedings.

28. The Division Bench of Bombay High Court further held that in the said case that in the case of **L.Chandra Kumar (supra)** a specific question before the Constitution Bench was the scope of jurisdiction of the High Court under Article 227 of Constitution of India and whether

exclusion of powers of judicial review of the High Court can be inferred. The Supreme Court in the aforesaid case held in favour of power of judicial review. The Bombay High Court further considered the position that the earlier judgment of equal strength in the case of **L. Chandra Kumar (supra)** was not considered by the later Constitution Bench in the case of **S.B.P. & Co. (supra)** while holding restriction on the power of judicial review of the High Court under articles 226/227 over the interlocutory orders of Arbitration Tribunal. Bombay High Court has held as under:-

> ***24.*** *In the wake of the test laid down by Supreme Court in Dhanwanti Devi (supra) we are of the considered view that the ratio of L. Chandrakumar (supra) would apply. Its an authority directly on the point which is well addressed, analyzed and answered by reasoned judgment. As against this, in S.B.P (supra) the issue was nature of the function of The Chief Justice or its designate under Section 11 of the Act. Whether the jurisdiction of the High Court under Article 226 or 227 was excluded or not was not the direct question which fell for consideration before the Bench. The observations in paragraph no. 44 to 46 which we have already reproduced above, cannot be said to be ratio for proposition with which we are concerned. The purport of observation in paragraph no. 45 (vi) is to minimize the interference of High Court at interlocutory stages.*
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> ***25.*** *It is pertinent to note that the judgment of Supreme Court in L. Chandra kumar (supra) has not been referred in the said matter which is indicative of the fact that the proposition with which we are concerned was not the predominantly the issue before the Supreme Court in the later judgment. Therefore, with all respect we are of the considered view that we are bound by law laid down in L. Chandra kumar (supra). The later judgment of the Supreme Court would be of no avail to respondent to sustain objection.*
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> ***26.*** *It is relevant to notice that L. Chandra kumar (supra) has been followed in the matter of Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75. The following is the relevant paragraph:*
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> > *18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. Cellular Operators Association of India, (2011) 14 SCC 337, this Court referred to several judgments and held:*
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> > > *"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary*

> *legislation - L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*
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> *It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.*
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> *Thus, though there cannot be exclusion of the judicial review by the High Court certain riders are imposed. It is imperative to examine the matters on merit in the wake of those riders.*

29. We are in complete agreement with the Division Bench of Bombay High Court for the reason that the issue in the case of **S.B.P. & Company (supra)** was not the scope of writ jurisdiction of the High Court and the earlier Constitution Bench of equal strength which had specifically decided the scope of judicial review of High Court in the case of **L. Chandra Kumar (Supra)** was not taken into consideration and therefore, the earlier view will prevail as the later judgment while taking different view has not considered the earlier view, therefore, we hold that the present writ petition against the interlocutory order passed by the arbitration tribunal is maintainable before this Court. We are also fortified in our view by the judgement of the Supreme Court in ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.*, (2022) 1 SCC 75**, wherein considering section 5 of the Act of 1996, it has been held that no enactment can

curtail a constitutional right, but interference under Article 226/227 of the Constitution of India in arbitral proceedings should be in exceptional cases.

30. We have already held above that the rejection of applications under Order 8 Rule 1-A of CPC and under Order 6 Rule 17 CPC for taking additional documents on record and consequential amendment in the written statement would amount to failure of justice and may also lead to multiplicity of proceedings at later stage.

31. In view of the above, while setting aside the impugned order dated 14.4.2023 passed by sole arbitrator, the applications filed by the petitioner under Order 8 Rule 1-A CPC and Order 6 Rule 17 of CPC stand allowed. The respondents would be at liberty to take consequential steps in rebuttal.

32. There is stay on the proceedings before the arbitrator in this Writ Petition and the stay order is prevailing since 28.06.2023. We also direct that the time since 28.06.2023 till the date of this order will not be counted for the purpose of calculation of time limit to conclude the arbitration proceedings.

33. The petition stands **allowed** and **disposed of** in the above terms.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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