2025:BHC-OS:4806-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.15131 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.

Ketan Lalit Shah,
An adult, Indian Inhabitant having
his address at B2, Amalfi, 27B,
L.D. Ruparel Marg, Malabar Hill,
Mumbai-400006. .....Respondent

WITH

WRIT PETITION NO.3083 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.

Ketan Lalit Shah,
(Legal heir of Lalit Popatlal Shah)
An adult, Indian Inhabitant having
his address at B2, Amalfi, 27B,
L.D. Ruparel Marg, Malabar Hill,
Mumbai-400006. .....Respondent

WITH

WRIT PETITION NO.3077 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.

Neeta Ketan Shah,
An adult, Indian Inhabitant having
her address at B2, Amalfi, 27B,
L.D. Ruparel Marg, Malabar Hill,
Mumbai-400006. .....Respondent

WITH

WRIT PETITION NO.3721 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.

Lalit Popatlal Shah HUF,
An adult, Indian Inhabitant having
his address at B2, Amalfi, 27B,
L.D. Ruparel Marg, Malabar Hill,
Mumbai-400006. .....Respondent

WITH

WRIT PETITION (L) NO.16245 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.

Bipin Nemchand Shah,
An adult, Indian Inhabitant having
his address at 1801, Dev Darshan Building,
50, Ridge Road, Near Teen Batti,
Mumbai-400006. .....Respondent

WITH

WRIT PETITION (L) NO.16246 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.

Prafulla Lalit Shah,
An adult, Indian Inhabitant having
his address at B2, Amalfi, 27B,
L.D. Ruparel Marg, Malabar Hill,
Mumbai-400006. .....Respondent

WITH

WRIT PETITION (L) NO.16251 OF 2024

Central Depositories Services (India) Limited,
A company incorporated under the
Companies Act, 1956 and having its
registered office at Marathon Futurex,
A-Wing, 25th Floor, NM Joshi Marg,
Lower Parel, Mumbai 400013. .....Petitioner

Vs.
Samir Shah,
An adult, Indian Inhabitant having
his address at 3B, Suvas Apartment, 68/F,
Rungta Lane, Off Nepeansea Road,
Malabar Hill, Mumbai-400006. .....Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Kunal Dwarkadas, Mr. Rahul Dwarkadas, Ms. Sanaya Contractor, Mr. Rahil Shah & Mr. Rahul Deshpande, i/b. Veritas Legal, Advocate for the Petitioner in all Writ Petitions.
Mr. Karl Tamboly with Mr. Ravichandra Hegde, Ms. Parinaz Bharucha, Mr. Ashok Panday & Mr. Kandarp Trivedi, i/b. RHP Partners, Advocate for Respondents in all Writ Petitions.

CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
RESERVED ON : 28th FEBRUARY 2025.
PRONOUNCED ON : 25th MARCH 2025

JUDGMENT :- (*Per Dr. Neela Gokhale, J.*)

1) **Rule**. Rule made returnable forthwith and with consent of the parties, the Petitions are taken up for final hearing forthwith.

2) The Petitioner assails order dated 18th April 2024 passed by the Arbitral Tribunal in Arbitration Case Nos.3 to 9 of 2023, wherein claims filed by individual Respondents in all the Petitions herein, against the present Petitioner were '*dismissed as withdrawn, with liberty to file afresh*'. The issue in all the Writ Petitions is

identical and hence, all the Petitions are being disposed off with this common judgment and order with Writ Petition (L) No.15131 of 2024 being taken as the lead Petition.

3) The Petitioner and the Respondents were parties in their respective disputes referred to arbitration. The following questions arise for determination:

(a) Whether the impugned order warrants interference by this Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India?

(b) If yes, whether the Arbitral Tribunal, in exercise of its powers under Section 19(3) of the Arbitration & Conciliation Act, 1996 ('the Act') can permit withdrawal of a claim with liberty to file a fresh claim?

4) The brief facts leading to the present Petitions are as follows. The Petitioner is a company registered under the Companies Act, 1956 and is a Depository, an organisation that facilitates the holding of securities in an electronic form and also records the transfer of ownership of securities through beneficial owner accounts held with its depository participants, being entities registered with Depositories. The Respondent/s-Claimant/s are individuals that claim

to be beneficial owners of securities and holders of dematerialized accounts registered with the Petitioner.

5) The individual Respondents were all claimants before the Arbitral Tribunal against the Petitioner herein. An agreement was executed between the Petitioner, in the lead Petition i.e. Ketan Shah and Anugrah Stock & Broking Private Limited ('Anugrah') as a Depository Participant under the bye laws of the Petitioner. The bye laws of Petitioner/CDSL provides for reference to arbitration. In September 2009, Ketan Shah opened a trading and demat account with Anugrah (Stock Broker). Funds and securities were transferred to the broker from time to time towards margin obligations and for trades in the future options and segments. Disputes arose between the parties leading to Ketan Shah addressing a notice dated 15th September 2023 calling upon the Petitioner to indemnify him towards loss caused to him due to negligence of the Petitioner and Anugrah along with interest thereon and other expenses incurred by Ketan Shah. By this notice, Ketan Shah invoked arbitral proceedings in terms of the arbitration clause in the agreement to be conducted under the bye laws of the Petitioner ('CDSL Bye-laws'). Thus, the arbitration proceedings

commenced from 15th September 2023.

6) Ketan Shah filed his Statement of Claim ('SOC') bearing Arbitration Case No. 3 of 2023. Claims were also filed on behalf of the other individual Respondents. The Petitioner filed its Statement of Defence ('SOD') in response to the SOC on 27th October 2023 and a rejoinder, sur rejoinder and sur sur rejoinder were also filed by the respective parties. According to the Petitioner, oral arguments concluded in the arbitration proceedings on 12th February 2024. Vide an e-mail dated 28th February 2024, Post Hearing Clarifications ('PHC') were submitted to the Arbitral Tribunal. According to the Petitioner, for the first time in the said PHC, Ketan Shah stated that he had engaged a chartered accountant to analyze shares in his demat account resulting in possible material alterations in his claim. He sought a week's time to place on record his CA's certificate. The Petitioner opposed the introduction of new documents. On 20th March 2024, during the hearing of the PHC, claimant/s sought an amendment to the prayers in the SOC to include an altered claim. The application for amendment was opposed by the Petitioner.

7) It is the Petitioner's further case that the Arbitral Tribunal being of the view that since the time for passing of the award had expired in May 2024, an amendment was not possible and hence, offered two options to the claimant - to either withdraw the arbitration cases and file a fresh application if they so desire, or, to continue with the present claim. Ketan Shah through his counsel informed the Tribunal that he would like to withdraw his claim. The Arbitral Tribunal recorded as follows:

> *"....on receipt of Letters for Withdrawal from Claimant in Arbitration Case Nos. 3 - 9 of 2023, the Hon'ble Tribunal will pass necessary Orders/Award. Meanwhile, the hearings in the Arbitration Case Nos.3 - 9 of 2023 stands concluded."*

8) Ketan Shah by a letter dated 21st March 2024 addressed to the Arbitral Tribunal withdrew his claim and sought liberty to file a fresh claim. The relevant paragraph reads as under:

> *"2. As submitted during the hearing on March 20, 2024, in the matter, given that I intend to place on record additional documents to substantiate my Claim, I withdraw the captioned arbitration proceedings, seeking liberty from the Hon'ble Arbitral Tribunal to file a fresh Claim. It would be difficult for me to deal with the Statement of Defence filed by the Respondent where there is a bare denial of my Claim for shares/securities.*

> *Further, given the fact that the Respondent has not provided complete statement and documents which were requested for, I would be doing an audit of my entire shareholding and re-filing my Statement of Claim.*
>
> *3. I humbly pray that appropriate Orders may be passed in this regard by the Hon'ble Arbitral Tribunal and liberty may be granted to file a fresh Claim. I am deeply grateful to the Hon'ble Arbitral Tribunal for granting me a patient hearing in the matter."*

9) On 29th March 2024, CDSL addressed a letter recording its detailed objections to the liberty sought by Ketan Shah to file a fresh claim. CDSL *inter alia* raised the following objections:

> "(a) The Tribunal does not possess the power to grant liberty to a party;
>
> (b) Ketan Shah has not made out any grounds for grant of liberty to file fresh proceedings upon withdrawal;
>
> (c) CDSL would be severely prejudiced in the event Ketan Shah is granted liberty to file fresh proceedings."

10) Pursuant to arguments advanced by the respective parties, supported by citations, the Arbitral Tribunal by its order dated 18th

April 2024 dismissed the Arbitration Proceedings as withdrawn while granting Respondent/s-Claimant/s liberty to file fresh claim, if and when the Claimant so decides. The Claimant/s were also directed to give a fresh Notice of invocation of arbitration. The Petitioner herein was given liberty to re-agitate its contentions pertaining to limitation, jurisdiction, *res judicata*, etc. It is this order which is impugned by the Petitioner in the present proceedings.

11) Mr. Janak Dwarkadas, learned Senior Counsel represented the Petitioner and Mr. Karl Tamboly, learned Counsel represented the Respondent/s in all Petitions.

12) Mr. Dwarkadas, learned Senior Counsel for the Petitioner submitted as under:

i. Since Arbitral proceedings were terminated, no remedy was available to the Petitioner under the provisions of the Act and hence, the Petition is maintainable under Article 226 of the Constitution of India.

ii. Tribunals cannot be equated with Courts of law and they do not have plenary powers. Procedural provisions cannot trump substantive law. An Arbitral Tribunal not being a Court of law does not have

general jurisdiction and does exist in perpetuity. Section 19 of the Act does not confer jurisdiction on the Arbitral Tribunal to override the provisions of Section 32(2)(a) read with Section 32(3) of the Act which are substantive in nature.

iii. The operative part of the impugned order results in termination of mandate of the Arbitral Tribunal and would therefore, override the liberty purported to have been reserved in the impugned order.

iv. An Arbitral Tribunal assumes jurisdiction as per the provisions of the Act and terminates either with passing of the final award under Section 32(1) of the Act or by an order of the Arbitral Tribunal under Section 32(2) of the Act. Thus, the jurisdiction of the Tribunal is co-terminus with the life of the arbitral proceedings.

v. The Arbitral Tribunal could have only passed an order permitting withdrawal of the claim and thereafter, the Arbitrator is rendered *functus officio,* thus, has no jurisdiction to grant liberty to file fresh proceedings.

vi. Even assuming while denying that principles underlying Order 23 of the Civil Procedure Code, 1908 ('CPC') could be invoked, the Civil Court would not have jurisdiction to grant liberty to institute a fresh suit on the grounds mentioned in the impugned order.

vii. The impugned order to the extent that it grants liberty to file fresh arbitral proceedings causes irreparable injury and prejudice to the Petitioner. The Petitioner has a legitimate interest in obtaining a final settlement of the dispute.

13) Mr. Dwarkadas relied upon the following citations in support of his arguments:

a) *Anuptech Equipments Private Ltd. v. Ganpati Co-operative Housing Society Limited & Ors.*[1]

b) *Ganpati Co-operative Housing Society Limited v. Anuptech Equipments Private Ltd. & Ors.*[2]

c) *Vimal Madhukar Wasnik (Dr.), Nagpur v. Sole Arbitrator*[3]

d) *Dowell Leasing & Finance Ltd. v. Radheshyam B. Khandelwal & Ors.*[4]

e) *S.K. and Associates and Anr. v. Indian Farmer and Fertilizers Co-operative Ltd., Allahabad & Anr.*[5]

f) *Union of India v. Indian Agro Marketing Co-operative*

1 1999 SCC OnLine Bom 54
2 In Appeal No. 398 of 1999 decided on 9.8.2007.
3 2005 SCC OnLine Bom 741
4 2007 SCC OnLine Bom 655
5 2010 SCC OnLine All 1884

Ltd.[6]

g) *Harinarayan G. Bajaj v. Sharedeal Financial Consultants Pvt. Ltd. & Anr.*[7]

h) *MS Vag Educational Services v. Aakash Educational Services Limited*[8]

i) *Hyderabad Metropolitan Development Authority, Rep. By its Metropolitan Commissioner and Anr. v. Ramky Elsamex Hyderabad ring Road Limited, rep. By its Authorized Representative*[9]

j) *Maharashtra State Electricity Board v. Datar Switchgear Ltd.*[10]

k) *K.S.Bhoopathy & Ors. v. Kokila & Ors.*[11]

l) *V. Rajendran & Anr. v. Annasamy Pandian (Dead) Thr. LR Karthyayani Natchiar*[12]

m) *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad*[13]

n) *Taj Ahmad v. State of U.P. Thru Secy & Ors.*[14]

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6 2022 SCC OnLine Del 1291
7 2003 (2) Mh.L.J. 598
8 2022 SCC OnLine Del 3401
9 2023 SCC OnLine TS 4416
10 2002 SCC OnLine Bom 983
11 (2000) 5 Supreme Court Cases 458
12 (2017) 5 Supreme Court Cases 63
13 2024 SCC OnLine SC 3190
14 2013 SCC OnLine All 1408

o) *Awaneesh Chandra Jha v. Anil Prasad Nanda*[15]

p) *Paira Ram & Anr. v. Ganesh Dass & Ors.*[16]

q) *R.S. Jiwani (M/S.), Mumbai v. Ircon International Ltd., Mumbai*[17]

r) *Sewpujanrai Indrasanrai Ltd. v. Collector of Customs and Ors.*[18]

s) *R. Jeevaratnam v. State of Madras*[19]

t) *Gajendra Prasad Saxena v. State of U.P. & Ors.*[20]

u) *Kamal K. Singh v. Union of India, Through the Ministry of Corporate Affairs & Ors.*[21]

v) *Roger Shashoua & Ors. v. Mukesh Sharma & Ors.*[22]

w) *Union Bank of India v. Rajat Infrastructure Private Limited & Ors. And Sunview Assets Private Limited*[23]

14) Mr. Tamboly, learned counsel for the Respondent/s-Claimant/s submitted as under:

15 2022 SCC OnLine Del 1866
16 1965 SCC OnLine Punj 450
17 2010 (1) Mh.L.J.547
18 1958 SCC OnLine SC 56
19 1965 SCC OnLine SC 54
20 2015 SCC OnLine ALL 8706
21 2019 SCC OnLine Bom 5609
22 (2017) 14 SCC 722
23 (2023) 10 SCC 232

I. The Petitions are not maintainable. Interference of the High Court under Article 226/227 of the Constitution of India is permissible only in exceptionally rare cases.

II. The order terminating arbitral proceedings under Section 32 of the Act can be challenged before a Court of competent jurisdiction under Section 14 of the Act.

III. The Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908 are applicable to arbitral proceedings. In any case, under Section 19 of the Act, the Arbitral Tribunal can lay down its own procedure.

15) He placed reliance on the following judgments:

a) ***Bhaven Construction through Authorised Signatory Premjibhai K. Shah v. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.***[24]

b) ***IDFC First Bank Limited v. Hitachi MGRM Net Limited***[25]

24 (2022) 1 Supreme Court Cases 75
25 2023 SCC OnLine Del 4052

c) *Akash Automobiles v. Mahindra & Mahindra Ltd.*[26]

d) *Deep Industries Limited v. Oil and Natural Gas Corporation Limited & Anr.*[27]

e) *Hindustan Petroleum Corporation Limited, Through its Authorized Representative Gangandeep Singh Sodhi v. Om Construction, Through its Sole Proprietor Satya Pal Yadav & Ors.*[28]

f) *SBP & Co. v. Patel Engineering Ltd. & Anr.*[29]

g) *Tagus Engineering Private Limited & Ors. v. Reserve Bank of India & Ors.*[30]

h) *Lalitkumar V. Sanghavi (Dead) Through Lrs Neeta Lalit Kumar Sanghavi & Anr. v. Dharamdas V. Sanghavi & Ors.*[31]

i) *Prime Interglobe Private Limited v. Super Milk Products Private Limited*[32]

j) *Rashmi Housing Private Limited v. Pan India Infraprojects Private Limited*[33]

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26 2022 SCC OnLine Bom 8437
27 (2020) 15 SCC 706
28 2023 SCC OnLine Bom 2219
29 (2005) 8 Supreme Court Cases 618
30 (2022) 1 HCC (Bom) 115
31 (2014) 7 SCC 255
32 2022 SCC OnLine Del 1599
33 2014 SCC OnLine Bom 1874

k) *HPCL Bio-Fuels Ltd. (Supra)*

l) *Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd.*[34]

m) *Chandrakant Pandurang Shingade & Anr. v. Walchand Gulabchand Bora & Anr.*[35]

n) *Mario Shaw v. Martin Fernandez & Anr.*[36]

o) *M. S. Sanjay v. Indian Bank & Ors.*[37]

p) *Revajeetu Builders and Developers v. Narayanaswamy & Sons and Ors.*[38]

q) *Heeralal v. Kalyan & Ors.*[39]

r) *State of Goa v. Praveen Enterprises*[40]

16) At this stage, the Petitioner brought to our notice that there was a prayer for amending the Petition in terms of the 'Draft Amendment' placed on record by the Petitioner, but the same has not been considered till date. By way of the 'Draft Amendment', the Petitioner essentially sought to amend original prayer (a) in the

34 2025 SCC OnLine SC 22
35 2019 SCC OnLine Bom 1669
36 1996(1) Mh.L.J.564
37 Civil Appeal No. 1188/2025 decided on 29.1.2025
38 (2009) 10 SCC 84
39 (1998) 1 SCC 278
40 (2012) 12 SCC 581

Petition to add the words 'to the extent that it grants liberty to the Respondents to invoke fresh arbitration proceedings.' Similarly, the Petitioner sought to delete prayer (b). The Petitioner thus, sought to amend pleadings corresponding to the prayers to the proposed amendment to the prayers. The original prayer was a challenge to the impugned order in its entirety and also seeking alternate relief in terms of directing the Arbitral Tribunal to hear and decide the arbitral proceedings on the basis of existing pleadings and the records as it stands on date. Mr. Tamboly objected to the amendments being allowed.

17) Heard the parties and perused the record with their assistance.

18) In so far as question (a) raised in paragraph number 3 herein is concerned, the law is well settled. In ***IDFC First Bank Limited (Supra),*** the Delhi High Court has enumerated certain circumstances wherein such type of petitions can be entertained. The relevant portion of the judgment reads as thus;

> *"24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the*

Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be "extremely circumspect".

25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia, this Court, after considering all the decisions, of the Supreme Court has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

> *"24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:*
>
> *(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.*
>
> *(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.*
>
> *(iii) For interference under Articles 226/227, there have to be 'exceptional circumstances'.*
>
> *(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.*

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

19) A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.

20) In ***Bhaven Construction (Supra)***, the Supreme Court held that the Arbitration Act is a code in itself and the phrase is not merely perfunctory, but has definite legal consequences. Section 5 of the Act is one such consequence, which limits the extent of judicial intervention

in matters governed by Part I of the Act. The framework of the Act clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solution. The use of term "only" as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure. Further, paragraph 18 of the decision reads as thus;

> *“18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAP, this Court referred to several judgments and held:*
>
> > *"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. 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."*
>
> *(emphasis supplied)*

> *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."*

21) The Delhi High Court has followed the same principles of law expounded in ***IDFC First Bank Limited (Supra) in Kelvin Air Conditioning & Ventilation System Private Limited v. Triumph Reality Private Limited.***[41] In its recent decision, in the matter of ***Serosoft Solutions Pvt. Ltd. (Supra)***, the Supreme Court has also considered the issue regarding the circumstances in which the High Court can correctly exercise its supervisory jurisdiction under Article 227 of the

41 2024 SCC Online Del 7137

Constitution of India. The Supreme Court while not finding any justification for interference by the High Court in the order passed by the Arbitral Tribunal in that case, reiterated the conditions for exercising jurisdiction under Articles 226/227 of the Constitution of India. The Supreme Court has in fact stressed on Conditions 5 and 6 of the decision in ***Kelvin Air Conditioning (Supra)***, which reads as thus:

> *"(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.*
>
> *(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.*
>
> *(vii) Excessive judicial interference in the arbitral process is not encouraged.*
>
> *(viii) It is prudent not to exercise jurisdiction under Articles 226/227.*
>
> *(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.*
>
> *(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."*

Thus, the Supreme Court has reaffirmed the law that

interference under Articles 226/227 is 'permissible only if the order is completely perverse i.e. the perversity must stare in the face'. Conditions (vi) to (x) underscore the reason why the High Courts ought not to interfere with orders passed by the Arbitral Tribunal for more than one reason.

22) We looked into the impugned order to see if in fact there is any perversity in the decision of the Tribunal and hence, raised question (a) herein above. The claim/s were that of the Respondents herein. Pursuant to a view taken by the Arbitral Tribunal to disallow an amendment to the claim/s on the ground that the time for passing of the award was ending in May 2024, the Arbitral Tribunal offered two options to the claimant/s therein. The same is reflected in paragraph number 4 of the order dated 20th March 2024 passed by the Arbitral Tribunal. The Respondent/s-Claimant/s chose the option to withdraw the present claim and file a fresh claim instead of continuing with the existing claim. Obviously, the Respondent/s-Claimant/s would not have sought withdrawal simplicitor and it was only on the option offered by the Arbitral Tribunal that the Respondent/s-Claimant/s sought withdrawal of its claim with liberty to file afresh.

23) Per contra, the Petitioner has harped upon Section 32(2)(a) of the Act to say that the Arbitral proceedings shall be terminated where the claimant withdraws his claim, unless the Respondent to the proceeding objects the order of withdrawal and the Arbitral Tribunal recognizes the legitimate interest on its part on obtaining a final settlement of the dispute. A plain reading of the impugned order itself does not indicate any such recognition of a 'legitimate interest' of the Petitioner herein, sufficient to reject the request of the Respondent/s-Claimant/s to withdraw the claim. Section 32 of the Act declaring the termination of mandate of an Arbitral Tribunal is a consequence of withdrawal of a claim and is not a ground on which an objection to withdraw a claim can be sustained. In fact, paragraph A of the Speaking Order impugned herein, itself reveals clearly that the Arbitral Tribunal was alive to its mandate being terminated on withdrawal of the claim as the Tribunal notes that the Respondent/s-Claimant/s shall have to give a fresh notice of invocation of arbitration. In fact, we are informed that pursuant to the said order, Ketan Shah has already addressed a letter to the Arbitral Secretary and CDSL seeking to file fresh arbitration proceedings in terms of the liberty granted by the impugned order. Thus, the Respondent/s-Claimant/s have already

invoked the arbitration clause as contemplated under Section 21 of the Act. In response, the CDSL has conveyed to Ketan Shah that since the present petition was *sub judice* appointing Arbitral Tribunal afresh would render the present Petitions infructuous and hence has not acted any further on the invocation.

24) Order 23 of the CPC provides for withdrawal and adjustment of suits and under Sub-rule (3) the Court has discretion to permit the plaintiff to withdraw a suit or part of a plaint in the suit with liberty to institute a fresh suit in respect of the subject matter of such suits or part of the claim. Similarly, section 19 of the Act provides for determination of rules of procedure. The Arbitral Tribunal undoubtedly is not bound by the CPC or the Indian Evidence Act, however, failing any agreement on the procedure to be followed in conduct of the proceeding, the Arbitral Tribunal has the power to determine conduct of the proceeding in the manner it considers appropriate. The Tribunal has observed in paragraph 7 of the impugned order that in view of the massive fraud committed by Anugrah and to ascertain the exact amount of securities lost by the Respondent/s-Claimant/s it would be fair to allow them to withdraw

the existing arbitration applications with a liberty to file fresh proceedings. Furthermore, the Respondents' (Petitioner herein) contentions to raise objections regarding limitation, *res judicata*, etc. are left open to be agitated in case such fresh arbitral proceedings are invoked. In these circumstances, there is no glaring perversity, least of all of a kind which 'stares in the face' in the order impugned herein, to justify any interference in the impugned order. In any case, there is no counter claim of the Petitioner herein in the arbitral proceedings and the Petitioner has no legitimate interest to claim a final award. As such, the impugned order does not cause any prejudice or irreparable damage to the Petitioner.

25) We have also gone through the decisions cited on behalf of the Petitioner. We agree with the ratios laid down in those decisions. There can be no dispute that the powers of the High Court to issue Writs under Articles 226/227 of the Constitution of India is a basic feature of the Constitution and it cannot be curtailed by parliamentary legislation, in this case, Section 5 of the Act, however, this power is to be exercised in exceptional rarity where one party is left remedy less or clear bad faith is shown by one of the parties. We are satisfied that

the facts in the present case do not comprise such 'exceptional rarity' to justify any interference. There is also no doubt that once the proceedings are terminated, the Arbitral Tribunal is rendered *functus officio* and has no jurisdiction to continue with the proceedings. We have perused the decisions relied upon by the Petitioner on this point also. In this regard, we note that the Arbitral Tribunal itself has declared that the Respondent/s-Claimant/s shall have to give a fresh notice of invocation of arbitration if the claimant decides to initiate fresh proceedings after withdrawal. Thus, the Arbitral Tribunal is under no misconception of enjoying a continued mandate and to remain seized of the arbitral proceedings even after withdrawal of the claim. Section 32 of the Act as canvassed by the Petitioner, is a consequence of termination of mandate and not a restriction on the power of the Arbitrator to permit withdrawal of claim. In this view of the matter, the decisions cited by the Petitioner do not carry the case of the Petitioner any forward.

26) In view of the foregoing discussion, question (a) is answered accordingly. We do not find any perversity in the impugned order to warrant interference in the same, in exercise of our

jurisdiction Articles 226/227 of the Constitution of India. The order does not depict any bad faith and no case of extreme rarity seems to exist either. In this view of the matter, the need to determine question (b) does not arise.

27) Therefore, we do not find any reason to interfere with the impugned order. The Petitions are dismissed.

28) Rule is accordingly discharged. In view of the same, the draft amendment is rendered infructuous and accordingly disposed.

29) All parties to act on an authenticated copy of this Judgment.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)

1) At this stage, after the Judgment is pronounced, Mr. Dwarkadas, learned Senior Counsel for the Petitioner, seeks stay of this Judgment.

2) For the reasons that we have recorded, the request is rejected.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)