2024:DHC:8020

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 15th October, 2024***

\+ CM(M) 3615/2024 & CM APPL. 60593-60594/2024

DR. RAJAN JAISWAL .....Petitioner

Through: Mr. Shubham Verma, Advocate.

versus

M/S SRL LIMITED .....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T *(oral)*

1. The present petition has been filed under Article 227 of Constitution of India and seeks to challenge order dated 30.09.2024 passed by learned Sole Arbitrator.

2. Learned counsel for petitioner (respondent before the learned Sole Arbitrator) has drawn attention of the Court to the pleadings as well as to the impugned order and has contended that the additional documents which the petitioner wanted to place on record were very crucial for just and fair disposal of the claim and, therefore, these should not have been denied to be placed on record.

3. A careful perusal of the impugned order would indicate that the application has been dismissed, primarily, on account of the fact that the petitioner could not give any justifiable or acceptable reason for not filing these documents at relevant stage. It also records that these documents were admittedly, in power, possession and control of the petitioner- Dr. Rajan

Jaiswal himself and he could have easily produced those earlier if he had chosen to exercise due diligence.

4. Admittedly, the issues in the above said arbitration matter, were framed on 16.10.2023 and both the sides have already led their respective evidence and the matter is now fixed for tomorrow for advancing final arguments.

5. In *Kelvin Air Conditioning And Ventilation System Private Limited vs Triumph Reality Private Limited* passed in CM (M) 3592/2024 on 09.10.2024, this Court had considered the scope of intervention in Article 227 of Constitution of India in context of challenge made to the interim order passed by learned Arbitral Tribunal and declined to interfere while observing as under:-

> *"10. Reference be made to IDFC First Bank Limited Vs. Hitachi MGRM Net Limited: 2023 SCC OnLine Del 4052 whereby Co-ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed under Section 16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -*
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> > *"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".*
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> > *25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708] , this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC 706; Bhaven Construction v. Sardar Sarovar Narmada*

Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd., 2022 SCC OnLine Del 566 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal, 2021 SCC OnLine Del 4023] 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 abovementioned 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."

> *26. 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."*

11. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283.

12. This Court in order dated 03.10.2024 passed in CM(M) 3265/2024 titled as M/s Agarwal Associates (Promoters) Limited vs. M/s Sharda Developers has also observed that the remedy available under Article 227 of the Constitution of India does not stand knocked off by the non-obstante clause of Section 5 of Arbitration & Conciliation Act, 1996 which provides that no judicial authority shall intervene except where so provided and, therefore, though the petition would be maintainable but fact remains that the scope of interference is extremely squeezed.

13. The issue in the present case is merely with respect to the fact that whether "sufficient cause" existed or not for the purpose of condoning delay in filing Statement of Defence.

14. Having seen the order passed by learned Sole Arbitrator, this Court does not find any reason to interfere with the impugned order. The aspect whether the ground shown is "sufficient or not" is primarily in the domain of discretionary jurisdiction and even if this Court was to take a contrary view, the impugned order cannot be set aside while exercising supervisory power under Article 227 of Constitution of India, particularly in context of arbitral proceedings where such interference is, to a very large extent, proscribed.

> *15. There is also nothing which may indicate that exercise of such discretion smacks off any bad faith or demonstrates any perversity, much less of extreme nature."*

6. During course of the arguments, learned counsel for the petitioner, very fairly, admitted that the above documents were though in possession of petitioner- Dr. Rajan Jaiswal but the urgency was felt later on when the manner in which he was, eventually, cross-examined and immediately, thereafter, the application was moved.

7. Be that as it may, the scope of interference in such type of matter is very limited and the learned Sole Arbitrator has merely used his discretionary power while denying such documents to be taken on record. Such order does not disclose any perversity, much less extreme perversity. It does not depict any bad faith and no case of extreme or exceptional rarity seems to exist either.

8. Therefore, this Court does not find any reason to interfere with the impugned order,

9. The petition stands dismissed in *limine.*

(MANOJ JAIN)
JUDGE

OCTOBER 15, 2024/*sw*