

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND**

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

CIVIL REVISION PETITION No.787 of 2025

Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for Mr. K. Dhananjaya Naidu, learned counsel for the petitioners.

Mr. A. Venkatesh, learned Senior Counsel representing Mr. Ch. Pushyam Kiran, learned counsel for the respondent.

ORDER: (Per Hon'ble. Justice Moushumi Bhattacharya)

1. The Civil Revision Petition has been filed against an order dated 09.12.2024 passed by the learned Commercial Court at Hyderabad. The impugned order was passed in CEA No.1 of 2024, which was filed by the petitioners under section 47 of The Code of Civil Procedure, 1908, for dismissal of the Execution Petition (CEP No.25 of 2019) filed by the respondent. The Commercial Court dismissed the petitioners' application by way of the impugned order.

2. The petitioners are the Judgment-debtors and the respondents in an arbitration which culminated in an Award dated 27.02.2019. The respondent/claimant is the Award-holder having been awarded Rs.140,89,01,800/- for claim No.1 and Rs.39,50,00,000/- as bonus annuity along with interest @ 12% per annum for a specified period. The arbitration arose

out of a Concession Agreement dated 17.08.2007 entered into between the petitioners and the respondent for Design, Construction and Maintenance of an 8-lane access controlled expressway under Phase II-A Programme as an extension of the Outer Ring Road to Hyderabad City, from Kollur to Patancheru from KM 12 to KM 23.7 on Build, Operate and Transfer (BOT) (Annuity) basis. The Arbitration Clause was contained in Clause 39.2 of the Concession Agreement.

3. The relevant and undisputed facts leading to the petitioners' filing of the application under section 47 of the CPC, in the Execution Petition filed by the respondent, are as follows:

4. The Arbitral Award was passed on 27.02.2019 awarding various sums to the respondent. On 16.09.2019, the respondent/Award-holder filed CEP No.25 of 2019 for enforcement of the Award before the Commercial Court at Hyderabad under section 36 of The Arbitration and Conciliation Act, 1996 (the 1996 Act). The petitioners/Judgment-debtors filed COP No.72 of 2019 under section 34 of the 1996 Act for setting aside the Award dated 27.02.2019. This COP was dismissed by the Commercial Court on 21.03.2022. The petitioners filed a Commercial Court Appeal (COMCA No.8 of

2023) under section 37 of the 1996 Act against the order dated 21.03.2022 passed by the Commercial Court dismissing the petitioners' COP. The petitioners filed I.A.No.1 of 2023 in COMCA No.8 of 2023 for stay of the Award dated 27.02.2019. A Co-ordinate Bench of this Court, by an order dated 17.10.2023, granted stay of execution of the Award subject to the petitioners' depositing 50% of the amount awarded by the Arbitral Tribunal within a period of 6 weeks from the date of the order. COMCA No.8 of 2023 is pending before this Court.

5. Admittedly, the petitioners failed to deposit 50% of the awarded amount as directed by the Division Bench as a condition for stay of execution of the Award.

6. The petitioners also filed I.A.No.2 of 2023 in COMCA No.8 of 2023 for recalling of the order dated 17.10.2023 passed by the Co-ordinate Bench whereby the petitioners had been granted conditional stay. I.A.No.2 of 2023 was dismissed by the Co-ordinate Bench on 05.01.2024. The Co-ordinate Bench further directed that I.A.Nos.3 and 4 of 2023, for amendment of pleadings and for filing of additional documents, respectively, shall be considered at the time of hearing of the Appeal. The petitioners challenged the order dated 05.01.2024 before the

Supreme Court. The petitioners' Special Leave to Appeal (C) Nos.8477-8478 of 2024 was dismissed by the Supreme Court on 09.04.2024.

7. The petitioners filed CEA No.1 of 2024 in CEP No.25 of 2019 under section 47 of the CPC (which deals with questions to be determined by the Court executing decree). This CEA was dismissed by the Commercial Court by way of the impugned order dated 09.12.2024. The order dated 09.12.2024 forms the subject matter of the present C.R.P.

8. Learned Senior Counsel appearing for the petitioners/Judgment-debtors argues that the impugned order passed by the Commercial Court, dismissing the petitioner's application under section 47 of the CPC warrants interference.

9. Learned Senior Counsel appearing for the respondent/Award-holder objects to the maintainability of the present CRP under the provisions of The Commercial Courts Act, 2015 (the 2015 Act), specifically section 8 thereof.

10. We first propose to deal with the issue of maintainability of the present CRP since that decision should precede a consideration of the merits of the dispute.

11. Section 8 of the 2015 Act bars filing of a Civil Revision Application or Petition against any interlocutory order of a Commercial Court including an order on the issue of jurisdiction. Section 8 refers to section 13 of the 2015 Act (Appeals from decrees of Commercial Courts and Commercial Divisions) as the appropriate mechanism for challenging an interlocutory order of a Commercial Court. The applicability of section 8 of 2015 Act i.e., whether the present CRP is barred under the provisions of the 2015 Act, requires a comprehensive reading of the facts underlying the CRP.

12. The case law cited by Senior Counsel appearing for the parties reflect a consensus that section 8 of the 2015 Act cannot impinge upon a party's right to invoke Article 227 of the Constitution of India, as a part of the High Court's supervisory powers over the jurisdictional Courts. The decisions also distinguish between the revisional power under section 115 of the CPC and the High Court's power of superintendence under Article 227 of the Constitution: *Surya Dev Rai Vs. Ram Chander Rai*¹ and *M.V. Ramana Rao Vs. N. Subash*². The Courts have, however, in the very same cases, sounded a note of caution regarding invocation of the High Court's power of

¹ (2003) 6 SCC 675

² (2019) 4 ALT 13

superintendence under Article 227 of the Constitution for correcting each and every order passed by a Court inferior to it and cautioned against untrammelled exercise of that power in unfit cases. Section 8 of the 2015 Act has been given due importance in all the decisions where the petitioners were unable to show cause good reason for not availing themselves of the statutory remedy of filing an appeal under section 13 (1)/(1A) of the 2015 Act.

13. Moreover, the Courts have also laid down broad guidelines for interference using the power under Article 227 of the Constitution, namely, in cases of flagrant abuse, miscarriage of justice or dereliction of duty: *The State of Telangana Vs. Siddartha Constructions*³. The Supreme Court circumscribed the power of interference within the boundaries of patent perversity, gross or manifest failure of justice or violation of the principles of natural justice: *Shalini Shyam Shetty Vs. Rajendra Shankar Patil*⁴. In other words, the power of superintendence should be sparingly exercised only in fit cases i.e., to keep strict administrative control of the Courts within the territory of the High Court.

³ 2024 SCC OnLine TS 3008

⁴ (2010) 8 SCC 329

14. Given the settled parameters of interference, it is necessary to reiterate the factual background of the impugned order for determining whether the impugned order calls for interference on any of the aforesaid grounds.

15. It is undisputed that the petitioners/Judgment-debtors have exhausted all their legal options save and except that of an appeal under section 37 of the 1996 Act.

16. To briefly recollect, COP No.72 of 2019 filed by the petitioners for setting aside the Award was dismissed by the Commercial Court on 21.03.2022. The petitioners' Appeal (COMCA No.8 of 2023 filed under section 37 of the 1996 Act) is pending before this Court as on date. The petitioners' application (I.A.No.1 of 2023 in COMCA No.8 of 2023) for stay of the Award dated 27.02.2019 was disposed of by a Co-ordinate Bench on 17.10.2023, conditional upon the petitioners depositing 50% of the amount awarded by the Tribunal within 6 weeks from the date of the said order. The petitioners' application (I.A.No.2 of 2023 in COMCA No.8 of 2023) to recall the order dated 17.10.2023 was dismissed by a Co-ordinate Bench on 05.01.2024. The petitioners' SLP, from the order

dated 05.01.2024, was dismissed by the Supreme Court on 09.04.2024.

17. Therefore, the only recourse left to the petitioners at this stage is to proceed with the hearing of the Appeal from the order of dismissal of the section 34 petition. There is however no evidence on record to show that the petitioners have taken any steps for expediting hearing of the Appeal (COMCA No.8 of 2023) after January, 2024.

18. The most significant fact is that the petitioners have failed to deposit 50% of the amount awarded by the Arbitral Tribunal till date for stay of the Award. The deposit was to be made within 6 weeks from the date of the order i.e., by 02.12.2023. We are now in May, 2025.

19. The legality of the impugned order dated 09.12.2024 must be assessed in the light of the undisputed facts as stated above. The Commercial Court gave the following reasons for dismissing the petitioners' application under section 47 of the CPC for stay of the execution of the Award:

- i. The petitioners failed in each and every application for challenge to the Award and for stay of execution of the

Award. Multiple applications filed by the petitioners were rejected at all levels of the judicial hierarchy i.e., by the Commercial Court, the High Court and thereafter by the Supreme Court.

- ii. The Appeal from dismissal of the section 34 application is pending before the High Court.
- iii. The petitioners failed to deposit 50% of the awarded amount within the timeframe fixed by the High Court in the order dated 17.10.2023, as a condition for stay of the Award.
- iv. The petitioners filed an application under section 47 of the CPC on the same facts and grounds as were narrated in the Commercial Court Appeal instead of pursuing the recourse available under the 1996 Act.
- v. The petitioners filed a COP challenging the legality of the Award when the Award was put into execution under section 36 of the 1996 Act.
- vi. Section 47 of the CPC does not apply to the facts of this case since the Award is not a decree as defined under section 2(2) of the CPC.

- vii. The petitioners failed to demonstrate any subsequent events after dismissal of the SLP by the Supreme Court on 09.04.2024 which would justify maintaining the section 47 application.

20. We find the above reasons to be fully within the framework of law i.e., The Arbitration and Conciliation Act, 1996 and judicial precedents. The Commercial Court considered both the relevant facts as well as the provisions of the 1996 Act in support of its decision to reject the petitioners' application under section 47 of the CPC.

21. The Arbitration and Conciliation Act, 1996, is a complete code in itself as it envisages and provides for a comprehensive mechanism for parties to settle their disputes before an Arbitral Tribunal. The mechanism covers the entire gamut of proceedings from invocation of the arbitration clause → nomination of the Arbitrator/s → conduct of the arbitration proceedings including the determination of the seat and venue → regulation of the procedure within prescribed time limits → challenge to the jurisdiction of the arbitrator → interim measures → termination of the proceedings → determination of

the form and content of the award and ends into termination of the arbitration process.

22. The 1996 Act also encompasses the post-award stage providing for recourse against the award and an appeal from that decision. Further, the Act provides for stay of the award pending consideration of an application for setting aside of the award. The mechanism aims to protect the rights of an Award-holder through enforcement of the award ensuring that the Award-debtor complies with the terms and conditions imposed by the Court for obtaining stay of the Award.

23. Section 36 of the 1996 Act refers to the Code of Civil Procedure to the extent of enforcement of the arbitral award in accordance with the provisions of the CPC. The first proviso to section 36(3) of the 1996 Act authorises the Court to impose conditions for stay of operation of the Award, having due regard to the provisions for grant of stay of a money decree under the CPC.

24. A careful reading of Section 36 of the Act would make it clear that the CPC only has a limited role in the matter of enforcement and stay of the Award. The language of section 36(1) emphasizes that the Award shall be enforced in

accordance with the provisions of the CPC in the same manner as if it were a decree of the Court. Section 36(1) of the 1996 Act is set out below:

“36. Enforcement.—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of subsection (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.”

25. The section itself demarcates the terrain of an award as opposed to the mode of its execution/enforcement. The reference to the CPC is restricted to the manner in which the award is to be enforced. The reference to the CPC does not spill over to the award itself for the purpose of equating the award with a decree as defined under section 2(2) of the CPC. The remaining part of section 36 sheds further light on this issue by diverging from the CPC route and establishing a specific mechanism under the 1996 Act for stay of enforcement of the award. Section 36(3) provides the only means of pausing the execution of the award by conferring the Court with discretion to decide the issue of stay and impose conditions in accordance with the CPC in case of money awards. Therefore, the

distinction drawn by the Trial Court between an award and the procedure for enforcement thereof fits with the statutory framework of the 1996 Act.

26. We hence do not find any reason to interfere with the findings of the Commercial Court. We also agree with the views expressed by the Commercial Court that the petitioners have not given any justification under the law for pursuing an alternative route for challenging the legality of the Award, without exhausting their rights under the pending Appeal under section 37 of the 1996 Act.

27. We find the conduct of the petitioners not only to be in blatant disregard of the law but also evincing desperation to avoid the processes of law by pushing back their obligation to make payment to the Award-holder by filing one vexatious proceeding after another. The petitioners' selective reliance on the CPC for mounting a challenge to the Award under section 47 of the CPC is contrary to law. In fact, the petitioners have no explanation for suddenly switching from the main line to a chord line for reaching the same distinction i.e., for nullifying the Award.

28. In essence, the objections/grounds available to a judgment-debtor under section 47 of the CPC are distinct from those available to an Award-Debtor under section 36 of the 1996 Act. A judgment passed by a Court of law and an award made by an Arbitral Tribunal arise from different sources of conflict, procedures and the parties' willingness to adjudicate their dispute in a forum of their choice (culminating in an award).

29. Moreover, The Arbitration and Conciliation Act, 1996 is a special statute which consolidates the law relating to domestic and international commercial arbitrations and enforcement of awards under both these categories. The Act draws upon the provisions of the CPC for limited purposes and circumstances. These circumstances are expressly stated in the Act and are not to be inferred or invoked based on the convenience of a party. That would be undermining the finality and binding nature of Arbitral Awards, as declared under section 35 of the Act.

30. The power of superintendence of a High Court under Article 227 of the Constitution must be exercised within self-imposed limits, restricting the parameters to miscarriage of justice, flagrant abuse or dereliction of duty. The bar contained

in section 8 of the 2015 Act should be given due weightage, particularly where the aggrieved party has not been able to justify relinquishing the recourse provided under section 13(1) or (1A) of the 2015 Act: *The State of Telangana Vs. Siddartha Constructions (supra)*.

31. Moreover, a decision brought before the Court under Article 227 of the Constitution must reflect a patent irregularity or a clear violation of law at first glance. The present case, in fact, is quite the opposite. The impugned order is well-reasoned with due consideration of the relevant facts and law applicable to the subject matter. The interpretation distinguishing a decree from an award is supported by the 1996 Act itself. We hence do not find any reason to interfere with the impugned order dated 09.12.2024.

32. C.R.P.No.787 of 2025 is accordingly dismissed as not maintainable, with costs of Rs.5 Lakhs to be paid by the petitioners to the respondent within two weeks from date. The respondent/Award-holder has been deprived of the fruits of the Award since 2019 and has instead been taken for a misconceived ride across Courts for more than 6 years.

33. All connected applications are disposed of. Interim orders, if any, stand vacated.

MOUSHUMI BHATTACHARYA, J

B.R.MADHUSUDHAN RAO, J

Date: 02.05.2025

Note: L.R. Copy to be marked

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