IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1605 of 2017
Date of decision:-31.12.2020

M/s Madan Lal Wadhwa and Co.

...Petitioner

Vs.

Hindustan Petroleum Corpn. Ltd

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.S. Gandhi, Advocate,
for the petitioner.

Mr. Raman Sharma, Advocate
for the respondent.

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Ritu Bahri, J.

The present civil revision petition under Article 227 of the Constitution of India is for setting aside of order dated 10.10.2011 (P-4) passed by learned Civil Judge (Sr. Divn.) Amritsar whereby the matter in suit has been referred to Arbitrator on the application of the respondent. Further prayer is for setting aside of order dated 02.12.2016 (P-11) and 16.12.2016 (P-12) by learned Civil Judge (Jr. Divn.), Amritsar whereby the application of the petitioner under Section 14 and 25 read with other provisions of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for terminating the Arbitration Proceedings pending before the Arbitration Tribunal have been disposed of without any order on merit.

The connected C.R. No. 1709-2017 has already been dismissed by this Court whereby challenge was to the order dated 10.10.2011 (P-4) whereby the matter of the suit has been referred to Arbitrator.

In the present civil revision petition, the question for consideration before this Court is that whether order dated 02.12.2016 (P-11) and 16.12.2016 (P-12) have been rightly passed under under Section 14 and 25 of the Act.

Brief facts of the case are that M/s Esso Standard Eastern Inc has taken on lease land from Ministry of Railways adjoining the Railway line near Bhandari Bridge Amritsar wherein the above said company had installed five oil storage tanks therein. The above said M/s Esso Standard Eastern Inc. has given on lease godown and office etc and having oil storage tanks therein to M/s Amrit Lal Wadhwa and Bros. Further M/s Amrit Lal Wadhwa and Bros had purchased five above said oil tanks from M/s Esso Standard Eastern Inc.

Thereafter, M/s Amrit Lal Wadhwa and Bros. was dissolved in February/march, 1973. This firm had its two partners namely (i) Sh. Amrit Lal Wadhwa and (ii) Sh. Madan Lal Wadhwa. After retirement of Sh. Amrit Lal Wadhwa, M/s Amrit Lal Wadhwa became the sole proprietorship firm and its assets and liabilities were taken over by M/s Madan Lal Wadhwa and Company i.e present petitioner/plaintiff. However, Amrit Lal Wadhwa was already carrying on his separate business under the name and style of M/s Barkat Ram Amrit Lal wherein later on partners were inducted and as such, Barkat Ram Amrit Lal Wadhwa and Bros out of five oil tanks which were purchased by it from M/s Esso Standard Eastern Inc., three such oil tanks were taken over by M/s Barkat Ram Amrit Lal Wadhwa and two oil tanks were taken by petitioner i.e M/s Madan Lal Wadhwa and Co.

Thereafter, M/s Esso Standard Eastern Inc. was taken over by the respondent/defendant viz Hindustan Petroleum Corporation Ltd

somewhere in 1974 and as such Hindustan Petroleum Corporation Ltd became lessee under the Ministry of Railways. The petitioner and other firm were consequently became sub-lessee under respondent and were required by the defendant to pay to the defendant the consolidated rent and storage fee at the rate of Rs.600/- per month payable. Rs.300/- per month was payable by M/s Madan Lal Wadhwa and Co (plaintiff) and Rs.300/- per month by M/s Barkat Ram Amrit Lal to the defendant.

The petitioner-firm then received a letter dated 15.03.2002 from the Divisional Engineer Northern Railway Ferozepur demanding to pay Rs.61,25,519/- for allegedly occupying the railway land for the period 01.04.1986 to 31.03.2002. The petitioner-firm served notice dated 09.10.2002 under Section 80 Cr.P.C upon Union of India through Ministry of Railways, which was followed by similar notice dated 10.01.2003 wherein the plaintiff had challenged the recovery of any alleged amount as demanded by Indian Railways, since any such alleged demand was unilateral, arbitrary, unjust and illegal and was otherwise barred by time. The petitioner-firm then filed a suit titled as M/s Madan Lal Wadhwa and Co. vs. Union of India and others before the Court of Civil Judge, Amritsar where the defendant-HPCL was also impleaded as co-defendant. The respondent then challenged the demand and recovery before this Court in C.W.P No. 13618-2011 which was admitted. Therefore, the suit of the petitioner, involving the same subject and recovery and notice is adjourned sine die awaiting the decision of the above writ petition.

The respondent then vide notice dated 09.01.2006 raised the demand of Rs.61,25,516/-. This order was challenged in the instant suit whereas in the earlier suit filed against the demand raised by railway, the

respondent in earlier suit for the same demand, appeared and filed written statement. The copy of plaint is Annexure P-1. In the present suit, the respondent appeared and after 4 years filed application dated 28.09.2010 under Section 8 of the Act for reference the matter to Arbitrator. Petitioner then filed reply dated 07.03.2011 and took stand that the subject matter in earlier suit and this suit is same and thus, the matter is not to be referred to Arbitrator. But vide order dated 10.10.2011 (P-4), the learned trial Court referred the matter to Arbitrator, keeping in view the clause in the agreement affected between the parties whereby it has been mentioned that the matter can be referred to Arbitrator.

The Arbitrator then served letter dated 04.10.2012 to parties asking them to submit the claim but respondent failed to file claim before arbitrator and sought time by filing application dated 05.11.2011. However, despite the extension of time, for 15 days, no claim was submitted for almost 01 year. The Arbitrator then passed order to submit the claim vide letter dated 13.06.2013 (P-7) but no claim was raised and the Arbitrator again serve notice dated 09.04.2014 (P-8) to submit the claim.

The petitioner then filed application under Section 14 and 25 of the Act seeking termination of Arbitration Proceedings as the respondent failed to submit the claims for almost 02 years to which respondent filed reply dated 22.08.2014 and the application was never considered on merits and decided. Vide order dated 02.12.2016 (P-11), it was ordered to be taken up after decision of the review application filed by the petitioner.

Thereafter, the learned trial court, while deciding the review application vide its order dated 16.12.2016 (P-12) simply observed that the said application stands decided vide order dated 02.12.2016 whereas vide

order dated 02.12.2016, it was only ordered to be heard with review application.

Learned counsel for the petitioner at the very outset has referred to Section 14 and 25 of the Act, which reads as under:-

14. Failure or impossibility to act.—(1) 1[The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 2[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited];

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Learned counsel for the petitioner has referred to Annexure A-1 placed on record vide C.M. No. 10313-CII-2020. As per clause 29 of Kerosene/ Industrial Diesel Dealership Agreement (A-1), it has been mentioned that any dispute or difference of any nature whatsoever or

regarding any right, liability act, commission or account or any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole Arbitrator of the Managing Director of the Corporation or of some officer of the Corporation or that he has to deal with the matters to which the contract relates for that in the course of his duties as an officer of the Corporation he had expressed views on all for any other matters in dispute or difference in the event of the Arbitrator to whom the matter is originally referred being transferred for vacating his office for being unable to act for any reasons the managing director as a force at the time of such transfer vacation of office or liability to Act shall designate another person to act as Arbitrator in accordance with the terms of the agreement in accordance with terms of agreement search person shall be entitled to proceed with reference from the point at which it was left by his predecessor it is also a term of this contract that no person other than the Managing Director of the Corporation as aforesaid shall act as Arbitrator herein under.

Learned counsel for the petitioner has further argued that award is to be passed in writing within a period of six months after entering upon the reference or within such extended time not exceeding for 4 months as the sole arbitrator shall by a writing under his own hands appoint.

Learned counsel for the petitioner has further argued that as per para No. 29 of the above agreement, it clearly specify that if at any stage, the arbitrator is transferred then a new arbitrator should be appointed but in the present case, the Arbitrator who was initially appointed was shifted to three different places, but he did not appoint any other Arbitrator but has decided to keep the matter with himself for the reason best known to him. Further, there was no stay granted by any Court with respect to Arbitration

Proceedings.

Learned counsel for the petitioner has referred to judgment of Hon'ble the Supreme Court in a case of ***Jayesh H. Pandya vs. Subhtex India Ltd, 2019 (5) R.A.J 99 and Bharat Cooking Coal Ltd vs. Annapurna Construction, 2008 (6) SCC 732*** to contend that extension without the consent of parties, is illegal and perverse. The Arbitrator had no power to further enlarge the time to make and publish the award. The Arbitrator cannot go beyond the terms of the contract between the parties, he cannot rule contrary to the terms of the contract. Where the terms of the contract is clear and unambiguous, the arbitrator cannot ignore it.

Learned counsel has referred to Section 12 (1), (2) and (3) of the Arbitration Act to contend that there is gross non compliance of Section 12, as the Arbitrator has not given statutory disclosure in writing in the prescribed format as mandated by the Act where the Arbitrator was ought to disclose in writing any circumstances likely to give rise to the justifiable doubt as to the independence or impartiality of the Arbitrator.

Learned counsel for the petitioner has further argued that the Arbitrator has not complied with Section 14 of the Arbitration Act. Section 14 provides that the mandate of an Arbitrator shall terminate if he becomes de jure or de facto unable to perform his functions or for other reason fails to act without undue delay.

Reference has been made to judgment of Bombay High Court in a case of ***Supreme Cylinders Ltd vs. S.P. Donadkar and another, passed in Arbitration Petition E Case No. 2432-2020, decided on 09.10.2020.*** The petition was filed under Section 14 of the Act. The arbitration between the parties ran for nearly 20 years. In this petition, HPCL was also a party.

During this 20 years, one arbitrator has come and gone without rendering an award. The petition was allowed by relying upon judgment of Hon'ble the Supreme Court in a case of ***NBCC Ltd vs. J.G. Engineering Pvt Ltd, 2010 (2) SCC 385*** wherein it has been held that the Arbitrator was bound to make and publish his award within the time mutually agreed, whether in the tender or a later extension by consent. Without consent to any extension, the arbitral authority ends.

While allowing the application in ***Supreme Cylinders Ltd's case (supra),*** it was held that failure to make the award within the specified time is fatal to the arbitral mandate. There was no extension in writing for the Arbitrator to proceed with the proceedings. It was further held that there was no question of HPCL appointing respondent No. 1 after the arbitral mandate ended.

Reference has further been made to judgment of Hon'ble the Supreme Court of India in a case of ***N.B.C.C Ltd vs. J.G. Engineering Pvt. Ltd., 2010 (1) RCR (Civil) 725*** wherein Arbitrator failed to conclude the proceedings within time fixed by parties. It was held that Arbitrator had no power to enlarge the time to make and publish award and his mandate had automatically terminated after the expiry of time fixed by parties. It was held that time can only be extended if the parties are agreed. Where one party did not give any consent for extension of time to arbitrator, then the Court cannot exercise its inherent power in extending time fixed by the parties in the absence of consent of either of them.

On the other hand, learned counsel for the respondent submits that the application under Section 14 and 25 of the Act has to be filed before District Judge and was not maintainable before the

Court of Civil Judge (Sr. Divn.). This Court cannot exercise its jurisdiction under Article 227 of the Constitution of India and pass an order. Reference has been made to judgment of ***Kiran Singh and others vs. Chaman Paswan and others, 1955 (1) SCR 117.***

Learned counsel has further submitted that application under Section 14 and 25 are not maintainable before Civil Judge, Sr. Division and has referred to Section 14 (2) and (2) (e) of the Act, which reads as under:-

> *"(2) If a controversy remains concerning any of the grounds referred to inclause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.*
> *(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

Learned counsel while referring to the above said Act contends that this Court cannot exercise its jurisdiction under Article 227 of the Constitution of India and treat this revision petition as an application under Section 14 and 25 of the Act. The District Judge is the Principal Court of Original Civil Jurisdiction. The application before Civil Judge Sr. Division was not maintainable.

Learned counsel for the respondent has further relied upon a judgment of Hon'ble the Supreme Court of India in a case of ***Hindustan Petroleum Corpn. Ltd vs. M/s Pinkcity Midway Petroleums, 2003 (3) RCR (Civil) 686*** wherein the dispute was with regard to cancellation of contract of supply on account of short supply of material tempering with the

measuring instruments, is capable of adjudication in arbitration.

Learned counsel for the respondent while referring to the above judgment contends that the objection taken by the petitioner under Section 14 and 25 of the Act, can be adjudicated by the Arbitrator. The petitioner had the liberty to take all pleas before the Arbitrator.

Learned counsel for the respondent argued that in the present case, the petitioner had not made the application before the appropriate authority and this ground is sufficient to dismiss the present revision petition. Reference has further been made to case titled as ***M/s Estralla Rubber vs. Dass Estate (Pvt) Ltd, (SC), 2001 (4) RCR (Civil) 362*** where the scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India was examined and explained in number of decisions of this Court. It has been held that High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the Courts, subordinate or Tribunal. Exercise of this power and interfering with the orders of the Courts or Tribunal is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if High Court does not interfere, a grave injustice remains uncorrected.

Learned counsel for the respondent has then referred to case titled as ***M/s Sterling Industries vs. Jayprakash Associates Ltd, 2019 (3) RCR (Civil) 844*** wherein the High Court entertained a writ petition under Article 227 of the Constitution of India against an order of learned District Judge, Gautam Budh Nagar purportedly passed under Section 20 of the Act read with Section 19 of the Micro, Small and Medium Enterprises

Development Act, 2006. This application was made by respondent No. 1to District Judge against a partial award under Section of the Act. Such an application was not tenable, vide Section 16 (6) of the Act. It was held that since such an application was not tenable, therefore, how in a writ petition filed against an order made by the District Judge in an untenable application, the High Court could have set aside the partial award. The judgment of the High Court was thus set aside.

Heard learned counsel for the parties at length.

It is not in dispute between the parties that the Arbitrator was appointed on 10.10.2011, keeping in view the terms of the agreement (Annexure A-1) wherein it has been mentioned that the Arbitrator has to conclude the proceedings within a period of six months and after extension, within a period of four months. But in the present case, after the Arbitrator was appointed on 10.10.2011, he served letter dated 04.10.2012 to parties asking them to submit the claim but respondent failed to file claim before arbitrator and sought time by filing application dated 05.11.2011. However, despite the extension of time, for 15 days, no claim was submitted for almost 01 year. The Arbitrator then passed order to submit the claim vide letter dated 13.06.2013 (P-7) but no claim was raised and the Arbitrator again serve notice dated 09.04.2014 (P-8) to submit the claim.

Now the question for consideration before this Court is that after the appointment of Arbitrator on 10.10.2011, can he serve notice after a gap of 04 years i.e on 09.04.2014 (P-8) for submitting the claim, keeping in view ***Jayesh H. Pandya's case (supra) and Supreme Cylinders Ltd's case (supra).***

In Jayesh H. Pandya's case (supra), Hon'ble the Supreme

Court was examining a case where the Bombay High Court while dismissing the Arbitration Petition held that the appellants had waived their right to the extension of time for completion of the arbitration proceedings and making the award, beyond the stipulated period. Hon'ble the Supreme Court allowed the appeal and in para 20 to 23 observed as under:-

> *"20. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of valuable rights where the circumstances show that what was done was involuntary. That apart, the doctrine of "waiver" or "deemed waiver" or "estoppel" is always based on facts and circumstances of each case, conduct of the parties in each case and as per the agreement entered into between the parties and this exposition has been affirmed by this Court in NBCC Ltd.(supra) regarding adherence to the imposition of time limit for the conclusion of the arbitral proceedings. The parties have to stand by the terms of contract including the Arbitrator.*
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> *21. The clause so referred indicates that the parties have admittedly agreed and the time period so prescribed is final and binding. It means the arbitration proceedings should commence and end within the prescribed period of time which in the instant case was of four months and expired on 4 th September, 2007 and, there was no occasion for either party to raise an objection as long as the time was available at the command of the Arbitrator to conclude the arbitral proceedings and pass an award within the time schedule fixed under the terms of contract as agreed by the parties.*
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> *22. That apart, there is no provision under the arbitration agreement to condone the delay when agreement between the parties binds them to see that the arbitration proceedings should be concluded within the time prescribed. This time restriction is well within the scope and purport of the Act, 1996 at national and international arbitrations.*
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> *23. The time fixed for the arbitration and/or schedule of time limit in such arbitration proceedings, as it is recognised by law, there is no reason not to accept the same, basically in the present facts and circumstances where the parties themselves agreed to bind themselves by the time limit. Section 14 read with Section 15 of the Act, 1996 also recognise this mechanism and after the expiry of four months period from the date of first preliminary meeting held on*

4th May, 2007, the Arbitrator indeed became de jure unable to perform his functions and the mandate to act as an Arbitrator in the arbitral proceedings between the parties as prayed for stood terminated.

Further in ***NBCC Ltd's case (supra),*** Hon'ble the Supreme Court set aside the impugned order and remanded the case back to High Court for fresh decision on the application under Section 11 (6) of the Act, in view of the law laid down in ***Northern Railway Administration, Ministry of Railway v. Patel Engineering Company Ltd, 2009 (1) CR (Civil) 306.*** In para 14, it has been observed as under:-

14. We have carefully examined the aforesaid observations of the impugned judgment of the High Court. We are of the view that in view of a three-Judge Bench decision of this Court in the case of Northern Railway Administration, Ministry of Railway vs. Patel Engineering Company Ltd. [2008 (10) SCC 240] in which a decision of this Court in Ace Pipeline Contracts Private Limited vs. Bharat Petroleum Corporation Limited [(2007) 5 SCC 304] was also referred to, the application for appointment of an Arbitrator under Section 11 of the Act should be referred back to the High Court for fresh decision. Arijit Pasayat, (as His Lordship then was), heading a three-Judge Bench of this Court after considering the scope and object of the Act particularly Section 11 of the Act concluded the following :-

"A bare reading of the scheme of Section 11 shows that the emphasis is on the terms of the agreement being adhered to and/or given effect as closely as possible. In other words, the Court may ask to do what has not been done. The court must first ensure that the remedies provided for are exhausted. It is true as contended by Mr. Desai, that it is not mandatory for the Chief Justice or any person or institution designated by him to appoint the named arbitrator or arbitrators. But at the same time, due regard has to be given to the qualifications required by the agreement and other considerations.

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In all these cases at hand the High Court does not appear to have focused on the requirement to have due regard to the qualifications required by the agreement or other considerations necessary to secure the appointment of an independent and impartial arbitrator. It needs no reiteration that appointment of the arbitrator or arbitrators named in the arbitration agreement is not a must, but while making the appointment the twin requirements of Sub-section (8) of Section 11 have

to be kept in view, considered and taken into account. If it is not done, the appointment becomes vulnerable. In the circumstances, we set aside the appointment made in each case, remit the matters to the High Court to make fresh appointments keeping in view the parameters indicated above."

In the aforesaid decision in the case of Northern Railway Administration (Supra), Arijit Pasayat, J. (as His Lordship then was), held that the High Court in the said case did not appear to have focused on the requirement to have due regard to the qualifications required by the agreement or other conditions necessary to secure the appointment of an independent and impartial arbitrator. In the aforesaid decision, this Court also concluded that since the requirement of sub-section (8) of Section 11 was not at all dealt with by the High Court in its order, the appointment of an arbitrator without dealing with Sub-Section 8 of Section 11 of the Act became vulnerable and accordingly, such appointment must be set aside. Similar is the position in this case. In this case also, before appointing an arbitrator under Section 11(6) of the Act, the High Court had failed to take into consideration the effect of Section 11(8) of the Act as was done in Northern Railway Administration (supra).

Hon'ble the Supreme Court has followed ***NBCC Ltd's case (supra)*** while allowing appeal of ***Supreme Cylinders Ltd's case (supra)*** and in para No. 22 and 23 observed as under:-

22. Second, Mr. Aggarwal for Supreme Cylinders is correct in relying on the decision of the Supreme Court in NBCC Ltd vs. JG Engineering Pvt Ltd. The Supreme Court held that the arbitrator was bound to make and publish his award within time mutually agreed, whether in the tender or a later extension by consent. Without consent to the extension, the arbitral authority ends. The Supreme Court held that the High Court was correct in terminating the arbitral mandate. Further, the Court had no power to extend this time (under the Act is then stood)- and in this case, HPCL has never applied to Court under the amended Act for any extension. There can be no invocation of any inherent power.

23. Whatever may be the position in regard to unilateral appointments, and I will turn to that presently, there is nothing at all in the Arbitration Act that contemplates an arbitrator, however, appointed, either abandoning an arbitration as Narvekar did, only to be substituted by another arbitrator who also functions with these prolonged gaps and does not complete the task at hand within the time stipulated (assuming that time could be

extended in the first place, which is ex facie incorrect). To prolong an arbitration like this is not the purpose of arbitration law: see paragraph NO. 22 of NBCC Ltd. It is contrary to the very mandate and legislative intent of the Arbitration Act.

The above judgment is directly applicable to the facts of the present case, as in the above case, as well the Arbitrator had not concluded the proceedings as per terms of the agreement.

M/s Pinkcity Midway Petroleums's case (supra) cited by learned counsel for the respondent will not be applicable to the facts of the present case, as in that case Hon'ble the Supreme Court was examining the issue with respect to reference to Arbitrator by Civil Court under Sections 8 and 16 of the Act. Hon'ble the Supreme Court was not dealing with the applications filed under Section 14 and 25 of the Act.

Reference at this stage can be made to C.M. No. 8034-CII-2020 in C.R. No. 1605-2017 wherein it has been stated that after filing the present revision petition, a letter was issued by the Arbitrator to the petitioner on 02.03.2020 (A-4) and asked him to appear in the Arbitration on 18.03.2020 to which the petitioner gave his reply on 10.03.2020 (A-5) stating therein that petitioners are pursuing for modification/recalling/rectification of order dated 04.12.2019 and requested the Arbitrator to keep the matter in abeyance till the application for modification/recalling/rectification of order dated 04.12.2019 is decided. But despite the request, the Arbitrator started the arbitration proceedings and was forcing the petitioner to join the Arbitration Proceedings. Vide order dated 11.08.2020 (A-10), the Arbitrator has observed that the respondent is not interested in participating in the present proceedings and delaying the proceedings on the one pretext or the other despite having given many opportunities to submit their reply.

The right of the respondent to file reply to statement of claim was ordered to be closed. Parties were directed to submit written arguments, within a period of fifteen days, from the date of communication. It was observed that the award shall be passed now on the basis of pleadings on record and written arguments, if any, submitted by the parties.

The above order shows that the Arbitrator is proceeding even now to complete the proceedings, after being appointed on 10.10.2011. The respondent in the present case had not placed on record any evidence that there was any written consent given by the parties for extension of time. As per Annexure A-1, the award is to be passed in writing within a period of six months after entering upon the reference or within such extended time not exceeding for 4 months. However, the Arbitrator is proceeding now even after a gap of 09 years, which is illegal and perverse, as Arbitrator cannot go beyond the conditions mentioned in the agreement which is the base of Arbitration Proceedings.

As far as argument of learned counsel for the respondent is concerned that the High court cannot exercise its power under Article 227 of the Constitution of India, reference at this stage can be made to judgment of ***Mr. Gurcharan Singh Sahney and others vs. Harpreet Singh Chabra and others, passed in Civil Revision Petition No.1861 OF 2015, decided on 16-03-2016 by Andhra High Court*** wherein it was held that the power vested in High Court under Article 227 of the Constitution of India, to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions, is part of the basic structure of the Constitution. Exercise of jurisdiction by the High Court under Article 227 of the Constitution of India, cannot be negated, circumscribed or

fettered even by an amendment to the Constitution, much less by legislation or any Act. The jurisdiction under Article 227 of the Constitution of India cannot be limited or fettered by any Act of the Legislature. The supervisory jurisdiction is wide and is used to meet the ends of justice. It has been observed as under:-

> *"The scope of interference, in proceedings under Article 227 of the Constitution of India, is limited, and the power conferred thereunder should be exercised within certain parameters. That does not, however, mean that a petition under Article 227 of the Constitution of India is not maintainable. While a petition filed under Article 227 of the Constitution of India, against an order passed under Section 14(2) of the Act, is no doubt maintainable, examination of the validity of such an order must be confined within the narrow limits within which the jurisdiction under Article 227 of the Constitution of India must be exercised. We see no merit in the submission of Sri Sunil Ghanu, Learned Counsel for the respondents, that this petition, filed under Article 227 of the Constitution of India, is not maintainable.*

The ratio of ***M/s Estralla Rubber's case (supra) and M/s Sterling Industries's case (supra)*** cited by learned counsel for the respondent are applicable to the facts of the present case, as grave injustice has been caused to the petitioner. A perusal of order dated 16.12.2016 (P-12) shows that Civil Judge (Jr. Divn) Amritsar has not given any detailed reasoning while deciding the application under Section 14 and 25 of the Act. Thus, it would cause further harassment to the petitioner if he is asked now to file application under Section 14 & 25 of the Act before the Court of District Judge.

Further as per terms of the Agreement (A-1), the Arbitrator was bound to complete the proceedings within a period of six months from the date of the reference with further extension of four months. However, the Arbitrator was appointed on 10.10.2011 and he has taken almost 09 years to conclude the proceedings and the parties have not given anywhere in

writing for extension of time.

This Court is now deciding this revision by exercise its power under Article 227 of the Constitution of India. In ***Jayesh H. Pandya's case's (supra) and NBCC Ltd's case (supra),*** the Arbitrator after the expiry of term, cannot proceed further without the consent of the parties for extension of time. Even the right to file claim of the respondent was closed, vide order dated 11.08.2020 (A-10). The Arbitrator was appointed on 10.10.2011 but he did not conclude the proceedings. A new Arbitrator could have been appointed, as per Section 29 of the agreement (A-1) which was not done.

In view of the discussion made above, the present revision petition is allowed and orders dated 10.10.2011 (P-4), 02.12.2016 (P-11) and 16.12.2016 (P-12) are set aside. The parties are directed to take appropriate steps for appointment of new Arbitrator, as per agreement (A-1).

(RITU BAHRI)
JUDGE

31.12.2020
G Arora

Whether speaking/reasoned : Yes
Whether reportable : Yes