CASE NO.:
Appeal (civil) 3620 of 2002

PETITIONER:
M/S. I.T.I. LTD.

Vs.

RESPONDENT:
M/NSE.TSWIOERMKENLSTDP.UBLIC COMMUNICATIONS

DATE OF JUDGMENT: 20/05/2002

BENCH:
N. Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

Leave granted.

This appeal is filed directly to this Court against the judgment and order of the 10th Addlitional City Civil Judge, Bangalore made in Misc. Appeal No.6 of 2002 dated 18th April, 2002.

The appeal before City Civil Judge was against an interim order made by the arbitral tribunal and that appeal was filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (the 'Act'). The learned Civil Judge dismissed the said appeal.

The principal question that arises for our consideration is whether a revision petition under Section 115 of the Civil Procedure Code (the 'Code') lies to the High Court as against an order made by a civil court in an appeal preferred under Section 37 of the Act. If so, whether on the facts and circumstances of this case, such a remedy by way of revision is an alternate and efficacious remedy or not.

Mr. K. Parasaran, learned senior counsel appearing for the appellants submitted that the right of second appeal is specifically taken away under Section 37(2) of the Act. Therefore, by implication it should be held that even a revision is not maintainable under Section 115 of the Act. He pointed out that under Section 5 of the Act, there is a bar against judicial intervention by any judicial authority unless the same is specifically provided under Part I of the Act. It is his contention that since a revision is not specifically provided for and the Code not being made applicable to proceedings arising under the Act, a revision to the High Court does not lie. Therefore, he contends that the appellant's only remedy is to approach this Court by way of this appeal. He sought to take support from a decision of the Privy Council in the case of R.M.A.R.A. Adaikappa Chettiar & Anr. vs. R.Chandrasekhara Thevar (AIR 1948 PC 12) and two decisions of this Court in the case of Shankar Ramchandra Abhyankar vs. Krishnaji Dattatreya Bapat

(1969 (2) SCC 74) and M/s. Central Coal Fields Ltd. & Anr. vs. M/s.Jaiswal Coal Co. & Ors. (1980 Supp. SCC 471).

Mr. P.Chidambaram, learned counsel appearing for the respondent in reply contended that under Section 37 of the Act an appeal is provided to a civil court as defined under Section 2(e) of the Act. He pointed out that though there is no specific reference as to the application of the Code to the proceedings arising under Section 37, there is no express exclusion of the Code either. Therefore, in the absence of any such express exclusion, the appeal being provided to a civil court, the Code should apply to the proceedings before the civil court. He also argues that this question of availability of an alternate remedy by way of revision to the High Court is no more res integra because the same is concluded by a recent order of this Court though rendered at SLP stage in the case of Nirma Ltd. v. M/s. Lurgi Lentjes Energietechnik GMBH & Anr. made in SLP No.22106 of 2001 dated 14.1.2002.

Mr. K.Parasaran's reliance on the case of Adaikappa Chettiar (supra) is misplaced because the judgment does not support the case of the appellant, what was held by the Privy Council in that case was when an appeal lies under Section 96 of the Code of Civil Procedure the High Court cannot entertain an application for revision under Section 115 of the Code because the High Court has no jurisdiction to entertain a revision where an appeal lies. In the said case, the Privy Council overruling an earlier Full Bench judgment of the Madras High Court held that an appeal against an order made by the civil court under the Madras Agriculturists' Relief Act, 1938 is maintainable, therefore, the High Court could not have entertained a revision under Section 115 of the Act which finding, in our opinion, does not help the appellant in the present case. Mr. Parasaran has also relied on a judgment of this Court in Shankar Ramchandra Abhyankar (supra) wherein this Court held that a revision in effect is in the nature of an appeal. Mr. Parasaran relying on this judgment argued that if revision is in effect an appeal then the Act having prohibited a second appeal, any proceeding which is in the nature of an appeal will also be barred. We think this observation of this Court in the case of Abhyankar (supra) also does not apply to the facts of the present appeal before us. In the case of Abhyankar, this Court noticed that the trial court had granted a decree for possession of certain rooms in the petition scheduled premises which order of eviction was confirmed by the appellate court on the ground of equity. Against the said judgment of the appellate court, the aggrieved party had preferred a revision petition before the High Court which came to be dismissed by a Single Judge. Having suffered an adverse order in the revision the aggrieved party then filed a writ petition under Articles 226 and 227 of the Constitution of India challenging the very same appellate order which was confirmed in revision. On those facts, this Court held that a writ petition ought not to have been entertained by the High Court when the party had already chosen the remedy of filing a revision before the High Court under Section 115 of the Code. In these circumstances, this Court held that if there are two modes for invoking jurisdiction of the High Court and one of those modes having been chosen and exhausted, it would not be proper for the High Court to entertain another proceeding in respect of the same impugned order under Articles 226 and 227. It is while discussing the propriety of entertaining a writ petition this Court had held that the aggrieved party had already exhausted a remedy by way of revision which is in the nature of an appeal. We do not think the observations made by this Court in the case of Abhyankar (supra) can be usefully applied to the

facts of this case.

The question still remains as to whether when a second appeal is statutorily barred under the Act and when the Code is not specifically made applicable, can it be said that a right of revision before the High Court would still be available to an aggrieved party ? As pointed out by Mr. Chidambaram, this Court in the case of Nirma Ltd. (supra) while dismissing an SLP by a reasoned judgment has held : "In our opinion, an efficacious alternate remedy is available to the petitioner by way of filing a revision in the High Court under Section 115 of the Code of Civil Procedure. Merely because a second appeal against an appellate order is barred by the provisions of sub-section (3) of Section 37, the remedy of revision does not cease to be available to the petitioner, for the City Civil Court deciding an appeal under sub-section (2) of Section 37 remains a court subordinate to the High Court within the meaning of Section 115 of the C.P.C."

But Mr. Parasaran contended that the said order is based on an earlier reported judgment of this Court in the case of Shyam Sunder Agarwal & Co. vs. Union of India (1996 (2) SCC 132). According to Mr. Parasaran, the Court in the case of Nirma Ltd. (supra) has erroneously founded its conclusion on the said judgment in Shyam Sunder Agarwal's case. Learned counsel argued that the case of Shyam Sunder Agarwal (supra) arose under the Arbitration Act, 1940 which Act had made the provisions of the Code specifically applicable to proceedings arising under the said Act in the civil court whereas in the present Act such provision making the Code applicable is not found. Therefore, there is a substantial difference in law between the cases of Shyam Sunder Agarwal (supra) and Nirma Ltd. (supra). Therefore, the order of this Court in Nirma Ltd. (supra) is not a good law, hence, requires reconsideration.

We do not agree with this submission of the learned counsel. It is true in the present Act application of the Code is not specifically provided for but what is to be noted is : Is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a civil court ? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.

It has been held by this Court in more than one case that the jurisdiction of the civil court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the extent stated in Section 37(2), we cannot draw an inference that merely because the Act has not provided the CPC to be applicable, by inference it should be held that the Code is inapplicable. This general principle apart, this issue is now settled by the judgment of a 3-Judge Bench of this Court in the case of Bhatia International vs. Bulk Trading S.A. & Anr. in C.A.No.6527/2001 decided on 13.3.2002 wherein while dealing with a similar argument arising out of the present Act, this Court held : "While examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily

the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion."

In the said view of the matter, we are in respectful agreement with the view expressed by this Court in the case of Nirma Ltd. (supra) and reject the argument of Mr. Parasaran on this question.

We also do not find much force in the argument of learned counsel for the appellant based on Section 5 of the Act. It is to be noted that it is under this Part, namely, Part I of the Act that Section 37(1) of the Act is found, which provides for an appeal to a civil court. The term 'Court' referred to in the said provision is defined under Section 2(e) of the Act. From the said definition, it is clear that the appeal is not to any designated person but to a civil court. In such a situation, the proceedings before such court will have to be controlled by the provisions of the Code, therefore, the remedy by way of a revision under Section 115 of the Code will not amount to a judicial intervention not provided for by Part I of the Act. To put it in other words, when the Act under Section 37 provided for an appeal to the civil court and the application of Code not having been expressly barred, the revisional jurisdiction of the High Court gets attracted. If that be so, the bar under Section 5 will not be attracted because conferment of appellate power on the civil court in Part I of the Act attracts the provisions of the Code also.

Mr. Parasaran then contended that since it is an accepted fact that this Court also has the jurisdiction to entertain an appeal, this appeal should not be rejected on the sole ground that there is a remedy available by way of a revision before the High Court. In support of this contention, he relied on the judgment of this Court in the case of Ram Shankar (supra) wherein it is noticed that this Court had entertained an appeal directly against a judgment and decree of a trial court bypassing the High Court. It is true that the power of this Court to entertain an appeal directly is not taken away merely because another remedy is available but then the question is, should this Court encourage litigants to indulge in hop, skip and jump to reach this Court either for the reason that the remedy from this Court would be quick or more efficacious ? The answer, in our opinion, should be no. The judgment of this Court in M/s. Central Coal Fields (supra) does not, in any way, take a contra view from what is expressed by us hereinabove. In that case, because of the peculiar fact-situation, this Court entertained an appeal without the party first appreciating the High Court but then it should be noticed that this Court did not entertain the appeal to decide the same itself, it did so to refer the matter to arbitration proceedings and when an award made by the learned arbitrator was acceptable to all parties then the same was made a rule of this Court. Such is not the situation in the present case. Therefore, we do not think the appellant can take much support from the above case of this Court.

Learned counsel for the appellant next contended that assuming that the remedy of revision is available even then the same is not an efficacious alternate remedy because this appeal involves a very sensitive issue pertaining to the security of the country and which, according to the appellant, requires extreme urgency in deciding the same and the said requirement will not be possible if the appellant has to approach the High Court. We are not impressed with this argument addressed on behalf of the

appellant because we notice from the record that the arbitration proceedings have started as far back as in the year 2001 and the parties instead of getting the arbitration concluded, have been litigating on interim applications till date. If indeed urgency was there then the party which feels the necessity of quick disposal would have concentrated more on completing the arbitral proceedings rather than spending its time in court inviting orders of the High Court on interlocutory applications. Therefore, we are of the opinion that there is no such urgency which requires us to treat this case differently. In regard to the sensitivity of the matter and the national security involved, we do not think that these factors will, in any manner, be compromised by approaching the High Court; more so in the background of the fact that the parties had already approached the High Court nearly three times without raising any objection as to its jurisdiction or in view of its apprehension as to the security of the State. If the facts involving such sensitive matter could be handled by the High Court three times earlier, we think the appellant can very well trust the High Court to protect such interest of the country in future proceedings also. Therefore, this argument of sensitivity or urgency, in our opinion, will not improve the appellant's case so as to make an exception or permit the appellant to take a short-cut to this Court. Therefore, the above argument of the appellant should also be rejected.

For the aforesaid reasons, while holding that this Court in an appropriate case would entertain an appeal directly against the judgment in first appeal, we hold that the High Court also has the jurisdiction to entertain a revision petition, therefore, in the facts and circumstances of this case, we direct the appellant to first approach the High Court. For the said reasons, this appeal fails and the same is hereby dismissed. We, however, make it clear that should the appellant present a revision petition within 30 days from today, the same will be entertained by the High Court without going into the question of limitation, if any.

J.

May 20, 2002. (N.Santosh Hegde)

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