



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-CARB-28-2022(O&M)

Reserved on : 05.11.2024

Pronounced on: 20.01.2025

Parsvnath Developers Limited

....Petitioner

V/s

Brig. Devendra Singh Yadav and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Puneet Bali, Senior Advocate with
Ms. Bhagyashri Setia, Advocate,
Mr. Rajat Joneja, Advocate and
Mr. Tarun Khaira, Advocate, for the appellant.

Mr. Siddharth Yadav, Senior Advocate with
Mr. Manav Bajaj, Advocate, and
Mr. Narender, Advocate for the respondents.

VIKRAM AGGARWAL, J.

1. The appellant (M/s Parsvnath Developers Limited) assails the order dated 06.08.2022 passed by the Court of learned District Judge Rewari, vide which the application preferred by the respondents under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 (for short the "CPC") read with Section 2(1)(e)(i) of the Arbitration and Conciliation Act, 1996 (for short the "1996 Act") seeking return of the objection petition preferred by the present appellant under Section 34 of the 1996 Act was allowed and the petition preferred under Section 34 was ordered to be returned for being presented in the competent Court.

2. The appeal raises an interesting, often debated but short question, for which extremely lengthy arguments were addressed by both sides. The question to be decided is as to whether the petition preferred by the appellant under Section 34 of the 1996 Act challenging the Award dated

21.09.2020 passed by the Arbitral Tribunal would be maintainable at Rewari or the same would have to be filed at Delhi, where the arbitration proceedings were conducted. The issue of “venue” and “seat” has once again been raised by the parties which this Court shall proceed to discuss and answer.

3. A collaboration agreement (Annexure A-2) was executed on 27.10.2005 between the respondents, who were owners in possession of land measuring approximately 54 acres, situated in Village Dharuhera, District Rewari and the appellant (M/s Parsvnath Developers Limited) being a developer. It was agreed that the land in question would be developed by the developer into a residential colony on mutually agreed terms. Various terms and conditions were agreed upon between the parties.

4. It appears that as is the case in many such other similar agreements, certain issues cropped up between the parties leading to the filing of a petition under Section 9 of the 1996 Act (Annexure A-3) by the respondents. The said petition was opposed by way of reply (Annexure A-4). Ultimately, the petition was allowed vide order dated 04.11.2015 (Annexure A-5) holding as under:

“25. This, however, will not mean that the court will not take any interim measure. To my mind, the purpose can be served by issuing following directions:-

(i) The respondent, in order to secure damages, if any, to be awarded by the arbitrator, shall not sell 10% of the residential plots falling to its share;

(ii) If the respondent wants to transfer/alienate the project to a third party after leaving aside 10% of the residential plots in terms of condition No.1 above, in that eventuality, there shall be a condition in agreement to be executed with that third party that it shall be bound to complete the development work and to discharge other obligations under the collaboration agreement. Such a condition shall, however, be not necessary while selling individual plots in retail. In other words, the condition will be

necessary when the entire project or a major part of the project is to be alienated en-block.

26. The petition stands disposed of in terms of the above directions which shall hold good for a period of 90 days from today within which arbitral proceedings have to commence or till any further directions are issued by the arbitral tribunal whichever is later. Needless to say that in case the arbitral proceedings are not commenced within 90 days, the directions will cease to operate.”

It would be significant to mention here that till this stage, no issue of jurisdiction of the Courts had cropped up between the parties.

5. It is apparent that the project ran into rough weather leading to the filing of a petition under Section 11(6) of the 1996 Act (Annexure A-6) by the respondents before this Court, pursuant to which vide order dated 05.02.2016 (Annexure A-7), Justice R.M. Lodha, former Chief Justice of India was appointed as a sole Arbitrator.

6. The arbitration proceedings commenced at Delhi and during the pendency of the same, an application for extension of time to make the Award was moved by the respondents before this Court, which was allowed vide order dated 29.09.2017 (Annexure A-8) and the time to make the Award was extended up to 11.03.2018. A similar application was again filed but the same was withdrawn on 26.10.2018 with liberty to take such appropriate remedy as may be available in law (Annexure A-9). The respondents then preferred an application in the High court of Delhi for extension of time which was allowed vide order dated 18.12.2018 (Annexure A-10).

7. Eventually, the Award was announced on 21.09.2020 (Annexure A-11). A petition under Section 34 of the 1996 Act (Annexure A-12) was preferred by the appellant herein in the Court at Rewari. An application under Order VII Rule 10 (Annexure A-13) was filed by the

respondents which was opposed by way of reply (Annexure A-14). The ground raised in the application was that since all proceedings had been conducted at Delhi, the jurisdiction to entertain and decide a petition under Section 34 of the 1996 Act would be with the Courts at Delhi and not with the Courts at Rewari. This stand was accepted by the Court of learned District Judge, Rewari and the impugned order was passed, leading to the filing of the instant appeal.

8. Learned Senior Counsel representing the parties were heard. As has been noticed in the opening part of the judgment, extremely lengthy arguments were addressed by both sides.

9. Mr. Puneet Bali, learned Senior Counsel representing the appellant vehemently submitted that the impugned order is not sustainable, for, it had misinterpreted the judgment of the Supreme Court in the case of **BGS SGS Soma JV V/s NHPC Limited (2020) 4 SCC 234**. The core argument was that in view of the jurisdiction clause i.e. Clause 24 of the Collaboration Agreement, the “seat” of the Arbitrator would be at Rewari and, therefore, the petition under Section 34 of the 1996 Act would have to be filed at Rewari. It was submitted that Delhi was merely the “venue” of Arbitration and in view of the exclusive jurisdiction clause, the “venue” of Arbitration would not be taken to be the “seat” of Arbitration. A detailed reference was made to the collaboration agreement, particularly Clauses 23 and 24 thereof along with the provisions of Sections 2(1)(e)(i), 20, 34 and 42 of the 1996 Act. Referring to the judgment in the case of **BGS SGS Soma JV** (supra), it was submitted that the ‘contrary indicia’ as referred to in the said judgment is the jurisdiction clause i.e. Clause No.24 in the Collaboration Agreement and, therefore, the “venue” of Arbitration will not be taken to be the “seat” of Arbitration. Learned Senior Counsel also

referred to the various documents on record, including the orders passed by this Court from time to time, the orders passed by the Delhi High Court, the Award and other documents to make good his argument. Reference was also made to a number of judgments and the relevant portions of almost judgments were read over by learned Senior Counsel at the time of arguments. The said judgments are:-

1. ***BGS SGS Soma JV V/s NHPC Limited (2020) 4 SCC 234;***
2. ***Indus Mobile Distribution Pvt. Ltd. V/s Datawind Innovations Pvt. Ltd. (2017) 7 SCC 678;***
3. ***Homevista Décor & Furnishing Pvt. Ltd. V/s Connect Residuary Pvt. Ltd., 2023 SCC Online Cal 1405;***
4. ***Kushraj Bhatia V/s DLF Power & Services Ltd., 2022 SCC Online Del 3309;***
5. ***My Preferred Transformation & Hospitality Pvt. Ltd. V/s Sumithra Inn, 2021 SCC Online Del 1536;***
6. ***Commercial Division Bowlopedia Restaurant India Ltd. V/s Debyani International Ltd., 2021 SCC Online Cal 103;***
7. ***Aniket SA Investments LLC V/s Janapriya Engineers Syndicate Pvt. Ltd., 2021 SCC Online Bom 919.***
8. ***Ravi Ranjan Developers Pvt. Ltd. V/s Aditya Kumar Chaterjee, 2022 SCC Online SC 568;***
9. ***Swastik Gases Private Limited V/s Indian Oil Corporation Limited, (2013) 9 SCC 32;***
10. ***Hunch Circle Private Limited V/s Futuretimes Technology India Pvt. Ltd., 2022 SCC Online Del 361 and***
11. ***Hemsukh Prajapati V/s Jai Prakash Associates Limited, AIR 2022 ALL 121.***

It was submitted that where both the “venue” and the jurisdictional “seat” are mentioned separately, “venue” is only for

convenience. It was submitted that if the argument of the respondents is accepted and as per Clause 23, “venue” is taken to be the “seat”, Section 34 would become *otois* i.e. null and void which was never the intention of the parties. It was submitted by Mr. Puneet Bali that three situations would arise. In the first situation, where neither “venue” nor “seat” would be mentioned, the place where arbitration would take place would be taken to be the “seat” of jurisdiction i.e. “venue” would be taken to be the “seat” of jurisdiction. The second situation would be where only the “venue” is fixed but the “seat” is not fixed. In such a case, “venue” and “seat” can be interchanged and, therefore, the “venue” of arbitration would also become the “seat” of arbitration. The third case would be where the “venue” and jurisdiction are separately provided, as is the case in the present matter. It was submitted that under such circumstances, “venue” would only be for convenience. It was also submitted that the respondents would be stopped from raising the issue of “venue” and “seat” once they had themselves filed the petition under Section 11 of the 1996 Act at Chandigarh and the petition under Section 9 of the 1996 Act at Rewari. It was also submitted that if the Courts at Chandigarh or under the jurisdiction of this High Court do not have the jurisdiction to deal with a petition under Section 34 of the 1996 Act, then even the appointment of Arbitrator would be illegal and the Award would have to go.

10. *Per contra*, Mr. Siddharth Yadav, learned Senior Counsel representing the respondents submitted with equal vehemence that there is no illegality in the impugned order and for, the entire arbitration proceedings were carried at Delhi, the petition under Section 34 of the 1996 Act would have to be filed at Delhi alone and that the Courts at Rewari would not have any jurisdiction to deal with the said petition. Learned Senior Counsel also



FAO-CARB-28-2022

-7-

referred to the documents on record, including the collaboration agreement with specific reference to Clauses 23 and 24 thereof, the orders passed by this Court and the Delhi High Court and especially the order dated 18.12.2018 (Annexure A-10) passed by the Delhi High Court, vide which the application for extension of time was allowed. It was submitted that the said application had been moved by the respondents herein and the Delhi High Court duly noticed that it had the jurisdiction to deal with the application. It was submitted that the word 'exclusive' had not been mentioned in Clauses 23 and 24. It was further submitted that the collaboration agreement was of the year 2005 and there had been a sea change in the 1996 Act after the amendment in the year 2015. It was further submitted that the supervisory jurisdiction would be of the Courts at Delhi, for the proceedings had been carried out at Delhi and, therefore, the petition under Section 34 of the 1996 Act would be maintainable at Delhi alone. Apart from the orders annexed with the appeal, reference was also made to certain orders annexed with the application filed for recalling of the order dated 23.03.2023 (Annexure R-1) passed by this Court, which in any case was not pressed, for arguments in the main appeal were being heard. However, referring to the said orders dated 31.01.2023 and 20.03.2023 (Annexures R-3 and R-4 respectively) passed by the High Court of Delhi, it was submitted that no objection was raised before the High Court of Delhi at that stage and it has wrongly been stated in the grounds of appeal that objection had been raised.

It was further submitted that 50 hearings of the arbitral tribunal were held at Delhi. It was further submitted that under the circumstances, the "venue" of arbitration would precede even the jurisdiction clause. It was submitted that as an example, if there were two parties from India and

Germany and the “venue” of arbitration was at London and appointment of Arbitration was at Chandigarh, it could never be argued that the supervisory Court would be Chandigarh and not London. It was further submitted that the judgments relied upon by learned Senior Counsel representing the appellant were prior to the 2015 amendment and some of them pertain to Section 11 of the 1996 Act and, therefore, would not apply. It was submitted that after three extensions having been granted by the Delhi High Court, only the Courts at Delhi would have the jurisdiction to entertain a petition under Section 34 of the 1996 Act. Learned Senior Counsel also, apart from referring to the judgments relied upon by him, extensively referred to the judgments relied upon by Mr. Puneet Bali and submitted that the impugned order deserves to be upheld. In support of his contentions, learned Senior Counsel placed reliance upon the following judgments:-

1. ***State of Maharashtra V/s Atlanta Limited, (2014) 11 SCC 619;***
2. ***Water and Power Consultancy Services Limited V/s Karbi Anglong Autonomous Council, (2020) 5 Guhati, Law Reports 477;***
3. ***Union of India V/s Arsh Constructions, OMP (COMPLAINANT) NO.15/2023;***
4. ***Delhi Tourism and Transportation Development Corporation Ltd. V/s Sunehari Bagh Construction Pvt. Ltd., (2024) SCC Online Del 378;***
5. ***Easy Trip Planners Ltd. V/s One97 Communication Ltd., CM(M) No.707 of 2022;***
6. ***SBP & Co. V/s Patel Engineering Ltd. and another, (2005) 8 SCC 618;***
7. ***Lots Shipping Company Ltd. V/s Cochin Post Trust, 2020 SCC Online Ker 21443;***
8. ***Bharat Aluminum Company V/s Kaiser Aluminum Technical Services Inc., (2012) 9 SCC 552;***



9. ***Union Bank of India V/s Hardy Exploration and Production (India), (2019) 13 SCC 472;***
10. ***Indus Mobile (supra);***
11. ***BGS Soma JV (supra);***
12. ***Mankastu Impex Private Limited V/s Airvisual Limited, (2020) 5 SCC 399;***
13. ***Inox Renewables Limited V/s Jayesh Electricals Limited, (2021) SCC Online SC 448;***
14. ***Zapdor-Ubc-Abnjv, Delhi V/s Union of India, 2022 SCC Online All 594;***
15. ***Ajay Singh V/s Kal Airways Private Limited and others, 2017 SCC Online Del 8934;***
16. ***Valentine Maritime Ltd. V/s Kreuz Subsea Pte Limited and another, 2021 SCC Online Bom 75;***
17. ***Sepco Electri Power Construction Corporation V/s Power Mech Projects Ltd., 2022 SCC Online SC 1243 and***
18. ***Hindustan Construction Company Limited and another V/s Union of India and others, (2020) 17 SCC 324.***

11. The issue of maintainability of the instant appeal was also raised by learned Senior Counsel representing the respondents. It was submitted that in view of the provisions of Section 37 of the 1996 Act, the instant appeal would not be maintainable. Reliance in this regard was placed upon the judgment of the Supreme Court of India in the case of ***BGS SGS Soma JV*** (supra).

12. Rebutting the arguments, learned Senior Counsel representing the appellant reiterated that once a jurisdiction clause was there in the collaboration agreement, the same would be applicable in so far as filing of the petition under Section 34 of the 1996 is concerned. Accordingly, the 'seat', as fixed by the parties, would be taken to be Rewari and the Punjab and Haryana High Court, Chandigarh and not the Delhi. As regards the maintainability, it was submitted that as per the provisions of Order 43 Rule

1(a), the appeal would be maintainable.

13. We have considered the submissions made by learned counsel for the parties, have gone through the relevant statutory provisions and the law on the subject.

14. Though, the issue of maintainability was raised after arguments had been addressed on merits, we deem it appropriate to take up the said issue first before touching upon the merits of the case.

15. Section 37 (1) of the 1996 Act reads as follows:

“37. Appealable orders.-(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) setting aside or refusing to set aside an arbitral award under Section 34.”

16. Section 13 of the 2015 Act reads as follows:

“13. Appeals from decrees of Commercial Courts and Commercial Divisions. (1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division Bench of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by the Commercial Division or a Commercial Court that are specifically enumerated in Order 43 of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie

from any other order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act."

17. The issue of maintainability of an appeal under Section 37 of the 1996 Act read with Section 13(1) of the 2015 Act against an order passed under Order 7 Rule 10 CPC directing the return of the petition under Section 34 of the 1996 Act was first raised before this Court in the case of ***BGS SGS Soma JV*** (supra). Vide judgment dated 12.09.2018, a coordinate Bench held that the appeal was maintainable. When the matter reached the Supreme Court of India, apart from merits of the case, the issue of maintainability was also raised. The Supreme Court of India elaborately discussed the issue of maintainability and after referring to the statutory provisions and the entire law on the subject, came to the conclusion that against an order passed on an application under Order 7 Rule 10 CPC ordering the return of a petition filed under Section 34 of the 1996 Act for presentation to the appropriate Court, no appeal under Section 37 of the 1996 Act read with Section 13(1) of the 2015 Act, would be maintainable;

"4. On 21-12-2017, the Special Commercial Court, Gurugram allowed the application of the petitioner, and returned the Section 34 petition for presentation to the proper court having jurisdiction in New Delhi. On 15-2-2018, the respondent filed an appeal under Section 37 of the Arbitration Act, 1996 read with Section 13(1) of the Commercial Courts Act, 2015 before the High Court of Punjab and Haryana at Chandigarh. On 12-9-2018, the impugned judgment was delivered by the Punjab and Haryana High Court, in which it was held that the appeal filed under Section 37 of the Arbitration Act, 1996 was maintainable, and that Delhi being only a convenient venue where arbitral proceedings were held and not the seat of the arbitration proceedings, Faridabad would have jurisdiction on the basis of the cause of action having arisen in part in Faridabad. As a result, the appeal was allowed and the judgment of the Special Commercial Court, Gurugram was set aside.

5. Dr Abhishek Manu Singhvi, learned Senior Advocate appearing on behalf of the petitioner in SLP (C) No. 25618 of 2018, has assailed the impugned High Court judgment on both counts. According



to him, on a combined reading of Section 13 of the Commercial Courts Act, 2015 and Section 37 of the Arbitration Act, 1996, it becomes clear that Section 13 of the Commercial Courts Act, 2015 only provides the forum for challenge, whereas Section 37 of the Arbitration Act, 1996- which is expressly referred to in the proviso to Section 13(1) of the Commercial Courts Act, 2015-circumscribes the right of appeal. He contended that this when read with Section 5 of the Arbitration Act, 1996, makes it clear that only certain judgments and orders are appealable, and no appeal lies under any provision outside Section 37 of the Arbitration Act, 1996. He contended that the High Court was manifestly wrong when it said that the present appeal was appealable under Section 37(1)(c) of the Arbitration Act, 1996 as being an appeal against an order refusing to set aside an arbitral award under Section 34 of the Arbitration Act, 1996. According to Dr Singhvi, an order which allows an application under Section 151 read with Order 7 Rule 10 CPC can by no stretch of the imagination amount to an order refusing to set aside an arbitral award under Section 34 of the Arbitration Act, 1996.

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12. The interplay between Section 37 of the Arbitration Act, 1996 and Section 13 of the Commercial Courts Act, 2015, has been laid down in some detail in the judgment in Kandla Export Corpn. The precise question that arose in Kandla Export Corpn. was as to whether an appeal, which was not maintainable under Section 50 of the Arbitration Act, 1996, is nonetheless maintainable under Section 13(1) of the Commercial Courts Act, 2015. In this context, after setting out various provisions of the Commercial Courts Act, 2015 and the Arbitration Act, 1996, this Court held: (SCC pp. 727,729, 731-34, paras 13-15, 20-22 & 27)

"13. Section 13(1) of the Commercial Courts Act, with which we are immediately concerned in these appeals, is in two parts. The main provision is, as has been correctly submitted by Shri Giri, a provision which provides for appeals from judgments, orders and decrees of the Commercial Division of the High Court. To this main provision, an exception is carved out by the proviso....."

14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37



of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act.

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20. Given the judgment of this Court in Fuerst Day Lawson, which Parliament is presumed to know when it enacted the Arbitration Amendment Act, 2015, and given the fact that no change was made in Section 50 of the Arbitration Act when the Commercial Courts Act was brought into force, it is clear that Section 50 is a provision contained in a self-contained code on matters pertaining to arbitration, and which is exhaustive in nature. It carries the negative import mentioned in para 89 of Fuerst Day Lawson that appeals which are not mentioned therein, are not permissible. This being the case, it is clear that Section 13(1) of the Commercial Courts Act, being a general provision vis-à-vis arbitration relating to appeals arising out of commercial disputes, would obviously not apply to cases covered by Section 50 of the Arbitration Act.

21. However, the question still arises as to why Section 37 of the Arbitration Act was expressly included in the proviso to Section 13(1) of the Commercial Courts Act, which is equally a special provision of appeal contained in a self-contained code, which in any case would be outside Section 13(1) of the Commercial Courts Act. One answer is that this was done ex abundanti cautela. Another answer may be that as Section 37 itself was amended by the Arbitration Amendment Act, 2015, which came into force on the same day as the Commercial Courts Act, Parliament thought, in its wisdom, that it was necessary to emphasise that the amended Section 37 would have precedence over the general provision contained in Section 13(1) of the Commercial Courts Act. Incidentally, the amendment of 2015 introduced one more category into the category of appealable orders in the Arbitration Act, namely, a category where an order is made under Section 8 refusing to refer parties to arbitration. Parliament may have found it necessary to emphasise the fact that an order referring parties to arbitration under Section 8 is



not appealable under Section 37(1)(a) and would, therefore, not be appealable under Section 13(1) of the Commercial Courts Act. Whatever may be the ultimate reason for including Section 37 of the Arbitration Act in the proviso to Section 13(1), the ratio decidendi of the judgment in Fuerst Day Lawson would apply, and this being so, appeals filed under Section 50 of the Arbitration Act would have to follow the drill of Section 50 alone.

22. This, in fact, follows from the language of Section 50 itself. In all arbitration cases of enforcement of foreign awards, it is Section 50 alone that provides an appeal. Having provided for an appeal, the forum of appeal is left "to the Court authorised by law to hear appeals from such orders". Section 50 properly read would, therefore, mean that if an appeal lies under the said provision, then alone would Section 13(1) of the Commercial Courts Act be attracted as laying down the forum which will hear and decide such an appeal.

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27. The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, in the international community. In point of fact, the raison d'être for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For



this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration."

13. Given the fact that there is no independent right of appeal under Section 13(1) of the Commercial Courts Act, 2015, which merely provides the forum of filing appeals, it is the parameters of Section 37 of the Arbitration Act, 1996 alone which have to be looked at in order to determine whether the present appeals were maintainable. Section 37(1) makes it clear that appeals shall only lie from the orders set out in sub-clauses (a), (b) and (c) and from no others. The pigeonhole that the High Court in the impugned judgment has chosen to say that the appeals in the present cases were maintainable is sub-clause (c). According to the High Court, even where a Section 34 application is ordered to be returned to the appropriate court, such order would amount to an order "refusing to set aside an arbitral award under Section 34".

14. Interestingly, under the proviso to Section 13(1-A) of the Commercial Courts Act, 2015, Order 43 CPC is also mentioned. Order 43 Rule(1)(a) reads as follows:

"1. Appeals from orders. An appeal shall lie from the following orders under the provisions of Section 104, namely-

(a) an order under Rule 10 of Order 7 returning a plaint to be presented to the proper court except where the procedure specified in Rule 10-A of Order 7 has been followed;"

This provision is conspicuous by its absence in Section 37 of the Arbitration Act, 1996, which alone can be looked at for the purpose of filing appeals against orders setting aside, or refusing to set aside awards under Section 34. Also, what is missed by the impugned judgment is the words "under Section 34". Thus, the refusal to set aside an arbitral award must be under Section 34 i.e. after the grounds set out in Section 34 have been applied to the arbitral award in question, and after the Court has turned down such grounds. Admittedly, on the facts of these cases, there was no adjudication under Section 34 of the Arbitration Act, 1996 all that was done was that the Special Commercial Court at



Gurugram allowed an application filed under Section 151 read with Order 7 Rule 10 CPC, determining that the Special Commercial Court at Gurugram had no jurisdiction to proceed further with the Section 34 application, and therefore, such application would have to be returned to the competent court situate at New Delhi.

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19. *It can be seen that the reasoning in this judgment would have no application to the facts of the present case. The Division Bench held that directing Antrix to file an affidavit, enclosing therewith its audited balance sheets and profit and loss account for the last three years, is itself an interim order passed under Section 9 of the Arbitration Act, 1996. The further reasoning of the Court that the direction to Antrix to furnish an affidavit is to aid a future interim order, which would be just consequential, does not commend itself to us. A step towards an interim order would not amount to granting, or refusing to grant, any measure under Section 9 of the Arbitration Act, 1996. The case is also distinguishable for the reason that, as regards the Bangalore Court, which cannot proceed further with the matter, the impugned order therein is really final and would, therefore, also be appealable under Section 37. For all these reasons, this judgment is wholly distinguishable and would not apply to the facts of the present case. We may also advert to the fact that our judgment in Kandla was delivered on 7-2-2018, and was missed by the Division Bench in Antrix Corpn. Ltd.⁸, as the Division Bench had reserved judgment on 6-12-2017¹⁹, even though it ultimately pronounced the judgment on 30-5-2018⁸. The judgment in South Delhi Municipal Corpn. ¹² was decided after reference was made to Kandla², resulting in a deposit order being held to be not appealable under Section 37 of the Arbitration Act, 1996.*

20. *It is clear, therefore, that the appeals filed in the present case do not fall within Section 37 of the Arbitration Act, 1996 and are not maintainable.”*

18. In view of the clear cut finding arrived at by the Supreme Court of India on the issue of maintainability, we find that the present appeal is not maintainable. Accordingly, the same is dismissed on the ground of maintainability. For, the appeal is being dismissed on the ground of maintainability, we do not intend to go into the merits of the case. Still



FAO-CARB-28-2022

-17-

further, the petitioner would be at liberty to avail any other remedy, as admissible in law, if so advised.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 05.11.2024

Pronounced on: 20.01.2025

vchgarg

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No