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* **IN THE HIGH COURT OF DELHI AT NEW DELHI** ***Reserved on: 29th January, 2021***

\+ **CM(M) 1272/2019 & CM APPLs. 38560/2019, 38561/2019, 41024/2019**

SURENDER KUMAR SINGHAL & ORS. ..... Petitioners
Through: Mr. Arjun Garg, Mr. S. Mahesh Sahasrananan, Mr. Devansh Srivastava, Ms. Rati Tandon, Ms. Sona Kamra& Mr. Nirmal Prasad, Mr. Abhinav Shrivastava Advocates (M-9971796913)

versus

ARUN KUMAR BHALOTIA & ORS. ..... Respondents
Through: Ms. Smita Maan, Mr. Vishal Maan (M-8510505957), Mr. Aakash Sehrawat & Mr. Satyawan Rathi, Advocates for R-1 to 4 (M - 9818713233)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This judgment has been pronounced through video conferencing.

Brief Background

2. Disputes arose between two branches of one family –

- One led by Sh. Arun Kumar Bhalotia – Respondent No.1 and his family members consisting of his wife – Smt. Sunita Bhalotia– Respondent No.2 and two sons, namely, Sh. Anant Bhalotia and Sh. Ayush Bhalotia, (Respondents No. 3 and 4 respectively) and

- The second branch led by his brother – Sh. Gopal Kumar Bhalotia (Respondent No.5) and his family consisting of his wife – Smt. Sunita Bhalotia (Respondent No.6) and two children, namely, Smt. Smriti Bhalotia (Respondent No.7) and Sh. Anshul Bhalotia (Respondent No.8).

3. CS(OS) 384/2017 titled Sh. Arun Kumar Bhalotia & Anr Vs. Sh. Gopal Kumar Bhalotia was filed before this Court, in which an application was moved by Respondent No. 5 (Sh. Gopal Kumar Bhalotia) under Section 8 of the Arbitration and Conciliation Act, 1996 (*hereinafter 'the Act'*).

4. Vide order dated 9th January, 2018, the ld. Single Judge of this Court, referred the disputes to Arbitration by a sole Arbitrator. The relevant portion of the said order reads as under:

> "*1. After hearing the counsels for the parties, this suit is disposed of by referring the disputes in the present suit as also disputes which may arise in any manner with respect to or connected with the family settlement/partition dated 15.7.2009, to the Arbitration of Shri B. B. Chaudhary, District & Sessions Judge (Retired) Mobile No.9910384611.*
>
> *2. Counsels for the parties also agree that irrespective of the wording of the arbitration clause in the family settlement/partition dated15.7.2009, the Arbitrator hereby appointed to determine the disputes between the parties connected to or with respect to the family settlement/partition dated 15.7.2009 will proceed in accordance with the procedure and other aspects as specified under the Arbitration &Conciliation Act, 1996. It is further clarified that parties will be entitled to file their claims and counter claims before the* Arbitrator *and which will not be restricted to the*

> *pleadings as raised in the present suit and claims and counter-claims to be filed can encompass all reliefs and claims which arise pursuant to the family settlement/partition deed dated 15.7.2009…."*

5. Pursuant to the above reference, claim petition was filed before the Arbitrator and counter claim was raised by the Respondent No. 5 (Shri Gopal Kumar Bhalotia).In the arbitral proceedings, the Petitioners herein (namely, Shri Surender Kumar Singhal, Shri Ramkishan Aggarwal, Shri Rajesh Kumar, Shri Kishore Kumar Aggarwal, Smt. Chetna Bansal and Shri Lovelesh Aggarwal) were arrayed as Respondents No. 5 to 10 and vide order dated 11th April, 2019, notice was issued to the said Respondents for appearing before the Arbitrator. On 16th April, 2019, notice was served in the arbitration proceedings to the Petitioners.

6. The Petitioners herein then filed an application under Section 16 of the Act and raised an objection that the Tribunal does not have any jurisdiction to adjudicate the claims against the Petitioners. One of the grounds raised in the application was that the Petitioners are *bonafide* purchasers of one of the properties and have valid title to the same and that the arbitration clause does not bind them. It was stated in the application that the Petitioners were neither party to the suit in the High Court nor a party to the arbitration agreement and since they are completely third parties, they cannot be compelled to participate in the arbitration proceedings. Thus, a prayer was made to dismiss the arbitration proceedings *qua* the Petitioners on the ground that the Arbitral Tribunal has no jurisdiction to entertain any claims against the Petitioners. In the said application the ld. Arbitrator held vide order dated 8th July 2019 that the objection as to jurisdiction would be decided along with the final award.

An application for recall of the order was filed, which was rejected on 7th August 2019. The orders dated 8th July 2019 and 7th August 2019 have been impugned before this Court in a petition filed under Article 227 of the Constitution of India.

Submissions of the Petitioners

7. It is argued on behalf of the Petitioners that if the issue of jurisdiction is not decided at the initial stage, parties like the Petitioners would be saddled with arbitral proceedings for several years and incur huge costs and this is contrary to the spirit of section 16(5) of the Arbitration and Conciliation Act, 1996 itself.

8. The submission of Mr. Arjun Garg, ld. counsel for the Petitioners is that there has been a complete failure by the Arbitral Tribunal in exercising jurisdiction and deciding the application under Section 16. Insofar as the maintainability of the petition is concerned, it is urged by him that the provisions of the Act cannot oust the jurisdiction of the High Courts and under Article 227, the said power ought to be exercised sparingly, the jurisdiction of High Courts ought not to be ousted especially when there is a manifest error by the Arbitral Tribunal or abdication of duty, the High Courts ought to exercise jurisdiction under Article 227. He further argues that the objection under Section 16 has to be decided at the outset and cannot be simply postponed by the Arbitrator without any decision as the language in Section 16(5) is that the Arbitrator "shall decide on a plea" as to jurisdiction. Reliance is placed on the following judgments:

I. Judgments upholding the maintainability of the petition under the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India :

i) *Dahya Lala v. Rasul Mohamed Abdul Rahim AIR 1964 SC 1320*
ii) *L. Chandra Kumar v. Union of India and Ors. (1997) 3 SCC 261*
iii) *Achutananda Baidya v. Prafulla Kumar Gayen and Others (1997) 5 SCC 76*
iv) *M/s UnikAccurates P Ltd v. M/s Sumedha Fiscal Services Ltd 2000 Supp Arb LR 220*
v) *Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675*
vi) *Punjab Agro Industries Corporation Limited v. Kewal Singh Dhillon (2008) 10 SCC 128*
vii) *UOI v. R Gandhi, President Madras Bar Association (2010) 11 SCC 1*
viii) *Vinod Jayrambhai Patel v. Gujarat Industrial Coop. Bank Ltd (judgment dated 21st January,2019 in R/Special Civil Application No. 17008 of 2017)*
ix) *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited (2018) 11 SCC 470*;

II. Judgments upholding that the Arbitrator has to decide the preliminary objection under Section 16 before continuing with arbitration proceeding or as a preliminary ground:

x) *McDermott International Inc. v. Burn Standard Co. Ltd. And Ors. (2006) 11 SCC 181*;

xi) *Raj International v. Tripura Jute Mills Ltd 2008 SCC Online Gau 333*

Submissions of the Respondents

9. On the other hand, ld. counsel for the Respondents, Ms. Smita Maan, submits that the orders of an Arbitral Tribunal are not amenable to writ jurisdiction. Under section 16, the only outcomes that are contemplated under the Act are where the objection as to maintainability is upheld by the Tribunal and whereby the Tribunal rejects the plea and continues with the

arbitral proceedings. In the former, when the plea is accepted by the Tribunal under Section 16 (2) or 16 (3) of the Arbitration and Conciliation Act, 1996, an appeal would lie under Section 37 of the Act. If the plea is either rejected or no ruling is rendered by the Tribunal, the proceedings would continue and the challenge if any would be only after the final award is passed. She relies upon the following judgments:

(i) SBP & Co. v. Patel Engineering Ltd. And Ors (2005) 8 SCC 618

(ii) Cadre Estate Pvt Ltd v. Salochna Goyal and Ors 2010(119) DRJ 457

(iii) Awasthi Construction Co. v. Government of NCT of Delhi LPA No. 701/2012 decided on 16th October, 2012 by Delhi High Court

(iv) United Spirits Ltd v. M/s Stitch Craft (India) W.P.(C) 4886/2013 decided on 8th November,2013 by Delhi High Court

(v) ATV Projects India Ltd. v. Indian Oil Corporation Ltd. & Anr. 2013 (136) DRJ 720 (DB)

(vi) Lalitkumar v. Sanghavi (Dead) Through LRs & Anr v. Dharamdas V. Sanghavi & Ors. (2014) 7 SCC 255

(vii) M/s Evolve Marketing Services Pvt. Ltd. v. M/s Aircel Ltd. & Anr. bearing W.P. (C) 2839/2015, decided by Delhi High Court on 7th September,2015.

(viii) Rajeev Gupta v. DMRC bearing W.P.(C) No.8085/2015 decided by Delhi High Court on 15th September2015.

(ix) United Electrical Industries Ltd. v. Micro and Small Enterprises &Ors (2017) 238 DLT 9 (DB)

(x) Business India Exhibitions Pvt. Ltd. v. Arvind V. Savant 2017 SCC Online Bom 7752(DB)

(xi) Indore Municipal Corporation v. Simplex Infrastructure Ltd. bearing W.P.(C) No. 20485/2018, decided by Madhya Pradesh High Court on 04th October,2018

(xii) Tangirala Srinivasa Gangadhara Baladityav. Sanjay Aggarwal, Sole Arbitrator and Others 2019 SCC Online Del 9112 (DB)

(xiii) Space Wood Office Solution Pvt. Ltd. v. Anupam Rai Construction through its partner Ritesh (2019) SCC Online Bom 751

(xiv) M/s HM Constructions v. M/s Century Silicon City bearing W.P. (C) No. 21404-21405, decided by Karnataka High Court on 17th June, 2019

10. Ms. Mann further submits that the question as to whether the Petitioners are *bonafide* purchasers of the property would be a complex question of fact and law and would have to be adjudicated after evidence. The partition deed itself which contains the arbitration clause deals with almost 20 properties and only in respect of one property, the Petitioners claim to have ownership and title. It is further urged by her that even a non-party to an arbitration agreement can be a party to arbitral proceedings and she relies upon *Chloro Controls India Pvt Ltd v. Severn Trent Water Purification Inc 2013(1) SCC 641.*

Further hearings and recent decisions

11. The judgment in this case was initially reserved on 19th December, 2019**.** However, simultaneously, this Court was hearing a batch of cases in which similar issues relating to the scope of interference in arbitral proceedings under Art. 227 of the Constitution of India, were raised. In the said batch, hearings could not be concluded due to the COVID-19 lockdown. On 8th December 2020, this matter was listed for directions and the following order was passed:

> *"..2. Arguments on behalf of the parties were heard in December 2019 and judgment was reserved. However, judgment has not been pronounced yet, as*

> *there were other matters where similar issues were raised as to the maintainability of petitions under Art. 227 against orders passed by arbitral tribunals. The said matters are part-heard before this court. Owing to the lockdown, hearing of those matters have been delayed.*
> *3. In the meantime, the following three judgments have also been rendered by the Supreme Court and High Courts: -*
> *(i) Deep Industries Ltd. v. ONGC and Ors. (Civil Appeal No.9106/2019) – Supreme Court (28/11/2019)*
> *(ii) Punjab State Power Corporation Ltd. v. Emta Coal Ltd. And Anr. (arising out of SLP (C) No. 8482/2020) –Supreme Court (18/9/2020)*
> *(iii) Bhilwara – Jaipur Toll Road (p) Ltd. v. State of Rajasthan and ors. (SB Civil Writ Petition No. 21394/19)-Rajasthan High Court (12/10/2020)*
> *4. List this matter on 8th January 2021. Parties to make their submissions on the said date, on the basis of above three judgments. "*

12. Thus, further submissions were heard in view of the recent decisions of the Supreme Court and of this Court, post the present judgment being reserved on 19th December, 2019. Ld. Counsels made further submissions on 29th January, 2021.

Submissions on recent decisions

13. Ld. counsel for the Petitioners – Mr. Garg referred to the judgment in ***Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd. & Anr. (2019) SCC Online SC 1602*** and ***Bhaven Construction through Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. & Anr Civil Appeal No. 14665 of 2015, decided on January 6, 2021.*** Relying upon the judgment in ***Deep Industries (supra)*** his submission was that in the said case, also, the

Supreme Court categorically held that the jurisdiction of the writ court under Article 227 would not be barred. However, the High Court would be extremely circumspect in interfering. The jurisdiction would be exercised where the Arbitrator patently lacks inherent jurisdiction. In the said case, according to Mr. Garg, ld. counsel, Section 16 was dismissed by the Arbitrator and there was a remedy available to the aggrieved under Section 34 of the Act.

14. Insofar as ***Bhaven Construction (supra)*** is concerned, he relied upon paragraphs 10, 12 13, 16, 19, 22 and 25. The test laid down by the Supreme Court was that if there is an exceptional circumstance which would justify exercise of jurisdiction under Articles 226 and 227, the same ought to be exercised.

15. Ms. Maan, ld. counsel appearing for the Respondents relied upon two judgments of the ld. Single Judge of this Court. One is ***Shri Pankaj Arora v. AVV Hospitality [O.M.P.(T) (COMM.) 32/2020 decided on 20th July, 2020]*** where the Court held that the Arbitrator had the option of keeping open the issue of jurisdiction to be decided after recording evidence and after hearing final arguments. In ***Glencore International AG v. Indian Potash Limited and Another 2019 SCC Online Del 9591,*** the ld. Single Judge held that it is not necessary that in every case, a jurisdiction issue has to be decided at the very thresh hold. She further submitted that in ***Punjab State Power Corporation Limited v. Emta Coal Limited and Anr Petition(s) for Special Leave to Appeal (C) No(s).8482/2020 decided on 18th September,2020*** the Supreme Court noted that in the case of patent lack of inherent jurisdiction alone, the writ court can exercise jurisdiction.

It must be a perversity that must stare the Court and hence an unusual circumstance when the Court would interfere.

16. In the light of the recent decisions laying down the scope of interference under Article 226/227 of the Constitution of India, the question that arises is as to whether the present writ petition is maintainable.

Analysis and Findings:

17. There are three aspects that arise for consideration:

(i) Whether arbitral tribunals are tribunals over which jurisdiction under Art. 226/227 is exercisable by High Courts and what is the scope of interference?

(ii) Law governing applications under Section 16 of the Arbitration & Conciliation Act, 1996 and manner of consideration by arbitral tribunals.

(iii) Whether on the facts of the present case, interference is warranted challenging the orders passed by the arbitral tribunal?

Maintainability

18. Dealing with the first aspect, the law is well settled that Arbitral tribunals are a species of tribunals over which the High Court exercises writ jurisdiction. Challenge to an order of an arbitral tribunal can be raised by way of a writ petition. In ***Union of India v. R. Gandhi, President Madras Bar Association(supra)*** the Supreme Court observed on the question as to what constitutes `Courts' and `Tribunals' as under:

> *"38. The term `Courts' refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for*

> *administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to Civil Courts, Criminal Courts and High Courts. Tribunals can be either private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or Tribunals authorized by the Constitution (Administrative Tribunals under Article 323A and Tribunals for other matters under Article 323B) or Statutory Tribunals which are created under a statute (Motor Accident Claims Tribunal, Debt Recovery Tribunals and consumer fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory Tribunals have Judicial and Technical Members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer fora, Cyber Appellate Tribunal, etc).”*

19. Similar observations were made by the Supreme Court in ***SREI Infrastructure Finance Limited (supra***) as under :

> *“14. Arbitration is a quasi judicial proceeding, equitable in nature or character which differs from a litigation in a Court. The power and functions of arbitral tribunal are statutorily regulated. The*

> *tribunals are special arbitration with institutional mechanism brought into existence by or under statute to decide dispute arising with reference to that particular statute or to determine controversy referred to it. The tribunal may be a statutory tribunal or tribunal constituted under the provisions of the Constitution of India. Section 9 of the Civil Procedure Code vests into the Civil Court jurisdiction to entertain and determine any civil dispute. The constitution of tribunals has been with intent and purpose to take out different categories of litigation into the special tribunal for speedy and effective determination of disputes in the interest of the society. Whenever, by a legislative enactment jurisdiction exercised by ordinary civil court is transferred or entrusted to tribunals such tribunals are entrusted with statutory power. The arbitral tribunals in the statute of 1996 are no different, they decide the lis between the parties, follows Rules and procedure conforming to the principle of natural justice, the adjudication has finality subject to remedy provided under the 1996 Act. Section 8 of the 1996 Act obliges a judicial authority in a matter which is a subject of an agreement to refer the parties to arbitration. The reference to arbitral tribunal thus can be made by judicial authority or an arbitrator can be appointed in accordance with the arbitration agreement under Section 11 of the 1996 Act."*

Thus, the Supreme Court held that arbitral tribunals are private tribunals unlike those tribunals set up under the statute or specialized tribunals under the Constitution of India. Thus, a Petition under Article 227 challenging orders of an Arbitral Tribunal would be maintainable.

Scope and extent of interference

20. Coming now to the question as to what would be the scope of interference under Article 226/227 against orders passed by the Arbitral Tribunals, though, a number of judgments have been cited by both parties, recent decisions of the Supreme Court and of this Court have settled the issue.

21. While there is no doubt that the arbitral tribunal is a tribunal over which writ jurisdiction can be exercised, the said interference by a writ court is limited in nature. Recently, in ***Deep Industries (supra)*** decided on 28th November, 2019, the Supreme Court considered ***S.B.P. & Company v. Patel Engineering Ltd. and Anr (2005)8 SCC 618*** and ***Fuerst Day Lawson Limited v. Jindal Exports Limited (2011) 8 SCC 333*** and observed as under:

> *"15. Given the aforesaid statutory provision and given the fact that the 1996 Act repealed three previous enactments in order that there be speedy disposal of all matters covered by it, it is clear that the statutory policy of the Act is that not only are time limits set down for disposal of the arbitral proceedings themselves but time limits have also been set down for Section 34 references to be decided. Equally, in Union of India v. M/s. Varindera Const. Ltd., dated 17.09.2018, disposing of SLP (C) No. 23155/2013, this Court has imposed the self-same limitation on first appeals Under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards.*
>
> *16. Most significant of all is the non-obstante Clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration*

Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act).

17. This being the case, there is no doubt whatsoever that if petitions were to be filed Under Articles 226/227 of the Constitution against orders passed in appeals Under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante Clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed Under Article 227 against judgments allowing or dismissing first appeals Under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

22. In ***Punjab State Power Ltd. v. Emta Coal Ltd. & Anr (supra)*** again the Supreme Court considered ***Deep Industries Ltd.(supra)*** and held:

*"We are of the view that a foray to the writ Court from a section 16 application being dismissed by the Arbitrator can **only** be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever – it must be the perversity of the order that must stare one in the face. Unfortunately, parties are*

> *using this expression which is in our judgment in Deep Industries Ltd., to go to the 227 Court in matters which do not suffer from a patent lack of inherent jurisdiction. This is one of them. Instead of dismissing the writ petition on the ground stated, the High Court would have done well to have referred to our judgment in Deep Industries Ltd. and dismiss the 227 petition on the ground that there is no such perversity in the order which leads to a patent lack of inherent jurisdiction. The High Court ought to have discouraged similar litigation by imposing heavy costs. The High Court did not choose to do either of these two things. In any case, now that Shri Vishwanathan has argued this matter and it is clear that this is not a case which falls under the extremely exceptional category, we dismiss this special leave petition with costs of Rs.50,000/- to be paid to the Supreme Court Legal Services Committee within two weeks."*

23. In ***Bhaven Constructions(supra),*** the Supreme Court was dealing with a similar situation where an order passed by the arbitrator under Section 16(2) of the Act was assailed in a petition under article 226/227. In the said case, the ld. Arbitrator held that he had jurisdiction to adjudicate the dispute. The Supreme Court considered the question of maintainability of the writ petition and held:

> *"....**10.** Having heard both parties and perusing the material available on record, the question which needs to be answered is whether the arbitral process could be interfered under Article 226/227 of the Constitution, and under what circumstance?*
>
> ***11.** We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has*

definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under "Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part." The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.

12. *The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.*

13. *Any party can enter into an arbitration agreement for resolving any disputes capable of being arbitrable. Parties, while entering into such agreements, need to fulfill the basic ingredients provided under Section 7 of the Arbitration Act. Arbitration being a creature of contract, gives a flexible framework for the parties to agree for their own procedure with minimalistic stipulations under the Arbitration Act.*

14. *If parties fail to refer a matter to arbitration or to appoint an arbitrator in accordance with the procedure agreed by them, then a party can take recourse for court assistance under Section 8 or 11 of the Arbitration Act.*

15. *In this context, we may state that the Appellant acted in accordance with the procedure laid down under the agreement to unilaterally appoint a sole arbitrator, without Respondent No. 1 mounting a judicial challenge at that stage. Respondent No. 1 then appeared before the sole arbitrator and challenged the*

jurisdiction of the sole arbitrator, in terms of Section 16(2) of the Arbitration Act.

16. *Thereafter, Respondent No. 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Article 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phrase of Section 34 reads as 'Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)'. The use of term 'only' as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.*

17. *In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In* ***Nivedita Sharma v. Cellular Operators Association of India****, (2011) 14 SCC 337, this Court referred to several judgments and held:*

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar v. Union of India, (1997) 3 SCC 261. ***However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/ instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the***

Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy*. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. (emphasis supplied)"*

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear 'bad faith' shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

18. In this context we may observe ***M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited, (2019)*** *SCC Online SC 1602, wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analyzed as under:*

> *"15. Most significant of all is the non-obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed (See Section 37(2) of the Act)*
>
> *16. This being the case, there is no doubt whatsoever that if petitions were to be filed*

> *under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the* ***High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.****"*

19. In the instant case, Respondent No. 1 has not been able to show exceptional circumstance or 'bad faith' on the part of the Appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by the Respondent No. 1 in a separate Section 34 application, which is pending.

20. Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modeled on the 'principle of unbreakability'. This Court in ***P. Radha Bai v. P. Ashok Kumar****, (2019) 13 SCC 445, observed:*

36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 2nd Edn., observed: "An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33 does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three-month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However, although "an unbreakable time-limit for applications for setting aside" was sought as being desirable for the sake of "certainty and expediency" the prevailing view was that the words ought to be retained "since they presented the reasonable consequence of Article 33".

According to this "unbreakability" of time-limit and true to the "certainty and expediency" of the arbitral awards, any grounds for setting aside the award that emerge after the three-month time-limit has expired cannot be raised.

37. Extending Section 17 of the Limitation Act would go contrary to the principle of "unbreakability" enshrined under Section 34(3) of the Arbitration Act.

(emphasis supplied)

If the Courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished.

21. The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and

reasoned that the Appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering the Respondent No. 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the Appellant herein had actually acted in accordance with the procedure laid down without any mala fides.

22. Respondent No. 1 did not take legal recourse against the appointment of the sole arbitrator, and rather submitted themselves before the tribunal to adjudicate on the jurisdiction issue as well as on the merits. In this situation, the Respondent No. 1 has to endure the natural consequences of submitting themselves to the jurisdiction of the sole arbitrator, which can be challenged, through an application under Section 34. It may be noted that in the present case, the award has already been passed during the pendency of this appeal, and the Respondent No. 1 has already preferred a challenge under Section 34 to the same. Respondent No. 1 has not been able to show any exceptional circumstance, which mandates the exercise of jurisdiction under Articles 226 and 227 of the Constitution.

23. The Division Bench further opined that the contract between the parties was in the nature of a works contract as it held that the manufacturing of bricks, as required under the contract, was only an ancillary obligation while the primary obligation on the Appellant was to supply the bricks. The Division Bench therefore held that the Gujarat Act holds the field, and not the Arbitration Act.

24. The Gujarat Act was enacted in 1992 with the object to provide for the constitution of a tribunal to arbitrate disputes particularly arising from works contract to which the State Government or a public undertaking is a party. A works contract is defined under Section 2(k) of the Gujarat Act. The definition

includes within itself a contract for supply of goods relating to the execution of any of the works specified under the section. However, a plain reading of the contract between the parties indicates that it was for both manufacturing as well as supply of bricks. Importantly, a contract for manufacture simpliciter is not a works contract under the definition provided under Section 2(k). The pertinent question therefore is whether the present contract, which is composite in nature, falls within the ambit of a works contract under Section 2(k) of the Gujarat Act. This is a question that requires contractual interpretation, and is a matter of evidence, especially when both parties have taken contradictory stands regarding this issue. It is a settled law that the interpretation of contracts in such cases shall generally not be done in the writ jurisdiction. Further, the mere fact that the Gujarat Act might apply may not be sufficient for the writ courts to entertain the plea of Respondent No. 1 to challenge the ruling of the arbitrator under Section 16 of the Arbitration Act.

25. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt first by the tribunal, before the Court examines the same under Section 34. Respondent No. 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. In Deep Industries case (supra), this Court observed as follows:

"22. One other feature of this case is of some importance. As stated herein above, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. ***The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of***

> ***a final award at which stage it may be raised under Section 34****."*
>
> ***(emphasis supplied)***
>
> *26. In view of the above reasoning, we are of the considered opinion that the High Court erred in utilizing its discretionary power available under Articles 226 and 227 of the Constitution herein. Thus, the appeal is allowed and the impugned Order of the High Court is set aside. There shall be no order as to costs. Before we part, we make it clear that Respondent No. 1herein is at liberty to raise any legally permissible objections regarding the jurisdictional question in the pending Section 34 proceedings."*

24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.

(i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;

(ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;

(iii) For interference under Article 226/227, there have to be *`exceptional circumstances'*;

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;

(v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;

(vii) Excessive judicial interference in the arbitral process is not encouraged;

(viii) It is prudent not to exercise jurisdiction under Article 226/227;

(ix) The power should be exercised in *`exceptional rarity'* or if there is *`bad faith'* which is shown;

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.

Section 16 of the Act and consideration by Arbitral Tribunals

25. Coming to the second aspect, i.e., the law governing applications under Section 16 of the Arbitration & Conciliation Act, 1996 and the manner of consideration by arbitral tribunals. Section 16 of the Arbitration and Conciliation Act, 1996 deals with the competence of a Tribunal. Following the principle of *kompetenze-kompetenze*, an Arbitral Tribunal has the power to rule on its own jurisdiction. However, Section 16(5) requires that the Tribunal ought to **decide the plea**. The provision is extracted below:

> *"16. Competence of arbitral tribunal to rule on its jurisdiction.—*
>
> *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

*(5) The arbitral tribunal **shall** decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.*

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

26. Can the arbitral tribunal, in the light of Section 16(5) postpone the decision in the plea is the question. In ***McDermott International Inc. (supra)***, the Supreme Court held as under :

> *"51. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the arbitrator would be the subject-matter of challenge under Section 34 of the Act. In the event the arbitrator opined that he had no jurisdiction in relation thereto an appeal there against was provided for under Section 37 of the Act.*
>
> *52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."*

27. In ***Raj International (supra),*** it was observed :

"17. So points for consideration come as to whether the arbitrator can pass the impugned order without deciding the preliminary objection raised by the petitioner under sub-section (2) of section 16 at the instance of the appointing authority, if not what should be the consequence and whether against such an order, a petition under article 227 is maintainable.

18. After going through the provisions in the Act, 1996, this court is of considered opinion that the statute casts duty on the arbitrator to act independently and decide the preliminary objection raised by the party to him under sub-section (2)/(3) of section 16 of the Act and only after taking such decision, he can continue the arbitration proceeding and pass an arbitral award. Without giving decision on the question of jurisdiction, the arbitrator has no right to proceed for making an arbitral award. He may accept or reject the plea as raised before him, but he cannot be abstained from giving any decision on such question of jurisdiction. In the instant case, there is no dispute that the petitioner raised a preliminary objection as to the jurisdiction of the arbitrator to try the dispute referred to him by the appointing authority.

19. For better appreciation, section 16(2), (3) and (5) of the Arbitration and Conciliation Act, 1996 is quoted hereunder:

"16. Competence of arbitral tribunal to rule on its jurisdiction. — (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as

the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings

(6) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral in proceedings and make an arbitral award."

20. Arbitration proceeding is nothing but an alternative dispute redressal forum and the general people should not lose faith in this alternative dispute redressal forum. In ordinary situation, the court should not exercise its power under article 227 of the Constitution, but in exceptional circumstances, when the statutory authority like the arbitrator did not exercise his power vested on him, then a petition under article 227 of the Constitution should not be thrown away.

21. Having considered the rival submissions of the learned counsel of the parties and the law reports, the question arises for decision is that whether the learned arbitrator is liable to rule on the preliminary objection raised by the petitioner as to his jurisdiction to try the dispute and if so whether failure to give decision on the objection and acted at the instance of appointing authority would vitiate the impugned order.

22. From the above contention of the petitioner in its objection, it is very clear that the petitioner wanted to decide the preliminary objection as to the jurisdiction of the arbitrator first before deciding the matter on merit as provided under section 16 of the Act, 1996 and the petitioner also reserved their right to place their defence in so far as the merits of the case and in such circumstances, the arbitrator is to decide the question of preliminary objection as to his jurisdiction and if the objection is overruled, an

opportunity should be extended to consider the matter on merit which is the requirement of the procedure contemplated under section 16 of the Act, 1996.

...

25. Now question comes whether such order can be challenged by the petitioner under article 227 of the Constitution. From the provisions of the Act, 1996, it appears that there is no such provisions for preferring the appeal against such an impugned order. In sub-section (6) of section 16, wherein it is stated, inter alia, that a party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34. Section 34 is the recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3) of section 34. Section 37 is the provision for appeal which shall lie from the following orders (and from no others) to the court authorized by law to hear appeals from original decrees of the court passing the order, namely:—

(a) granting of refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

26. The other provisions of appeal are sections 50 and 59 of the Act which are relating to foreign awards and Geneva Convention awards. Therefore, it can be safely said that the impugned order is not appealable order and there is no other option before the petitioner except to approach this court.

> *27. In paragraph 46 of the Patel Engineering Ltd. (supra), the Apex Court held that the object of the minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under article 227 or under article 226 of the Constitution against every order made by the arbitral Tribunal. The Apex Court also indicated that once the arbitration has commenced in the arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under section 37 of the Act even at an earlier stage, meaning thereby the parties are not fully debarred from approaching the High Court under article 227 of the Constitution when the arbitrator failed to act under sub-section (5) of section 16 of the Act, which is an obligatory to him as intended by the Legislature. Section 16 is self-contained clause as regards to challenge the jurisdiction of the arbitral tribunal/arbitrator before passing the award.*

28. In ***Shri Pankaj Arora (supra).***, a Ld. Single Judge of this Court dealing with a similar fact situation observed as under:

> *"13. Be that as it may, I am of the opinion that the present petition cannot succeed, even otherwise, as no case is made out, to direct the learned Sole Arbitrator to take a decision on the application, of the petitioner under Section 16 of the 1996 Act, at this stage itself, without deferring the issue for decision after recording of evidence. The procedure to be followed, in arbitral proceedings, is essentially the province of the arbitrator, or the arbitral tribunal. Unless the decision, in that regard, falls foul of any mandatory stipulation, contained in the 1996 Act, this Court would be loath to interfere, the autonomy of the arbitral proceedings, and of the arbitrator, being statutorily pre-eminent.*

> *16. I am unable to read sub-section 5 of Section 16 as casting a mandate, on the arbitrator, or the arbitral tribunal, to decide the objection, to its/his jurisdiction, to adjudicate on any claim/counter claim, necessarily before recording of evidence. No doubt, issues of jurisdiction are, ordinarily, to be addressed at the outset. That, however, is more a rule of prudence than one of inflexible procedure. Legally, so long as the said decision is taken prior to the making of the final arbitral award, in my view, no infraction of Section 16 could be said to have occurred……"*

29. In ***Glencore International AG (supra)***, a ld. Single Judge has again taken a similar view in respect of an objection to the jurisdiction of the arbitral tribunal:

> *"**40**. The contention raised that an error had been committed by the arbitral tribunal in not ruling on the objection raised with regard to jurisdiction at the very threshold and thereby depriving IPL the right to challenge the said decision under Section 10(3) of the IA Act was misconceived as the arbitral tribunal had the discretion to rule on its jurisdiction either at the preliminary stage or at the time it rendered a final award in the matter….*

> ***65…..**The crucial aspect is that the issue of jurisdiction or bar to the suit created by law should be one that can be disposed of as an issue of law only. In other words if it is a mixed question issues at the final stage of the matter…."*

30. In the opinion of this Court, the scheme of Section 16 of the Act envisages that issues of jurisdiction ought to be raised before the Arbitral Tribunal at the earliest, before the submission of the statement of defence. Under Section 16 (5), the Tribunal is mandated to decide the said issue. The question that arises is at what stage is the objection to be decided. As

per ***McDermott International Inc. (supra),*** the jurisdictional question is to be decided as a preliminary ground. This obviously means that the objection has to be decided ***at the earliest***. However, there cannot be a hard and fast rule. Depending on the facts and circumstances of each case, the Tribunal ought to decide the objection under Section 16 of the Act as soon as possible, as a preliminary ground. The following factors can be borne in mind when objections are raised under Section 16 of the Act:

i. If the issue of jurisdiction can be decided on the basis of admitted documents on record then the Tribunal ought to proceed to hear the matter/ objections under Section 16 of the Act at the inception itself;

ii. If the Tribunal is of the opinion that the objections under Section 16 of the Act cannot be decided at the inception and would require further enquiry into the matter, the Tribunal could consider framing a preliminary issue and deciding the same *as soon as possible*.

iii. If the Tribunal is of the opinion that objections under Section 16 would require evidence to be led then the Tribunal could direct limited evidence to be led on the said issue and adjudicate the same.

iv. If the Tribunal is of the opinion that detailed evidence needs to be led both written and oral, then after the evidence is concluded, the objections under Section 16 would have to be adjudicated first before proceeding to passing of the award.

31. A jurisdictional objection by its very nature would be one which has to be raised at the inception itself. The statute contemplates that the party

raising the objection has to raise it with alacrity and hence by an overall reading of Section 16 and especially Section 16(5) of the Act, there is no doubt that the Tribunal also ought to decide the objection with a sense of urgency. Such dispensation would be favoured especially in order to ensure that parties to whom the arbitral proceedings may not even be applicable are not entangled to long drawn arbitral proceedings with substantial costs being incurred. Moreover, in order to maintain the efficiency of the arbitral system, it is necessary that only those parties to whom the arbitral Clause is applicable contractually are obliged to arbitrate.

32. Coming to the last aspect i.e., the manner in which the Arbitral Tribunal, considered the objections/application under Section 16 in the present case. Vide the impugned order dated 8th July, 2019 the tribunal observed as under:

> *"The ld. counsel Respondent Nos. 5 to 10 has filed an application under section 16 of Arbitration & Conciliation Act, 1996. Copies supplied.*
>
> *Heard.*
>
> *The application is kept on the file. The objection raised in the application are similar to the objection raised earlier in the Counter Claim/ Statement of Defense filed by Respondent No. 1 to 4.*
>
> *Vide order dated 11.04.2019, it has been observed that the objections can be decided along with the other issues. The application cannot be separately decided. On similar grounds, the present application is not decided on merit at this stage. The Respondent No. 5 to 10 may take all these objections in their reply to the claim and the counter claim, if any.* ***The objection***

taken in the application will be taken care of while passing the award in the case.

Counsel for the Respondent No. 5 to 10 seeks adjournment to file the reply to the claim/counter claim. The reply may be filed on or before 07.08.2019.

The parties are to bear the out of pocket expenses of the Arbitrator. So far 10 hearings including today's hearing have taken place in the campus of the high court or at the present venue.

The expenses of Rs. 1500/- per hearing shall be borne by Claimant and the Respondent No. 1 to 4 in equal proportion.

Come up for reply to be filed by Respondent No. 5 to 10 at 07.08.2019 at 2 PM at the above-mentioned venue. In case the counsel for the Respondent No. 5 to 10 files the reply well before 07.08.2019 and supply the copies to the claimant and Respondent No. 1 to 4, then they may file the counter reply to the same on the next date of hearing."

33. An application was moved by the Petitioner herein seeking recall of the above order dated 8th July, 2019 before the arbitrator. In the said application, the ld. Arbitrator heard the submissions of the parties and rejected the prayer for recall vide order dated 7th August, 2019. Extracts from the said order are reproduced herein below:

"Arguments heard to decide the application.

It is correct that the respondents No. 5 to 10 are not signatories to the settlement/partition deed dated 15.07.2019. That deed was executed between the claimants and the respondents No.1 to 4. However, the deed is in respect to various properties, including the property purchased by the respondents No. 5 to 10 from the respondent No.2, vide sale deeds dated

14.02,2017.The claimants and the respondents No. 1 to 4 are at variance in respect to the various properties as mentioned in the deed dated 15.07.2009. While dealing with the disputes, the properties purchased by the respondents will also be subject to adjudication, it is simply because as per the case of the claimants, the said property at Vrindvan was meant for Guashala and in case, it was to be sold, the sale consideration was to be shared equally by the claimants and the respondents No.1 to 4. The claimants have not been paid that share. The claimants have pleaded that the sale deeds in favour of respondents No. 5 to 10 may be declared null and void.

The directions of the Hon'ble High Court in the order of the reference of the disputes are very wide and broad. The arbitrator has been directed to deal with disputes which may arise in any manner with respect to or connected with the family settlement/partition deed dated 15.7.2009. The arbitrator is to determine the disputes between the parties connected to or with respect to the family settlement/partition deed date 15.7.2009. it has been further clarified in the order that parties will be entitled to file their claims and the counter claims which will not be restricted to the pleadings as raised in the suit and claims and the counter claims can encompass all reliefs and claims which arise pursuant to the family settlement/partition deed dated 15.7.2019.

In the light of the order of the court, the claimants have filed the claim in respect to the property, which the respondents purchased from the respondent No. 2, subsequent to the date of the settlement/partition deed 15.7.20.09. The respondents No. 5 to 10 may be genuine purchaser of the property. However, that property is also the subject matter of the disputes, referred for arbitration. Therefore, the request of the claimants was allowed to send notice of the arbitration

proceedings to the respondents No. 5 to 10 so that their rights might not be dealt with in their absence. They have been called so that they may file their response to the claims and the counter claims in respect to the property purchased by them from counter claimants.

In the order dated 11.04.2019 of the arbitral tribunal, it has been held that the objections of the respondents No. 1 to 4 against the request to issue notice to the respondents No. 5 to 10 and also any objection which the respondents No. 5 to 10 may raise, will be taken care of at an appropriate stage.

The Ld. Counsel for the respondents No. 5 to 10 has argued that since the respondents have put appearance and have filed an application u/s 16 of the Arbitration and Conciliation Act, therefore, their request to recall the order of issuing notice of the arbitration may be allowed. He has further submitted that it is the appropriate stage to decide their application. The respondents No. 5 to 10 have derived their rights in the property at Vrindavan but it is also subject matter of settlement/partition deed dated 15.7.2009. The subject matters of that deed and all other related matters are subject to the arbitration as per order of the Hon'ble High Court. The arbitration in respect to the disputes is only at the stage of completion of the pleadings and admission and denial of the documents by the parties and also to decide the application to refer documents to the CFSL for an expert opinion. The appropriate stage to decide the matters, including the application u/s 16 of the Arbitration and Conciliation Act of the respondents No. 5 to 10 has not yet arrived. The matters are complicated and required evidence. The case of the respondents No. 5 to 10 cannot be adjudicated in isolation as they have got rights in the property which is subject matter of arbitration. It is simply because the claimants have claimed their share in the property and has made request to declare the

sale deed as null and void. In the alternative, they have claimed share in market value of the property.

While framing issues, an issue can be framed to decide if the respondent No. 5 to 10 are necessary party or not. That issue will also take care of the objections of the respondents No. 1 to 4 against the request of the claimants to call these respondents in the arbitration proceedings. The appropriate stage will be only at the time of final adjudication of the referred disputes. The application of the respondents No. 5 to 10 is kept on the file and their plea will be disposed of at the time of final adjudication of the disputed.

The respondents No. 5 to 10 may file their response, if any to the pleadings of the claimants and the respondents No. 1 to 4 on the next date of hearing. However, the respondents No. 5 to 10 are not to bear any expenses of the arbitration proceedings as they have been called at the request of the claimants.

The claimants and the respondents No. 1 to 4 shall also do their admission and denial of the documents of each other. The admission and denial of the documents shall be made by way of affidavits. The application, filed u/s 26 of the Act will also be taken up on that date. The claimants shall also comply with the order datedll.04.2019 in respect with the directions in reference to the documents of the Plot no. 10, Sector 12B, Dwarka, New Delhi."

34. A perusal of the above orders shows that the ld. Arbitrator has fully applied his mind and given reasons as to why the application of Petitioners (Respondent No.5 to 10 in the arbitration) under Section 16 of the Act is not to be adjudicated at this stage. The ld. Arbitrator observes that the property in question which was purchased by the Petitioners was subject matter of the reference which was made by the ld. Single Judge of this

Court on 9th January, 2018. Ld. Arbitrator, further observes that the Petitioners may be genuine purchasers of the property, however, the sale consideration *qua* the said property was to be decided between the parties. Thus, notice was issued to the Petitioners so that their rights are not jeopardized in any manner. An application to recall notice of arbitration under Section 16 cannot, therefore, in the opinion of the ld. Arbitrator, be decided at this stage and would rightly have to await completion of pleadings and admission and denial. According to the ld. Arbitrator, the matters are complicated and would require evidence and the Petitioners arguments cannot be adjudicated in isolation since the claimants have asked for declaration of the sale deed in favour of the Petitioners as null and void. The property which the Petitioners have purchased is squarely in dispute in the arbitration and, therefore, the Ld. Arbitrator was of the view that the appropriate stage will only be the final stage and the application of the Petitioners was kept on file.

35. Applying the settled legal position to the facts of the present case, the approach of the ld. Arbitrator cannot be set out as either perverse or patently lacking in jurisdiction. The fact situation does not present an `exceptional rarity' requiring exercise of jurisdiction. The order of reference dated 9thJanuary, 2018, as held by the arbitrator is quite wide in nature by use of the expression *"Disputes which may arise in any manner with respect to or connected with the family settlement/ partition dated 15th July, 2019*"

36. Considering this expression used in the order of reference, ld. Arbitrator was of the opinion that a final decision on the application of the Petitioners under Section 16 cannot be taken, without further evidence in

the matter. The property which the Petitioners have purchased as per the Arbitrator is clearly subject matter of the arbitral proceedings and thus the ld. Arbitrator, after evidence being recorded may be required to mould relief in the same manner. Thus, the tests for interference under Article 226/227 being extremely strict, this Court does not deem it appropriate to interfere under Article 227.

37. Having said that, the Ld. Arbitrator's observation that the said objection shall be decided `while passing the award' may also not be fully in line with the legal position as held in ***Mcdermott International Inc(supra).*** Thus, the question of jurisdiction raised by the Petitioners would have to be adjudicated first, prior to the passing of the final award.

38. The present petition is disposed of in the above terms. The ld. Arbitrator would proceed to adjudicate the disputes expeditiously and pass an award, preferably within a period of six months. Parties to appear before the arbitrator on April 5th,2021.

PRATHIBA M. SINGH
JUDGE

MARCH 25, 2021*dj/RC*