**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/LETTERS PATENT APPEAL NO. 1011 of 2022**
**In R/SPECIAL CIVIL APPLICATION NO. 8727 of 2019**

**With**

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2022**
**In R/LETTERS PATENT APPEAL NO. 1011 of 2022**

==========

PAHAL ENGINEERS.

*Versus*

THE GUJARAT WATER SUPPLY AND SEWERAGE BOARD

==========

**Appearance**:
MR.MIHIR JOSHI, SENIOR COUNSEL WITH MR ISA HAKIM(10874) for the Appellant(s) No. 1
MR.KEYUR GANDHI, ADVOCATE FOR GANDHI LAW ASSOCIATES(12275) for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2

==========

*CORAM*:**HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR**
and
**HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI**

**Date : 30/01/2023**
**ORAL ORDER**
**(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)**

[1] This intra court appeal lays a challenge to the order dated 14.06.2022 passed in Special Civil Application No.8727 of 2019 by the learned Single Judge whereby writ application filed under Article 226 of the Constitution of India assailing the order dated 24.04.2019 passed by the second respondent therein, by virtue of which, the proceedings of arbitration came to be terminated

on the ground of there being non-compliance of the provisions of Order VI Rule 15, namely, there being no verification of the pleadings and consequently rejecting the claim petition on said ground came to be affirmed.

[2] Appellant herein was the successful bidder for a contract of building water treatment plant and laying down pipelines floated by respondent Water Board. On such contract being entered into with the first respondent herein there seems dispute had arisen between the parties resulting in appellant herein filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "Act 1996") seeking for appointment of an Arbitrator. Same resulted in petition being allowed *vide* order dated 08.12.2017 and appointing Shri L. C. Kanani, Retired Member Secretary, Gujarat Water Supply and Sewage Board, Gandhinagar as sole Arbitrator. The Arbitral Tribunal after entering reference, permitted the claimant to file the statement of claim and accordingly, it was filed on 09.03.2018 and it resulted in respondent filing written statement and also counter claim on

25.04.2018. Appellant herein filed its reply to the counter claim on 17.05.2018.

[3] During the course of the arguments, appellant sought for amendment of the claim petition which came to be allowed by order dated 27.09.2018 by the Arbitral Tribunal and as such amended claim statement was filed. Subsequently, arguments were concluded on behalf of the appellant on 23.02.2019 and learned counsel representing the first respondent also commenced the oral arguments and a contention with regard to the maintainability of the statement of claim was raised for the first time contending *inter alia* that said claim petition or claim statement was not maintainable on account of pleading nemely claim statement having not been verified as contemplated under Order VI Rule 15 of the C.P.C. The learned Arbitrator heard the said objection by treating it as a preliminary objection and by impugned order dated 24.04.2019 upheld the objection and dismissed the claim petition. Being aggrieved by the same, a Special Civil Application was filed before this Court in Special Civil Application No. 8727 of 2019. This Court upheld the order

of the Arbitral Tribunal on the ground that writ application filed under Article 226 of the Constitution of India was not maintainable and also on the ground that defect pointed by Arbitral Tribunal or procedural irregularity is not being dealt with. In other words, only on the ground that order passed by Arbitral Tribunal is not amenable to writ jurisdiction, petition came to be dismissed. It also came to be held that a statutory remedy is available to writ applicant under Section 34 to challenge the said order. Hence, this intra court appeal.

[4] It is the contention of Mr. Mihir Joshi, learned senior counsel appearing with Mr. Isa Hakim for the appellant that learned Single Judge erred in dismissing the petition on the ground of maintainability after having not entered into merits which clearly indicates that there has been patent illegality committed by the Arbitral Tribunal came to be continued and as such to rectify or correct the jurisdictional errors committed by the Arbitral Tribunal, learned Single Judge has power of superintendence under Article 227 of the Constitution of India to correct such errors and non exercise of power so vested is

only a self imposed restraint on the part of constitutional Courts and there is no absolute bar for exercising such power to correct the jurisdictional errors committed by the Arbitral Tribunal. In support of his submission, he has relied upon the judgment of the co-ordinate Bench in the case of ***Narmada Clean-Tech and Anr. versus Indian Council of Arbitration and Ors.*** in Letters Patent Appeal No.308 of 2020, disposed of on 30.07.2020.

[5] *Per contra*, Mr. Keyur Gandhi, learned counsel for Gandhi Law Associates appearing for first respondent would support the impugned order and contends that a material defect which has crept in cannot be cured by way of amendment and even otherwise non verification of the pleadings was fatal as rightly held by the Arbitral Tribunal which was not interfered with by the learned Single Judge on account of there being alternative remedy available under Section 34 of the Act 1996 and as such he prays for dismissal of the appeal.

[6] Having heard the learned advocates appearing for the parties and on perusal of the records, we may notice at the first

available opportunity that claim petition which was filed was undisputedly without verification of pleadings. The incidental question would be as to whether pleadings in arbitration proceedings commenced under the Act 1996, the provisions of C.P.C. would apply or not? The answer is simple, straight as is found in Section 19 of the said act itself. It reads:-

> "***19. Determination of rules of procedure.—***
>
> *(1) The arbitral tribunal* ***shall not be bound by the Code of Civil Procedure, 1908*** *(5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).*
>
> *(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.*
>
> *(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.*
>
> *(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.*
>
> *(Emphasis Supplied)*

[7] A plain reading of the above provision namely Section 19 of the Act, 1996 would clearly indicate that Arbitral Tribunal would not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act. Sub-section (2) of Section 19 mandates that parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings. In fact, if the parties fail to reach an agreement as provided under sub-section (2) of Section 19, the Arbitral Tribunal itself is empowered under sub-section (3) of Section 19 to regulate the proceedings in the manner it may consider appropriate. This view also gets fortified from the law laid down by the Hon'ble Apex Court in the case of ***Vidyawati Gupta and others Versus Bhakti Hari Nayak and others*** reported in ***(2006) 2 SCC 777*** whereunder it came to held as follows:-



> *"49. In this regard we are inclined to agree with the consistent view of the three Chartered High Courts in the different decisions cited by Mr. Mitra that the requirements of Order VI and Order VII of the Code, being procedural in nature, any omission in respect thereof will not render the plaint invalid and that such defect or omission will not only be curable but will also date back to the presentation of the plaint. We are also of the view that*

*the reference to the provisions of the Code in Rule 1 of Chapter VII of the Original Side Rules cannot be interpreted to limit the scope of such reference to only the provisions of the Code as were existing on the date of such incorporation. It was clearly the intention of the High Court when it framed the Original Side Rules that the plaint should be in conformity of the provisions of Order VI and Order VII of the Code. By necessary implication reference will also have to be made to Section 26 and Order IV of the Code which, along with Order VI and Order VII, concerns the institution of suits. We are ad idem with Mr. Pradip Ghosh on this score. The provisions of Sub-rule (3) of Rule 1 of Order IV of the Code, upon which the Division Bench of the Calcutta High Court had placed strong reliance, will also have to be read and understood in that context. The expression "duly" used in Sub-rule (3) of Rule 1 of Order IV of the Code implies that the plaint must be filed in accordance with law. In our view, as has been repeatedly expressed by this Court in various decisions, rules of procedure are made to further the cause of justice and not to prove a hindrance thereto. Both in the case of Khayumsab (supra) and Kailash (supra), although dealing with the amended provisions of Order VIII Rule 1 of the Code, this Court gave expression to the salubrious principle that procedural enactments ought not to be construed in a manner which would prevent the Court from meeting the ends of justice in different situations.*

*50. The intention of the legislature in bringing about the various amendments in the Code with effect from 1st July, 2002 were aimed at eliminating the procedural delays*

*in the disposal of civil matters. The amendments effected to Section 26, Order IV and Order VI Rule 15, are also geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance thereof would not automatically render the plaint non-est, as has been held by the Division Bench of the Calcutta High Court.*

*51. In our view, such a stand would be too pedantic and would be contrary to the accepted principles involving interpretation of statutes. Except for the objection taken that the plaint had not been accompanied by an affidavit in support of the pleadings, it is nobody's case that the plaint had not been otherwise verified in keeping with the unamended provisions of the Code and Rule 1 of Chapter VII of the Original Side Rules. In fact, as has been submitted at the Bar, the plaint was accepted, after due scrutiny and duly registered and only during the hearing of the appeal was such an objection raised.*

*52. Considering the aforesaid contention, even though the amended provisions of Order VI are attracted in the matter of filing of plaints in the Original Side of the Calcutta High Court on account of the reference made to Order VI and Rule 1 of Chapter VII of the Original Side Rules, non-compliance thereof at the initial stage did not render the suit non-est. On account of such finding of the Division Bench of the Calcutta High Court, not only have the proceedings before the learned Single Judge been wiped out, but such a decision has the effect of rendering the proceedings taken in the appeal also non-est.*"

[8] Thus, we are of the considered view that procedural law, if any, which undisputedly did not apply in the instant proceedings commenced under the Act 1996 would not be fatal and as such Arbitral Tribunal was not justified in dismissing the claim petition itself without going into the merits and as such the impugned order dated 24.04.2019 is not sustainable in law. The incidental question which has arisen is whether the order of the learned Single Judge in not entertaining the petition on the ground of alternative remedy being availed under Section 34 of Act, 1996 is to be sustained or not? The answer has to be necessarily in the negative in view of the law laid down by the Co-ordinate Bench in the case of ***Narmada Clean-Tech and Anr. (supra)*** whereunder it has been held to the following effect:-



> *"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*
>
> *(a) xxx.*

*(b) xxx.*

*(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.*

*(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.*

*(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, `within the bounds of their authority'.*

*(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is*

*vested in them and by not declining to exercise the jurisdiction which is vested in them.*

*(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.*

*(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.*

*(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, and therefore abridgement by a Constitutional amendment is also very doubtful.*

*(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be*

*remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article227.*

*(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*

*(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*

*(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.*

*(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the*

*larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.*

*(o) xxx*"

[9] We are in respectful agreement with the views expressed by the Co-ordinate Bench and as such the finding recorded by the learned Single Judge would not be sustainable.

[10] For reasons aforestated, we proceed to pass the following

O R D E R

(i) Letters Patent Appeal is allowed.

(ii) The order passed by the learned Single Judge in Special Civil Application No.8727 of 2019 is set aside.

(iii) Special Civil Application No.8727 of 2019 is allowed and order dated 24.04.2019 (*Annexure-A*) passed by the Arbitral Tribunal is hereby quashed.

(iv) In view of the mandate of the Arbitral Tribunal having expired by operation of law, it is needless to state that both the parties are at liberty to move for appropriate orders seeking for extension of mandate in the petition filed under Section 11(6) of the Act, namely, in Arbitration Petition IAAP No.138 of 2017.

(v) The Arbitral Tribunal on such mandate being extended shall proceed to adjudicate the claim on merits and in accordance with law by accepting the amended claim statement.

(vi) All pending applications stand consigned to records.



**(ARAVIND KUMAR, C.J.)**

**(ASHUTOSH SHASTRI, J.)**

DHARMENDRA KUMAR