Case No. 73

2002 (2) CTC 585

IN THE HIGH COURT OF MADRAS

E. Padmanabhan, J.

C.R.P.No. 62 of 2002 and C.M.P.No 549 of 2002
30.04.2002

M/s. Mangayakarasi Apparels Pvt Ltd., Sona Towers,
71, Millers Road,Bangalore –52 and another — Petitioners

Vs

Sundaram Finance Ltd., 21, Patullous Road, Chennai –2. — Respondent

Arbitration proceeding - order passed by arbitrator - whether amenable to judicial review under Article 226 or 227 of the Constitution - No arbitral tribunal not 'other authority' as to be amenable to writ jurisdiction or subject to supervisory jurisdiction -per contra AIR 1999 Bombay 219 - Bombay High Court view disagreed.

CASES REFERRED

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| 2001 (8) SCC 97 | (30) | 1992 Supp (2) SCC 651 | (24) |
| 2001(6)SCC569 | (32) | AIR 1976 SC 425 | (13) |
| 2000 (5) SCC 515 | (10) | 1976 (2) SCC 82 | (21,28) |
| 1999 (5) SCC 734 | (22,39) | AIR 1963 SC 874 | (20.28) |
| AIR 1999 Bom.219 | (13,25) | 1965 (2)SCR 366 | (19,28) |
| 1997(89) Com.Cases 483 | (10) | AIR 1963 SC 677 | (23) |
| 1997 (2) CLJ 2 | (10) | 1955 (1) SCR 267 | (19) |
| 1997 (5) SCC 76 | (31) | AIR 1954 SC 520 | (23) |
| 1995 (1) CTC 206 | (40) | 1950 SCR 459 | (20,23) |
| 1993 (2) SCC 144 | (38) | | |

Mr.S.R.Rajagopal, Advocate for Petitioners.
Mr.M.S. Krishanan, Advocate for Respondent.
C.R.P. DISMISSED.

ORDER

1. This revision has been preferred under Article 227 of The Constitution of India against the order passed by the sole Arbitrator Mr. Y.K. Rajagopal, in the memo dated 25.09.2001 filed by the petitioner in Arbitration Case R. R/SF/1/2001 dated 21.12.2001.

2. The respondent has entered appearance through M/s. Sarvabhauman Associates.

3. It is the main contention of the respondent that apart from the merits, no revision is maintainable under Art. 227 of The Constitution in respect of an order passed by the Arbitrator on a memo and that too in respect of a non statutory arbitration. The Arbitration was appointed in terms of the Arbitration Clause contained in the Hire Purchase Agreement entered into between the petitioner and the respondent.

4. The factual matrix could be summarised briefly: The petitioner and the respondent entered into a hire purchase agreement dated 25.1.1996. As disputes have arisen, the respondent appointed Mr. Y.K.Rajagopal as the sole arbitrator in terms of the Hire Purchase Agreement dated 25.1.1996. The respondent filed a claim statement claiming that an award be passed directing the petitioner to pay the sum of Rs.6,56,03,729 jointly and severally together with interest of 24 % per annum from 27.3.2001 till date of realization and in default to claim without prejudice to other modes of enforcing the award be permitted to seize the assets, the subject matter of the hire purchase agreement described in the schedule to the claim and sell the same by private auction and appropriate the sum realised towards the dues and in case the amounts realised is not sufficient, claimant be granted a personal award against all the petitioners to recover the short fall and other consequential reliefs.

5. The very respondent herein has filed an application under section 9 of the Arbitration and Conciliation Act, 1996 and proceeding is pending on the Original Side of this Court. Before the Arbitrator the petitioner herein filed a memo, dated 25.9.2001, which reads thus: -

" MEMO FILED BY THE IST RESPONDENT

The first respondent submits as follows:

Without prejudice to the validity or existence of the alleged Arbitration Agreement, it is submitted that the Company had become a Sick Industrial Company and as per the

provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, has made a reference to the BIFR. The said reference has been registered as case No. 248 of 2001 and the same is pending (A photocopy of the letter issued by the BIFR is annexed as Annexure –1)

In the light of the above and in light of Section 22 of the Sick Industrial Companies (Special Provision) Act, 1985, the above proceedings which is allegedly for recovery of money cannot be proceeded or continued without the consent/ permission of the BIFR.

It is therefore prayed that suitable orders be passed.

6. The respondent filed a counter to the said memo contending that Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 is not a bar to the arbitration proceedings and that Section 22 cannot be invoked at all on the facts of the case, besides contending that the bar provided under section 22 will not operate nor apply to the facts of this case.

7. The Arbitrator by Order date 21.12.2001 held that there is no bar for seeking the relief before the Arbitral Tribunal and section 22 of the SICA Act do not prohibit taking of any proceedings before the Arbitrator and that too in respect of repossession of hire purchase machineries and that the arbitration proceedings cannot be suspended or stayed. The memo has been in effect rejected by the Arbitrator, Challenging the said rejection; the present revision has been preferred under Art. 227 of The Constitution.

8. According to Mr. S.R. Rajagopal, the learned counsel appearing for the petitioner, the proceedings before the Arbitrator stands stayed statutorily under section 22 of the SICA Act, 1985 and the refusal to stay is arbitrary, illegal, vitiated by material misdirection and illegalities. When admittedly proceedings are pending before the BIFR in terms of Section 22, all the Recovery Proceedings shall stand stayed and the arbitrator should have stayed the proceedings and the refusal to stay is liable to be set aside.

9. The learned counsel further contended that though it is arbitration proceedings, it is a proceeding for recovery of the amounts and therefore Section 22(1) of the SICA Act would apply squarely and the rejection of memo is illegal, besides biased.

10. The learned counsel further contended that the proceedings before the Arbitrator also has to be stayed as held by the Delhi High Court in Lloyd Insulations (India) Ltd., v Cement Corporation of India, 1997 (89) Com. Cases 483, Rishab Agro Industries Ltd., v. P.N.B. Capital Services Ltd., 2000 (5) SCC 515, and the judgement of the Calcutta High Court in Burn Standard v. Dermoit international, 1997 (2) CLJ 2.

11. Per contra, Mr. M.S Krishnan, learned counsel appearing for the respondent contended that no revision is maintainable under Article 227, that Arbitration proceeding is not liable to be stayed, that the judgment of the Single Judge of the Delhi High Court has been reversed and it is no longer good law and prayed for dismissal of the revision petition.

12. The learned counsel for the respondent also contended that the Arbitrator has been appointed as per the contractual terms entered between the parties and not being a statutory arbitrator no revision under Art, 227 is maintainable. At any rate, Mr. M.S.Krishnan, learned counsel appearing for the respondent relying upon Section 5 of the Arbitration and Conciliation Act Contended that no judicial authority shall intervene except where so provided in Part –I of the Arbitration and Conciliation Act and as against the interim order passed in the Memo no revision could be maintained. It is contended that only after the final Award, it may be open to the petitioner to challenge the same under Section 34 of the Act.

13. After the conclusion of the arguments Mr.S.R. Rajagopal, learned counsel appearing for the revision petitioner circulated a copy of the judgment of the Bombay High Court in M/s Anuptech Equipments Pvt., Ltd., v. M/s. Ganapathi Co.op. Housing Society Ltd., AIR 1999 Bom. 219 in support of his contention that the petitioner could invoke Art.226 as well as 227. Mr. S.R. Rajagopal also relied upon the judgment of the Apex Court in Rohtas Indusries v. Its Union, AIR 1976 SC 425 in support of his contention that a writ is maintainable against Arbitral Tribunal.

14. In this Revision preferred under Article 227, the following points arise for consideration: -

(A) Whether a revision under Article 227 is maintainable against the interlocutory order passed by the Arbitrator rejecting a memo seeking for stay?
(B) Whether the rejection of the memo by the Arbitrator or refusal to

stay the proceedings is liable to be interfered in exercise of judicial review under Article 227 of the Constitution?

(C) Whether Section 5 of the Arbitration and Conciliation Act is a bar which excludes the jurisdiction of this court?

(D) Whether the statutory stay provided for under section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 applies to the arbitral proceedings arising out of a hire purchase agreement?

15. At the threshold, it is essential and proper to take up for consideration the jurisdictional issue, namely the maintainability of the revision under Art 227. The parties have entered into a Hire Purchase agreement where a stipulation has been agreed to for appointment of arbitrator by the respondent in respect of disputes. It is admitted that the petitioner has committed default in payment of Hire Purchase instalments and it is further admitted that the respondent could very well repossess the machineries which is the subject matter of hire purchase. The petitioner has committed default in payment of hire purchase instalments and the arrears of instalments is also substantial which aggregates to Rs. 6,56,03,729 with interest from 27.3.2001.

16. It is stated by the petitioner that the petitioner has already approached the BIFR under section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and a case No. 248 of 2001 has been registered on 25th June 2001. But there is nothing to show that the petitioner has impleaded the respondent as one of the parties or creditor in the said application filed under section 15 of the Sick Industrial Companies (Special Provisions) Act. The respondent has raised the dispute before the Arbitrator and the Arbitrator entered into the arbitration by issuing notice on 22.12.2001. The application filed under section 15 of the SICA Act is dated 4th June 2001.

17. Mr. Y.K. Rajagopal, a Member of the Bar has been appointed as the Arbitrator and he has entered into the Arbitration proceedings by issuing notice and entertaining the claim statement dated 20.07.2001, besides serving a notice on the revision petitioner. The revision petitioner has filed a memo seeking for the stay of the proceedings under section 22 of The Sick Industrial Companies (Special Provisions) Act, 1985 which memo has been rejected on merits by the said Arbitrator. In this

background the present revision has been preferred.

18. It is to be pointed out that the Arbitration proceedings in this case arose out of a hire purchase contract, which is a commercial transaction between the two companies. The respondent Arbitrator herein will not fall under the expression " State " or other authorities' falling under Article 12 of The Constitution. So also the Arbitrator appointed by the respondent in terms of a commercial transaction entered into between the two different companies. In other words, it is not a statutory contract, nor it is a statutory arbitration, nor one of the parties to contract is a public authority amenable to the writ jurisdiction, nor the Arbitrator will fall under the expression " other authority" under Art. 12 of The Constitution. The Arbitrator is not a "Court", nor it is a " Tribunal" in relation to which the High Court cannot exercise its jurisdiction of superintendence under Article 226/ 227 of the Constitution.

19. In Associated Cement Companies Ltd., v P.N. Sharma and another, 1965 (2) SCR 366, while examining the scope of Art. 136(1) and 227 of The Constitution, the Apex Court held the expression " court" involves a Tribunal constituted by the State as a part of the ordinary hierarchy of courts which are invested with the State's inherent judicial power. The said five Judges Bench of the Apex Court while examining the expression " court" and " " tribunal", held thus: -

> " Mr. Goyal contends that respondent No.2, is not a tribunal under Art. 136(1) and so, the impugned appellate order passed by it cannot be challenged by appeal under the said article. It would be noticed that Art. 136(1) refers to a tribunal as distinguished from a court. The expression "court" in the context denotes a tribunal constituted by the State as a part of the ordinary hierarchy of courts, which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers, which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary courts, which have been constituted under its relevant provisions. The Constitution recognised a hierarchy of courts and to their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These courts can be described as ordinary courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact and law raised before them by adopting a process, which is described as judicial process. The powers, which these courts exercise, are

judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions.

In every State there are administrative bodies or authorities, which are required to deal with matters within their jurisdiction in an administrative manner, and their decisions are described as administrative decisions. In reaching their administrative decisions, administrative bodies can and often to take into consideration questions of policy. It is not unlikely that even in this process of reaching administrative decisions, the administrative bodies or authorities are requited to act fairly and objectively and would in many cases have to follow the principles of natural justice: but the authority to reach decisions conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on courts, and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decisions pronounced by courts.

Tribunals which fall within the purview of Art. 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic: both the courts and the tribunals are " constituted by the State and are invested with judicial as distinguished from purely administrative or executive function," (vide Durga Shankar Mehta v. Thakur Raghuraj Singh and others, 1955 (1) SCR 267. They are both adjudicating bodies and they deal with and finally determine disputes between parties, which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their function and exercising their powers, the courts have to conform to that procedure. The procedure, which the tribunals have to follow, may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred, and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the state transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features, which are common to the tribunals and the courts, and features, which are distinct and separate. The basic and the

fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state."

20. In Engineering Mazdoor Sabha and another v. Hind Cycles Ltd., AIR 1963 SCC. 874 the Apex Court held thus:

> " (8) This question was considered by this court in Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi, 1950 SCR 459: This decision is opposite for our purpose because the question which came to be determined was in regard to the character to the Industrial Tribunals constituted under the Act. The majority decision of this court was that the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions and so, though the Tribunal is not a court, it is nevertheless a Tribunal for the purposes of Art.136. In the other words, the majority decision which in a sense was epoch- making, held that the appellate jurisdiction of this court under Art. 136 can be invoked in proper cases against awards and other orders made by Industrial Tribunals under the Act. In discussing the question as to character of the industrial Tribunal functioning under the Act, Mahajan.j observed that the condition precedent for bringing a tribunal within the ambit of Art, 136 is that is should be constituted by the State: and he added that a tribunal would be outside the ambit of Article 136 if it is not invested with any part of the Judicial functions of the State but discharges purely administrative or executive duties. In the opinion of the Learned Judge, Tribunals, which are found invested with certain functions of a court of justice and have some of its trappings also would fall within the ambit of Art. 136 and would be subject to the appellate control of this court whenever it is found necessary to exercise that control in the interests of Justice. It would thus be noticed that apart from the importance of the trappings of a court, the basic and essential conditions which makes and authority or a body a tribunal under Art. 163, is that it should be constituted by the State and should be invested with the State's inherent judicial power. Since this test was satisfied by the Industrial Tribunals under the Act, according to the majority decision, it was held that the awards made the Act, according to the majority decision, it was held that the awards made by the Industrial Tribunals are subject to the appellate jurisdiction of this Court under Art. 136"

21. Following the above pronouncement, in Rohtas Industries Ltd. v. Rohtas Industries Staff Union, 1976 (2) SCC 82, a Three Judges Bench of the Apex Court

held thus:

> ' " 10. Many rulings of the High Courts, pro and con, were cited before us to show that an award under Section 10 A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar, J (as he than was) in Engineering Mavloor Sabhal which nail the argument against the existence of jurisdiction. The learned Judge clarified at p. 640:

Article 226 under which a writ of *Certiorari* can be issued in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of courts or tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore even if the arbitrator appointed under Section 10A is not a tribunal under Article 136 in a proper case, a writ may lie against his award under Article 226. (P.640)

> " 11. We agree that the position of an arbitrator under Section 10A of the Act (as it then stood) vis- a -Vis Article 227 might have been different. Today, however, such an arbitrator has power to bind even those who are not parties to the reference or agreement and the whole exercise under Section 10A as well as the source of the force of the award on publication derive from the statute. It is legitimate to regard such an arbitrator now as part of the methodology of the sovereign's dispensation of justice, thus falling within the rainbow of statutory tribunals amenable to judicial review. This observation made en passant by us is induced by the discussion at the Bar and turns on the amendments to Section 10A and cognate provisions like Section 23, by Act XXXVI of 1964".

22. The learned counsel for the respondent placed reliance upon the pronouncement of the Apex Court in Agio Countertrade Pte Ltd., v. Punjab Iron and Steel Co., 1999 (5) SCC 734.

23. In Jaswant Sugar Mils v. Lakshmi Chand, AIR 1963 SC 677, a Five Judges Bench of the Apex Court held thus:

> "18. The essential characteristics of a " tribunal ' within the meaning

of Art, 136 were examined by Mahajan. J., in the Bharat Bank., v Employees of Bharat Bank Ltd., 1950 SCR 459 and it was observed that, " tribunals which do not derive authority from the sovereign power cannot fall within the ambit of Article 136. The condition precedent for bringing a tribunal within the ambit of Article 136 is that it should be constituted by the State. Again a tribunal would be outside the ambit Article 136 if it is not invested with any part of the judicial functions of the State but discharges purely administrative or executive duties". This view adopted by the Court in Durga Shankar Mehta v. Raghuraj Sing, AIR 1954 SCC 520, where Mukherjee, J., observed:

"It is now well settled by the majority decision of this court in the case of 950 SR 459 that the expression " Tribunal" as used in Article 136 does not mean the same thing as " court". but includes within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions."

19. The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs Authorities, Motor Vehicles Authorities, Income –tax and Sales tax officers are illustrations *prima facie* of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State. Their primary function is administrative and not judicial. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be it regarded as a tribunal, though not a court, the principal incident is the investiture of the " trappings of a court' such as authority to determine matters in cases initiated by parties, sitting in public power to compel attendance of witnesses and to examine them on oath, duty to follow fundamental rules of evidence (though not the strict rules of the Evidence Act), provision for imposing sanctions by way of imprisonment, fine, damages or mandatory or prohibitory orders to enforce obedience to their commands. The list is illustrative: some though not necessarily all such trappings will ordinarily, make the authority which is under a duty to act judicially, a " tribunal".

24. In Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) SCC 651, a Five Judges Bench of the Apex Court held thus:

> " 98 ..... " All tribunals are not courts, though all courts are tribunals". The word " courts " is used to designate those tribunals, which are set up in an organised State for the Administration of Justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish" wrongs ". Wherever there is an infringement of a right or an injury, the courts are there to restore the vinculum juries, which is disturbed. (See Harinagar Sugar Miles Ltd. v. Shyam Sundar Jhunjhunwala 35.) In that case Hidayatullah, J. said (SCR p.362)

"…. By 'Courts' is meant courts of civil judicature and by 'tribunals' those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ but the functions are not essentially different. What distinguishes them has never been successfully established. Load Stamp said that the real distinction is that the courts have' an air of detachment" But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

99. Where there is a lis- an affirmation by one party and denial by another and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a Court. In Associated Cement Companies Ltd. v. P.N Sharma 36 this Court said; (SCR pp. 386-87)

"…. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power, which the State Government exercises under Rule 6(5), and Rule 6(6) is a part of the State's judicial power…. There is,in that sense,a lis: there is affirmation by

one party and denial by another,and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding."

25. As against the above pronouncement of the Apex Court, the learned counsel for the petitioner relied upon the judgment of the Bombay High Court in Anuptech Equipments v. M/s. Ganapathi Cooperative Housing Society, AIR 1999 Bom. 219. Rebello, J., while taking note of the dichotomy maintained between the statutory arbitration and arbitration under bilateral agreements, held that the arbitral tribunal is not a tribunal within the meaning of Art 226 of The Constitution, nevertheless held a writ could be issued under Art 266 of The Constitution where no other remedy is a available to an aggrieved person.

26. This Court is not persuaded to accept the said view taken by Rebellow .J., and this Court respectfully disagree with the said view of the Bombay High Court in the light of the above cited pronouncements of the Apex Court. The Arbitrator appointed as a result of the arbitration clause agreed to between the independent parties, though referred to as arbitral tribunal, they are not " other authorities"' nor they are amenable to writ jurisdiction, nor this court under Art. 226/227 could exercise supervisory jurisdiction in respect of those arbitrators. A private arbitration is governed by the terms of the agreement and in case of any grievance, the provisions of The Arbitration and Conciliation ACT, 1996 could be invoked to redress the grievance in respect of the proceedings before the private arbitrator or any proceedings which are not in exercise of statutory arbitration or statutory confirmation, but by virtue of private arbitration, a contractual stipulation agreed to between the parties.

27. In the light of the above pronouncements of the Apex Court, referred to already, this court is of the considered view that the petitioner cannot maintain an action by invoking the powers of judicial review under Art. 226 or Art. 227 with respect to the order passed by the Arbitrator in a private arbitration or a non statutory arbitration arising out of a commercial transaction. As the Arbitration and Conciliation Act, 1996 provides for remedies besides it also restricts invocation of the jurisdiction of the Courts at interlocutory stage, this court taking note of the Legislative Policy adumbrated in The Arbitration and Conciliation Act, 1996 also will not be justified in exercising the powers of judicial review or superintendence under Art. 226/227.

28. In the circumstances, following the Supreme Court Judgments in Engineering Mazdoor Sabha and another v. Hind Cycles Ltd., AIR 1963 SC 874, Rohtas Indus-

tries Ltd., v. Rohtas Industries Staff Union, 1976(2) SCC 82 and Associated Cement Companies v. P.N. Sharma and another, 1965(2) SCR 366, this court holds that a revision under Art 227 is not maintainable as against the orders of rejection of memo passed by Mr. Y.K. Rajagopal, Arbitrator appointed under the commercial transaction between the two private parties in terms of the bilateral Hire Purchase agreement entered between them.

29. Taking up the second contention, this court holds that rejection of the memo by the Arbitrator or refusal to stay of the proceedings is not liable to be interfered under Art. 227. The refusal to stay and rejection of the memo on the facts of the case is valid and it is not liable to be interfered.

30. The power of judicial review under Art. 227 is circumscribed by several conditions and the Supreme Court in Estralla Rubber v. Dass Estate (p) Ltd., 2001 (8) SCC 97, while examining the scope and ambit of Article 227, held thus:

> " 6) The exercise of power under Article 227 of the Constitution of India involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the tribunals is restricted to cases serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to."

31. " In Achutananda Baidya v. Prafullya Kumar Gayen, 1997 (5) SCC 76 the Apex Court held thus:

> " 10. The power of superintendence of the High Court under Article 227 of the

Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, Inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous error of law apparent on recorded as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse."

32. In Punjab National Bank v. O.C. Krishnan. 2001 (6) SCC 569, the Apex Court held that provisions of Recovery of Debts due to Banks and Financial Institutions, the jurisdiction of this Court under Articles 226 and 227 of the Constitution has not been expressly ousted, yet when there is an alternate remedy, the High Court shall refrain from exercising its jurisdiction under Article 227.

33. The petitioner had not made out a case for interference under Art 227 on the case.

34. Taking up the next contention, the counsel for the respondent relies upon Section 5 of the Arbitration Act and contends that no judicial authority shall intervene except where so provided in this behalf. In other words a matter when governed by the Arbitration and Conciliation Act, no court shall intervene except where so provided in this Act

35. Though Section 5 of the Arbitration and Conciliation Act bars the Jurisdiction of judicial authority, the said Section shall not be pressed into service to exclude the power of judicial review under Art. 226/227

36. Taking up the last contention, namely whether Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 applies to arbitral proceedings arising out of

a hire purchase agreement, it has to be pointed out that the Arbitration Agreement in this case is based upon a hire purchase transaction and in respect of hire purchase transaction title in the instruments or vehicle or subject mater of hire purchase will not pass till the last installment is paid. Therefore, a debtor or hire purchase debtor when an action is taken for recovery of the hire purchase taken in respect of the hypotheca, then the debtor cannot desist the same as if it is a proceedings which is barred by the operation of Section 22. In this case, the foremost being that the respondent herein is not a party to the proceedings before the BIFR/ AIFR. The two transactions are totally different and distinct. The attempt to recover the hire purchase Machinery and the action taken thereof is not stayed under section 22, as it is not a recovery against the Sick Company's properties. The Arbitration proceedings are not proceedings for winding up. nor it is proceedings for execution, distress or like, nor it is a proceeding for appointment of Receiver nor it is a suit for recovery of money or enforcement of any security. Therefore Section 22(1) of Sick Industrial Companies (Special Provisions) Act, 1985 cannot be invoked, nor the proceedings are stayed.

37. The object of the Sick Industrial Companies (Special Provisions) Act, 1985 is to afford the maximum protection of employment, optimise the us of financial re-sources, salvaging the assets of production, realising the amounts due to the banks and to replace the existing time consuming and inadequate machinery by efficient machinery for expeditious determination by a body of experts to safeguard the economy of the country and protect viably sick units.

38. In Maharashtra Tubes v. State Industrial Investment Corporation 1993 (2) SCC 144, the Apex Court held that Section 29 permits coercive action against the defaulting industrial of the type which will be will be taken in execution or distress proceedings, the only difference being that in the latter case the concerned party would have to use the forum prescribed by law for the purpose of securing attach-ment and sale of property of the defaulting industrial concern, whereas in the case of a financial Corporation that right is conferred on the Creditor Corporation itself which is permitted to take over management and possession of the property and deal with them as if it were the owner of the properties.

39. In Agio Countertade Pte. Ltd., v. Punjab Iron & Steel Co.Ltd 1999 (5) SCC 734, the Apex Court held that the provisions of Section 22 of SICA and the proceedings for the appointment of Arbitrator under section 11 of the Arbitration and Conciliation Act have a very narrow scope and the same are not covered by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The respondent not being made

as a party before the BIFR, no relief can be sought for and no application has been filed before the BIFR so as to include the respondent finance, it is clear that there is no bar under section22 of the SICA Act. In other words, SICA Act will have no application in respect of proceedings under the Arbitration Act where Arbitration Proceedings are yet to take palce.

40. A Division Bench of this Court in Shri Ananta Udyog Private Ltd., v. Cholamandalam Investment & Finance Company Ltd., 1995 (1) CTC 206 While considering the scope of 22(1) of the Sick Industrial Companies (Special Provisions) Act, held that the property which is sought to be seized by the respondent pursuant to an order in an Application No. 2307 of 1994 is not a property of the appellant and it will not fall within the scope of section 22 (1) of the Sick Industrial Company (Special Provisions) Act. This court is bound by the said pronouncement of the said Division Bench.

41. On a detailed consideration as set out above, this court answers the points formulated as hereunder: -

> Point (A) that the revision under Article 227 is not maintainable.
> Point (B) that the rejection of the memo by the Arbitrator or the refusal to stay the proceedings is not liable to be interfered.
> Points (C& D) that Section 5 of the Arbitration and Conciliation Act is not a bar for invoking Article 226/227 of The Constitution and Section 22 will not encompass the arbitration proceedings and therefore this contention also cannot be sustained.

42. The Civil Revision Petition fails and it is dismissed. The parties shall bear their respective costs.