2026 INSC 566

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(@ SLP (C) NO.27534 OF 2025)

M/S TARINI PRASAD MOHANTY **APPELLANT**

VERSUS

M/S SUNFLAG IRON AND STEEL COMPANY LIMITED **RESPONDENT**

J U D G M E N T

ATUL S. CHANDURKAR, J

1. An objection raised under Section 16 of the Arbitration and Conciliation Act, 1996[1] that various agreements executed between the parties were insufficiently stamped was turned down by the learned Arbitrator. A challenge was raised to the said order by the objector through a writ petition preferred under Articles 226 and 227 of the Constitution of India[2]. A learned Single Judge of the High Court entertained the writ

[1] For short, 'the A and C Act'
[2] For short, 'the Constitution'

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petition and upheld the objection raised under Section 16 of the A and C Act. Impounding of the said agreements was directed. The other party challenged this decision in a writ appeal that was allowed by the Division Bench of the High Court. The objector, being aggrieved, has approached this Court.

2. Leave granted.

3. Two issues arise for consideration in the present appeal, namely (a) whether in the exercise of jurisdiction under Articles 226 and 227 of the Constitution, a challenge to an order passed under Section 16 of the A and C Act ought to have been entertained, especially when the Arbitrator was seized of the arbitration proceedings? and (b) the learned Single Judge having upheld the challenge to an order passed under Section 16 of the A and C Act, whether the Division Bench was right in interfering with such exercise of jurisdiction and setting aside that order?

4. It is not necessary to refer to the facts in great detail. Suffice it to observe that an agreement for sale of iron ore came to be executed on 12.02.2004 between the appellant-

M/s Tarini Prasad Mohanty[3] and the respondent-M/s Sunflag Iron and Steel Company Limited[4]. Supplementary agreements were also entered into between the parties thereafter. During the course of their contractual engagement, disputes arose between the parties. In accordance with the arbitration clause contained in the agreement for sale, these disputes were referred to a Sole Arbitrator. SISCO as claimant made various claims against the mine owner, who in turn filed a counter claim against SISCO. On 05.02.2024 during the course of the arbitration proceedings, the mine owner filed an application under Section 16 of the A and C Act. It was stated therein that the agreement for sale dated 12.02.2004 alongwith various supplementary agreements had been insufficiently stamped. According to the mine owner, the contract between the parties was in the nature of 'conveyance' and, hence, it was necessary that the agreements had to be stamped in accordance with Article 23 of Schedule I to the Indian Stamp Act, 1899[5]. It was, thus, stated that unless the agreements were impounded and

[3] For short, 'the mine owner'
[4] For short, 'SISCO'
[5] For short, 'the Stamp Act'

properly stamped, the arbitration proceedings could not continue.

5. The claimant filed its reply to the aforesaid objection and took the stand that the agreements between the parties had been duly stamped and there was no need to impound the same. It was further stated that such objection had not been raised when the counter claim was filed and it was not liable to be entertained as having been raised belatedly.

The learned Arbitrator after hearing both sides by his order dated 30.05.2024 turned down the said objection and held that the agreement between the parties was "an agreement to sell" and not "conveyance" or sale. Since the agreement had been properly stamped in accordance with Article 5(c) of Schedule I to the Stamp Act, the objection was rejected.

6. The mine owner being aggrieved by the aforesaid order challenged the same by filing a writ petition under Articles 226 and 227 of the Constitution of India before the High Court

of Orissa[6]. The prayers made in the writ petition read as under:

> "A) Why the Impugned Order dated 30.05.2024 vide Annexure 1, passed by the Ld. Arbitral Tribunal shall not be quashed, being illegal, arbitrary and contrary to settled principles of law;
>
> B) Why directions shall not be issued to the Ld. Sole Arbitrator directing the Respondent to produce the original Sale Agreement before the concerned Collector for impounding the same for the determination of the deficit stamp duty and payment of the same by the Respondent;
>
> C) Why the arbitral proceedings in the matter of arbitration between "Sunflag Iron and Steel Co. Ltd. Vs. Tarini Prasad Mohanty" shall not be kept in abeyance until the Respondent rectifies the defect as per the law prescribed procedure in law;
>
> D) Why such other appropriate order/orders as this Hon'ble Court may deem fit and proper shall not be passed;"

7. SISCO opposed the writ petition by urging that the order passed by the learned Arbitrator under Section 16 of the A and C Act during pendency of the arbitration proceedings could not be challenged in writ jurisdiction. It stated that at the conclusion of the arbitration proceedings, the remedy provided under Section 34 of the A and C Act could be availed. It was further stated that the conclusion arrived at by the learned Arbitrator that the agreements had been properly stamped was correct and this did not call for any interference.

[6] For short, 'the High Court'

8. A learned Single Judge of the High Court by the judgment dated 25.02.2025 considered the question as to the maintainability of a writ petition wherein a challenge was raised to an interlocutory order passed by the Arbitral Tribunal. He, thereafter, examined the situations in which an order passed under Section 16 of the A and C Act could be interfered with in exercise of writ jurisdiction. After finding that an 'exceptional' case for interference had been made out, the learned Single Judge proceeded to hold that unless proper stamp duty was paid on the sale agreement, the learned Arbitrator did not have jurisdiction to arbitrate the disputes. On that basis, the order passed under Section 16 of the A and C Act came to be set aside and the Arbitral Tribunal was directed to impound the agreements to enable them to be duly stamped in accordance with Article 23, Schedule I(b) to the Stamp Act. Various directions indicating the manner in which such impounding was to be undertaken were also given. The writ petition preferred by the mine owner, thus, came to be allowed.

9. The claimant being aggrieved by the exercise of jurisdiction by the learned Single Judge preferred writ appeal

under Clause 10 of the Letters Patent Act, 1992. The Division Bench of the High Court after referring to various decisions of this Court was of the view that the power of judicial review under Article 226 of the Constitution as well as the power superintendence over courts and tribunals under Article 227 of the Constitution were integral parts of the basic structure which could not be curtailed and/or abridged under any legislative fiat. It further held that an order upholding the jurisdiction of the Arbitrator was capable of being challenged under Section 34 of the A and C Act at the conclusion of the arbitration proceedings. It found that the exercise of determining whether the agreements were properly stamped required an interpretation of the contract between the parties. This was required to be done on the basis of evidence to be adduced by the parties. It was therefore desirable that the writ court ought not to go into the question involving interpretation of the contract. On that basis, it held that the view taken by the learned Arbitrator could not be said to be perverse or that the Arbitral Tribunal lacked inherent jurisdiction to entertain the arbitration proceedings. The Division Bench, thus, set aside the judgment of the learned Single Judge holding the same to be in excess of jurisdiction.

The mine owner being aggrieved by this adjudication has preferred the present appeal.

10. Mr. Shashank Garg, learned Senior Advocate for the appellant in support of the appeal made the following submissions:

a) The writ appeal preferred by SISCO was not maintainable:

It was urged that though the mine owner referred to Articles 226 and 227 of the Constitution in the writ petition preferred by him, the said writ petition was in fact one under Article 227 of the Constitution alone. This was clear from the tenor of the writ petition and the grounds raised therein. The mine owner had invoked supervisory jurisdiction of the High Court under Article 227 of Constitution and therefore, the writ appeal preferred by SISCO was not maintainable. The directions issued in the order passed by the learned Single Judge as regards impounding of the documents in question would not result in converting the proceedings into one under Article 226 of the Constitution. In this regard, the learned Senior Advocate placed reliance on the decisions in **Umaji Keshao Meshram and others Vs. Radhikabai w/o Anandrao**

Banapurkar and another[7]**, Life Insurance Corporation of India Vs. Nandini J. Shah and others**[8] and **Ram Kishan Fauji Vs. State of Haryana and others**[9].

b) The writ petition preferred by the mine owner for challenging the order passed under Section 16 of the A and C Act was maintainable:

It was submitted that in exceptional cases and on grounds of perversity, an order passed by the Arbitral Tribunal under Section 16 of the A and C Act would be maintainable. The fact that the learned Single Judge set aside the order passed under Section 16 of the A and C Act on the ground that the same was 'grossly erroneous and perverse' justified the invocation of such jurisdiction by the mine owner. Since an exceptional case had been made out by the mine owner, jurisdiction under Article 227 of the Constitution was rightly exercised by the learned Single Judge.

c) The agreement dated 12.02.2004 and the supplementary agreements constituted 'conveyance':

It was submitted by referring to the provisions of Section 2(10) of the Stamp Act and Section 4(4) of the Sale of Goods Act, 1930[10] that on a reading of the agreements in their

[7] 1986 INSC 41
[8] 2018 INSC 178
[9] 2017 INSC 238
[10] For short, 'SoG Act'

entirety, it was clear that the transaction envisaged therein was one of sale. Reference was made to various clauses of the agreement dated 12.02.2004 to substantiate this contention. The nomenclature of the said document was not relevant but its substance was required to be seen. The learned Arbitrator having failed to determine the exact nature of the agreement dated 12.02.2004 and the supplementary agreements, the learned Single Judge was justified in concluding that the transactions entered into amounted to 'conveyance'. Reliance was placed on the decision in **State of Uttaranchal and others Vs. M/s Khurana Brothers**[11] in that regard.

d) Failure of the Arbitral Tribunal to impound the various agreements resulted in a jurisdictional error:

It was submitted that unless the agreement for sale between the parties was properly stamped, the learned Arbitrator did not have jurisdiction to arbitrate the disputes. For determining the true nature of the transaction, the agreement for sale dated 12.02.2004, various supplementary agreements and the eighty-nine purchase orders ought to have been taken into consideration. They all were relevant for determining the issue of proper stamp duty being paid on the

[11] 2010 INSC 746

agreements. The Arbitral Tribunal erred in failing to take the entire material into consideration before arriving at its conclusion. The learned Single Judge rightly considered all the relevant material in this regard and found that the agreements were insufficiently stamped. Unless proper stamp duty was duly paid, the learned Arbitrator could not have proceeded with the arbitration proceedings. The Division Bench, thus, erred in interfering with the well reasoned order passed by the learned Single Judge.

e) The interest of revenue ought to be borne in mind while adjudicating the present dispute:

It was submitted that non-payment of stamp duty or insufficiency of stamp duty results in a loss to the public exchequer. For an instrument to be admitted in evidence and/or acted upon in law, the document ought to have been correctly stamped. Reference was made to the judgment of the Constitution Bench in **Re: Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act, 1996 and The Indian Stamp Act, 1899**[12]. Moreover, the scope for interference under Section 34 of the A and C Act was

[12] 2023 INSC 1066

limited as reiterated in **Gayatri Balasamy Vs. M/s ISG Novasoft Technologies Limited**[13].

It was, thus, submitted on the aforesaid grounds that the judgment of the Division Bench impugned herein was liable to be set aside and order passed by the learned Single Judge impounding the agreement dated 12.02.2004 deserved to be upheld.

11. Per contra, Mr. Gopal Subramanium, Mr. N.K.Mody and Ms. Malvika Trivedi, learned Senior Advocates for the respondent supported the judgment of the Division Bench and urged as under:

a) The writ appeal filed by SISCO was maintainable:

It was submitted that the writ petition filed by the mine owner was under Articles 226 and 227 of the Constitution. Substantive reliefs in the nature of writs had been prayed for and no supervisory direction had been sought. The learned Single Judge after setting aside the order passed under Section 16 of the A and C Act issued a direction to the Collector to determine the deficient stamp duty. Even otherwise, the writ petition having been filed invoking Articles

[13] 2025 INSC 605

226 and 227 of the Constitution, the writ appeal would be maintainable by treating the writ petition as filed under Article 226 of the Constitution. Reliance was placed on the decision in *Umaji Keshao Meshram (supra)* to support this submission.

b) The order passed by the learned Arbitrator under Section 16 of the A and C Act was not liable to be interfered with:

The learned Single Judge erred in interfering with the order passed by the learned Arbitrator under Section 16 of the A and C Act. It was not a case of complete lack of inherent jurisdiction on the part of the learned Arbitrator so as to enable writ jurisdiction being invoked. The Constitution Bench in *Re: Interplay (supra)* having held that the issue as to stamping of a document was one that fell within the ambit of the Arbitral Tribunal, the decision taken by the learned Arbitrator under Section 16 of the A and C Act was thus within its jurisdiction. Merely by stating that the circumstances were 'exceptional', writ jurisdiction could not have been exercised. Assuming that the order passed by the learned Arbitrator under Section 16 of the A and C Act was erroneous in law, the same could have been challenged under Section 34 of the A and C Act at the conclusion of the proceedings as provided under Section 16(6).

c) The agreement dated 12.02.2004 and the supplementary agreements did not amount to 'conveyance' under Section 2(10) of the Stamp Act:

It was submitted that on a complete reading of the entire agreement dated 12.02.2004 and the supplementary agreements, it was clear that it envisaged a future sale of iron ore by the mine owner to SISCO. Under the said agreements, the goods were neither ascertained nor were they in a deliverable state. Reference was made to various clauses in the agreements to substantiate this contention. It was further urged that the aspect of interpretation of a document touched the merits of the dispute, consideration of which was yet to be undertaken by the learned Arbitrator. This Court, therefore, would not undertake that exercise at this stage. The decision in *M/s Khurana Brothers (supra)* relied upon before the learned Single Judge was sought to be distinguished. It was also submitted that various purchase orders were sought to be relied upon by the mine owner for the first time in the writ petition before the learned Single Judge. In any event, the transaction in question could not be treated to be 'conveyance'.

It was, thus, submitted that the Division Bench of the High Court having rightly set aside the order passed by the

learned Single Judge, no interference was called for and the appeal was liable to be dismissed.

12. We have heard the learned Senior Advocates for the parties at length and with their assistance, we have also perused the relevant documentary material placed on record. At the outset, it would be necessary to consider the objection raised on behalf of the mine owner that the writ appeal preferred by SISCO was not maintainable as the learned Single Judge had merely exercised jurisdiction under Article 227 of the Constitution while setting aside the order passed under Section 16 of the A and C Act. According to the mine owner, since a challenge was raised to an order passed by the learned Arbitrator under Section 16 of the A and C Act, notwithstanding the invocation of Articles 226 and 227 of the Constitution in the writ petition, the jurisdiction exercised by the learned Single Judge was only under Article 227 of the Constitution.

We are not in a position to accept this submission for more than one reason. Perusal of the writ petition as preferred by the mine owner including the prayers made therein makes it clear that the writ petition was preferred under Articles 226

and 227 of the Constitution. Besides the cause title of the said writ petition, the pleadings therein, especially paragraph 27 indicates that the mine owner sought to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution. Further, the learned Single Judge after referring to various decisions cited before him by the parties observed in paragraph 60 as under:

> "60. 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."

Thereafter, on examining the agreement for sale dated 12.02.2004 as well as the second agreement dated 09.01.2011, the learned Single Judge was of the view that the challenge raised by the mine owner could be treated to be 'exceptional' and writ jurisdiction ought to be exercised in the matter.

13. In this regard, we may refer to the decision of this Court in **Lokmat Newspapers Pvt. Ltd. Vs. Shankar Prasad**[14] wherein after referring to the decision in *Umaji Keshao Meshram and others (supra)*, it was observed as under:-

> "It is, therefore, obvious that the Writ Petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for High Court's interference seeking issuance of an appropriate Writ of *Certiorari* under Article 226 of the Constitution of India. Basic averments for invoking such jurisdiction were already pleaded in the Writ Petition for High Court's consideration. It is true, as submitted by learned counsel for the appellant, that the order of the learned Single Judge nowhere stated that the Court was considering the Writ Petition under Article 226 of the Constitution of India. It is equally true that the learned Single Judge dismissed the Writ Petition by observing that the Courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge did not inclined to interfere under article 227 of the Constitution of India only. The said observation equally supports the conclusion that the

[14] 1999 INSC 279

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learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier, that he was considering the aforesaid Writ Petition moved under Articles 226 as well as 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the Writ Petition of the respondent. In this connection, it is profitable to have a look at the decision of this Court in the case of *Umaji Keshao Meshram and Others vs. Radhikabai*, widow of *Anandrao Banapurkar and Anr.*, [(1986) Supp SCC 401]. In that case O.Chinnappa Reddy and D.P.Madon, JJ., considered the very same question in the light of clause 15 of the Letters Patent Appeal of the Bombay High Court. Madon J., speaking for the Court in para 107 of the Report at page 473, made the following pertinent observations :

> "Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High court in Aidal Singh v. Karan Singh and by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dass and Barham Dutt v. Peoples' Co-operative Transport Society Ltd., New Delhi* and we are in agreement with it."

The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke jurisdiction of the High Court both under Articles

> 226 and 227 of the Constitution of India. Once such jurisdiction was invoked and when his Writ Petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 of the Constitution of India. This conclusion directly flows from the relevant averments made in the Writ Petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that Clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of learned Single Judge.....”
>
> [emphasis supplied by us]

14. In our view, the observations referred to above are clearly applicable to the facts of the present case. The mine owner having invoked jurisdiction under Articles 226 and 227 of the Constitution and the learned Single Judge having exercised jurisdiction without clearly specifying any particular Article, it cannot be said that what was exercised by the learned Single Judge was jurisdiction only under Article 227 of the Constitution and not under Article 226 of the Constitution. Moreover, the mine owner himself having invoked both Articles and having succeeded before the learned Single Judge, in fairness, he ought not now contend that the writ petition preferred by him was only under Article 227 of the Constitution so as to question the maintainability of the writ appeal.

We would reiterate what was held by this Court in **Sh Jogendrasinhji Vijaysinghji Vs. State of Gujarat and others**[15] in paragraph 25:

> "**25.** From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in **Radhey Shyam** (supra) that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasised in the aforestated authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation...."

We are, therefore, of the view that the learned Single Judge having entertained the writ petition that was preferred under Articles 226 and 227 of the Constitution and having granted relief to the mine owner, the writ appeal preferred by

[15] 2015 INSC 485

SISCO was maintainable. SISCO, therefore, cannot be non-suited on this count.

15. We further find from the proceedings in the writ appeal before the Division Bench that the parties did not join issue on the maintainability of the writ appeal. Rather the contest was on the scope of jurisdiction under Articles 226 and 227 of the Constitution and the legal propriety of the learned Single Judge exercising such jurisdiction. In paragraphs 1, 4 and 5 of the 'Note for Writ Appeal' submitted by the mine owner, it has been stated as under:

> "I. Whether a writ court can interfere with the order passed by the arbitral tribunal in exercise of its powers under Section 16 of the Arbitration and Conciliation Act
>
> 1. The test propounded by the court for a challenge of an order of the arbitral tribunal (section 16 of the Arbitration and Conciliation Act 1996) by way of a writ petition under Article 226/227 is perverse/exceptional circumstance namely: patent lack of inherent jurisdiction."
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> 4. In relation to jurisdiction of a writ court challenging a Section 16 order of an arbitral tribunal, the Hon'ble Supreme Court has upheld the position in Deep Industries, in the case of *Punjab State Power Corporation Limited V. EMTA Coal Limited and anr.* (2020) 17 SCC 93, in paragraph 4 as follows:
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> > "4.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."

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> 5. The order passed by the single judge squarely falls within the parameters." [16]

The Division Bench, therefore, observed in paragraph 8 of the impugned judgment as under:

> "8. Learned Counsels appearing for the respective parties made extensive arguments not only on the nature of an agreement for the purpose of stamp duty leviable thereupon but also on the scope and jurisdiction of the High Court conferred under Article 226/227 of the Constitution of India."

It, thus, becomes clear that maintainability of the writ appeal was not specifically questioned by the mine owner before the Division Bench.

16. Having found that the writ appeal preferred by SISCO was maintainable, it would now be necessary to consider whether the Division Bench was justified in entertaining the same and setting aside the order passed by the learned Single Judge. For doing so, a brief reference to the adjudication by the learned Arbitrator under Section 16 of the A and C Act would be necessary. During the course of arbitration proceedings, an objection was raised by the mine owner on 05.02.2024 that the agreement for sale dated 12.02.2004 as

[16] (See pages 299 and 300, Annexure R-7 of counter affidavit by SISCO)

well as the supplementary agreements executed between the parties were insufficiently stamped. Unless the said instruments were impounded and adequate stamp duty was paid, the arbitration proceedings could not proceed. The learned Arbitrator considered the said objection. After referring to the agreements in question including its relevant clauses, he came to the conclusion that the agreements could not be treated to be 'conveyance' or sale of movable property. The application under Section 16 of the A and C Act was, thus, dismissed on 30.05.2024.

17. A perusal of the aforesaid adjudication would *prima facie* indicate that on consideration of various agreements between the parties and the relevant clauses therein, the learned Arbitrator concluded that the same were merely in the nature of an agreement to sell and not 'conveyance'. This decision was arrived at after examining and *prima facie* interpreting the agreements in question. The learned Single Judge while considering the challenge to the said order re-examined the said agreements and clauses therein. He undertook the exercise of determining the true intention of the parties

behind executing the said agreements. In fact, in paragraph 70 of his judgment, it has been observed as under:

> "70. Now, this court shall embark on a perusal of the true intention of the Parties by examining the Agreement itself as it is settled in law, that the mere title of the document would not be indicative of the true nature of the document itself....."

Thereafter, he concluded in paragraph in 75 of his judgment that the intention of the parties made it clear that the minerals excavated from the mines of SISCO would stand vested in the mine owner for a period of ten years for which the consideration had already been fixed and paid. He, therefore, concluded that there was indeed conveyance of the goods in question. The conclusion of the learned Arbitrator as recorded in paragraphs 38 to 40 of his order was held to be grossly erroneous and perverse.

It is, thus, evident that while considering the challenge raised by the mine owner to the order passed by the learned Arbitrator under Section 16 of the A and C Act, the learned Single Judge entered into the merits of the dispute and thereafter concluded that the transactions were in the nature of 'conveyance'.

18. At this stage, it would be necessary to refer to the decision of the Constitution Bench in **M/s S.B.P. and Company Vs. M/s Patel Engineering Ltd. and another**[17]. In paragraphs 6, 44 and 45 of the majority judgment, it has been held as under:

> "**6.** .....Chapter IV deals with the jurisdiction of Arbitral Tribunals. Section 16 deals with the competence of an Arbitral Tribunal, to rule on its jurisdiction. The Arbitral Tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement. A person aggrieved by the rejection of his objection by the Tribunal on its jurisdiction or the other matters referred to in that Section, has to wait until the award is made to challenge that decision in an appeal against the arbitral award itself in accordance with Section 34 of the Act. But an acceptance of the objection to jurisdiction or authority, could be challenged then and there, under Section 37 of the Act."
>
> xxxxxxxx
>
> "**44.** It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226

[17] 2005 INSC 526

> or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.
>
> **45.** The object of minimising 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. Therefore, it is necessary to indicate 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."
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> [emphasis supplied by us]

The object of minimal judicial intervention and availability of a remedy under Section 34 of the A and C Act has been highlighted.

19. As regards challenge to the rejection of an objection raised under Section 16 of the A and C Act is concerned, this Court in **M/s Deep Industries Ltd. Vs. Oil and Natural Gas Corporation Limited and another**[18] held in paragraph 16 as under:

> **"16.** .....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. What the High Court has done in the present case is to invert this statutory scheme by going into exactly the same matter as was gone into by the arbitrator in the Section 16 application, and then decided that the two-year ban/blacklisting was no part of the notice for arbitration issued on 2-11-2017, a finding which is directly contrary to the finding of the learned

[18] 2019 INSC 1299

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arbitrator dismissing the Section 16 application. For this reason alone, the judgment under appeal needs to be set aside."

Yet again in **Bhaven Construction through Authorised Signatory Premjibhai K. Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and another**[19], it was held in paragraphs 11, 15, 16 and 25 as under:-

> **"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."
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> xxxxxxxx
>
> **"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 1 mounting a judicial challenge at that stage. Respondent 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 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Articles 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phase 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."

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> "**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 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 hereinabove, on 9-5-2018, 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)

20. Recently, the Constitution Bench in *Re: Interplay (supra)* considered the scheme of the A and C Act including Section 16 thereof as well as the question whether the rejection of an objection raised under Section 16 could be subjected to challenge in the midst of the arbitral proceedings. In paragraphs 120 and 122, it was held as under:

> "**120.** .....Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. Importantly, the parties have a right under Sections 16(2) and 16(3) to challenge the jurisdiction of the Arbitral Tribunal on grounds such as the non-existence or invalidity of the arbitration agreement. The Arbitral Tribunal is obligated to decide on the challenge to its jurisdiction, and where it rejects the challenge, it can proceed with the arbitral proceedings and make an arbitral award. It is the principle of procedural competence-competence which recognises the power of an Arbitral Tribunal to hear and decide challenges to its jurisdiction. Once the Arbitral Tribunal

makes an arbitral award, Section 16(6) allows the aggrieved party to make an application for setting aside the award under Section 34. Sections 16(5) and 16(6) further show that Parliament has completely ousted the jurisdiction of Courts to interfere during the arbitral proceedings - courts can intervene only after the tribunal has made an award. Thus, Section 16 is intended to give full effect to the procedural and substantive aspects of the doctrine of competence-competence."

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"**122.** Under Section 34, the grounds for setting aside an arbitral award are specific. The provision requires a party challenging an award to plead and prove the existence of one or more such grounds.[20] The scheme of the Arbitration Act shows that although an Arbitral Tribunal is given priority to determine all issues pertaining to its jurisdiction based on the principle of competence-competence, the tribunal's decision is subject to judicial review at the stage when an award is challenged. Moreover, one of the grounds on which an arbitral award can be set aside is that the arbitration agreement is not valid under law. This indicates that the Arbitration Act does not contemplate the Court determining the validity of an arbitration agreement at a pre-arbitral stage."

Thereafter, the Constitution Bench recorded its conclusions in paragraph 224 as under:

"**224.** The conclusions reached in this judgment are summarised below:

a. Agreements which are not stamped or are inadequately stamped are inadmissible in evidence under Section 35 of the Stamp Act. Such agreements are not rendered void or void ab initio or unenforceable;

b. Non-stamping or inadequate stamping is a curable defect;

c. An objection as to stamping does not fall for determination under Sections 8 or 11 of the Arbitration Act. The Court concerned must examine whether the arbitration agreement prima facie exists;

d. Any objections in relation to the stamping of the agreement fall within the ambit of the Arbitral Tribunal; and

[20] *Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd., (2009) 17 SCC 796 : (2011) 2 SCC (Civ) 637*

> **e.** The decision in *N.N. Global (2)*[21] and *SMS Tea Estates*[22] are overruled. Paras 22 and 29 of *Garware Wall Ropes*[23] are overruled to that extent."

21. The learned Senior Advocate for the mine owner also urged that relegating the stamping objection to the post-award stage under Section 34 of the A and C Act would compel the mine owner to endure prolonged and expensive arbitral proceedings merely to vindicate what he characterises as a mandatory fiscal objection going to the root of the agreement, while the remedy available under Section 34 is too circumscribed to adequately address such a fundamental defect. This Court is unable to accept this submission, as it derives its force only if non-stamping or inadequate stamping of an agreement is treated as a fatal, jurisdictional infirmity that vitiates the agreement at its inception. That premise, however, no longer holds good in law. The Constitution Bench in *Re: Interplay (supra)*, has unequivocally held that non-stamping or inadequate stamping of an arbitration agreement is merely a curable defect. In paragraph 48, it was held as under:

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[21] N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564
[22] SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777
[23] Garware Wall Ropes Ltd. v. Coastal Marine constructions & Engg. Ltd., (2019) 9 SCC 209 : (2019) 4 SCC (Civ) 324

> "**48.** Section 35 of the Stamp Act is unambiguous. It stipulates, "No instrument chargeable with duty shall be admitted in evidence…" The term "admitted in evidence" refers to the admissibility of the instrument. Sub- section (2) of Section 42, too, states that an instrument in respect of which stamp-duty is paid and which is endorsed as such will be "admissible in evidence." The effect of not paying duty or paying an inadequate amount renders an instrument inadmissible and not void. Non-stamping or improper stamping does not result in the instrument becoming invalid. The Stamp Act does not render such an instrument void. The non-payment of stamp duty is accurately characterised as a curable defect. The Stamp Act itself provides for the manner in which the defect may be cured and sets out a detailed procedure for it. It bears mentioning that there is no procedure by which a void agreement can be 'cured'."

Hence, this Court drew a careful and fundamental distinction between the admissibility of an instrument in evidence and its validity and enforceability in law, holding that the scheme of the Stamp Act is concerned only with admissibility and mere non-stamping or inadequate stamping does not render an agreement void. The agreement survives non-stamping or insufficient stamping, and the defect can be cured by getting the agreement sufficiently stamped at any stage, whereupon it becomes admissible in the eyes of law. It is the arbitral tribunal that is empowered to deal with this issue in the first instance. The remedy of having the Tribunal satisfy itself on the question of stamping under Section 16, with the award remaining open to challenge under Section 34 at a later stage, is not inadequate. The apprehension of the

mine owner, therefore, rests on a legal position that stands overruled.

22. Besides the well settled parameters to be borne in mind while exercising jurisdiction under Articles 226 and 227 of the Constitution, it is also necessary to be mindful of the statutory scheme of the concerned enactment from which the impugned order arises. If the enactment besides providing for a statutory remedy [herein, Section 34] also expects minimal judicial interference prior to the culmination of the arbitral proceedings [herein, Section 5], the said factor would be of relevance while considering the exercise of jurisdiction. In other words, the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the light of such legislative intent would be higher. As held in *Re: Interplay (supra)*, the non-obstante clause in Section 5 of the A and C Act must take precedence over any other law for the time being in force. It would have to be demonstrated that notwithstanding the availability of an alternate remedy at the conclusion of the proceedings, such challenge cannot await the final adjudication of the proceedings and despite the

statutory expectation of minimal interference, intervention in exercise of writ jurisdiction at an interim stage is imperative.

We may clarify that our observations are as regards the 'entertainability' of a writ petition under Articles 226 and 227 of the Constitution and not with regard to its 'maintainability'. This Court in **M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and others**[24] has succinctly explained these concepts as under :-

> "4 …In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest…."

[24] 2023 INSC 92

23. Yet another aspect that is required to be referred to is that the learned Single Judge while referring to the scope of interference under Articles 226 and 227 of the Constitution was cognizant of the fact that such power needs to be exercised in exceptional rarity wherein the illegality or perversity in the order of the learned Arbitrator stares one in the face. These observations can be found in paragraph 61 of the judgment of the learned Single Judge. Despite noticing the contours and the scope of jurisdiction under Articles 226 and 227 of the Constitution, the learned Single Judge proceeded to go into the intention of the parties and thereafter determine the true nature of the agreements between them. It may be noted that the Constitution Bench in *Re: Interplay (supra)* has held in clear terms that any objection in relation to stamping of an agreement falls within the ambit of the Arbitral Tribunal. It would, thus, be clear that the learned Arbitrator was duly empowered to decide the objection raised by the mine owner as regards insufficient stamping of the agreement. The jurisdiction to decide cannot mean to decide in a particular manner. While exercising such power, one may err on merits. Such error may not be one beyond jurisdiction. The learned Arbitrator was, thus, within his jurisdiction in

not upholding the objection raised by the mine owner. It therefore cannot be said that there was any inherent lack of jurisdiction with the learned Arbitrator. Once it is found that the learned Arbitrator had the jurisdiction to decide the objection in relation to stamping of the agreements, in our view, it was impermissible for the learned Single Judge to undertake the exercise of entertaining a challenge to the said adjudication by proceeding to interpret the agreements. Assuming that the learned Arbitrator erred in his conclusion that the agreement between the parties was 'an agreement to sell', that would not make the case 'exceptional' for being set aside in exercise of writ jurisdiction. Even on this count, the approach of the learned Single Judge is found to be incorrect.

24. In our view, there is another material aspect that requires mention. It was not open for the learned Single Judge in exercise of writ jurisdiction to enter into the merits of the dispute while adjudicating the challenge to an order passed under Section 16 of the A and C Act. It has to be noted that learned Arbitrator is still seized of the arbitration proceedings and the parties are yet to lead evidence therein. Determining the nature of the agreements at such stage would definitely

result in prejudice to the parties. We may in this regard refer to the decision in *Bhaven Construction through Authorised Signatory Premjibhai K. Shah (supra)*[25] wherein a three Judge Bench of this Court observed that it was settled law that interpretation of contracts should not generally be undertaken while exercising writ jurisdiction. Therein, the question arose as to whether the contract between the parties was a contract for manufacture simpliciter or whether it was a contract that was composite in nature and thus a works contract. It was held that the said question required contractual interpretation and was a matter of evidence, especially when both parties had taken contradictory stands in that regard.

We, therefore, find that that the learned Single Judge was not justified in going into the merits of dispute between the parties as regards the nature of the agreements while exercising writ jurisdiction. An exercise requiring interpretation of the various agreements ought not to have been undertaken in exercise of extraordinary jurisdiction.

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25. We may state that Mr. Shashank Garg, learned Senior Advocate for the mine owner sought to justify the finding recorded by the learned Single Judge as regards the true nature of the agreements and the conclusion that it was in the nature of 'conveyance'. Mr. Gopal Subramanium, learned Senior Advocate for SISCO in his usual fairness sought to dissuade the appellant from seeking an adjudication as regards the true nature of the agreements at this stage. According to him, undertaking such exercise now would be premature as the arbitration proceedings were pending before the learned Arbitrator and adjudication of the said issue required interpretation of various terms of the agreements. He, therefore, submitted that such adjudication could be undertaken during the course of arbitration proceedings before the learned Arbitrator after the evidence was led and that the aggrieved party could thereafter avail the statutory remedy, if aggrieved.

Since we have found that for the purposes of determining the true nature of the agreement for sale dated 12.02.2004, it would be necessary to meaningfully interpret the said agreement alongwith other supplementary

agreements, we are not inclined to undertake such exercise as the same touches the merits of the dispute. Suffice it to observe that the remedy available under Section 34 of the A and C Act could be invoked by the party aggrieved and all contentions could be raised at that stage. Section 16(6) read with Section 34 of the A and C Act takes care of such contingency. We, therefore, leave open the consideration of the question as to whether the agreement for sale dated 12.02.2004 and the subsequent agreements between the parties were in fact 'conveyance' as contended by the mine owner or were merely agreements for sale as contended by SISCO. We have, therefore, not dealt with the decisions cited by learned counsel in this regard.

26. We would, thus, restrict ourselves to recording a conclusion that the learned Single Judge was not justified in exercising writ jurisdiction under Articles 226 and 227 of the Constitution for examining and thereafter setting aside the order passed by the learned Arbitrator under Section 16 of the A and C Act. Consequently, the Division Bench was justified in entertaining the writ appeal and setting aside the

order passed by the learned Single Judge after finding the same to be in excess of jurisdiction.

27. To conclude, we do not find any reason whatsoever to interfere with the order passed by the Division Bench of the High Court. It is clarified that the issue with regard to stamping of the agreement for sale dated 12.02.2004 and the subsequent agreements is kept open for being raised by the aggrieved party under Section 34 of the A and C Act, if the need for the same arises. We place on record our deep appreciation for the meaningful assistance rendered by all the learned Senior Advocates as well as the learned counsel assisting them in presenting before us the issues as raised in a concise and clear manner.

The Civil Appeal is, accordingly, dismissed with no order as to costs. Pending applications also stand disposed of.

.....J.
[J. K. MAHESHWARI]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI,
MAY 27, 2026.