Register now for your free, tailored, daily legal newsfeed service.

Find out more about Lexology or get in touch by visiting our **About** page.

Limits under Articles 226 and 227: Supreme Court's Dictum on High Courts' Jurisdiction over Arbitral Orders

Nishith Desai Associates

India | February 6 2025

Introduction

The Arbitration and Conciliation Act, 1996 ("**A&C Act**") does not specify remedies to parties before courts, against procedural orders of the arbitral tribunal. In certain cases, aggrieved parties have invoked High Courts' writ and supervisory jurisdiction under Articles 226 and 227 of the Constitution of India. However, this has often led to a debate between arbitral autonomy and judicial intervention.

Recently, the Supreme Court of India, in *Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd.*,[i] ruled on the applicable standard for interference by High Courts in a petition under Article 227 of the Constitution. While allowing the appeal against the High Court's order, the Supreme Court held that High Courts may interfere with an order of an arbitral tribunal only if such an order is *ex-facie* perverse.

Factual Background

Dexter Capital Advisors Pvt. Ltd. ("**Dexter**"/ "**Respondent**") entered into a Client Service Agreement with Serosoft Solutions Pvt Ltd. ("**Serosoft**"/ "**Appellant**"). Serosoft allegedly failed to pay the fees for services rendered by Dexter under the Agreement. Hence, Dexter initiated arbitration proceedings against Serosoft.

Procedural History

Dexter produced two witnesses for cross-examination (CW-1 and CW-2) and Serosoft produced one witness (RW-1). The counsel for Serosoft completed the cross-examination of CW-1 and CW-2 over a span of two days. However, Dexter's counsel took two days to cross-examine RW-1 and sought an additional hour on another day to conclude the cross-examination, which was granted by the arbitral tribunal. Thereafter, the arbitral tribunal recorded that the cross-examination of RW-1 stood concluded and RW-1 was discharged.

Two days after the conclusion of the cross-examination, the counsel for Dexter filed an interlocutory application ("**IA**") before the tribunal seeking additional time for cross-examining the sole witness of Serosoft. The arbitral tribunal rejected the IA by an order dated 09 October 2024, on the basis that (a) the arbitration proceedings were time bound and his mandate (which had already been extended once) was due to expire soon; and (b) the counsel for Dexter had exhausted the allotted time for the cross-examination of RW-1 on two occasions. The tribunal directed that the final arguments should be concluded by November 2024 so that there is sufficient time for preparation and making of the award, in accordance with the applicable time limits.

Dexter filed a writ petition before the High Court,[ii] seeking a direction to the arbitral tribunal to provide Dexter another opportunity for cross-examining RW-1. While noting that judicial interference is least warranted in such cases, the Delhi High Court ("**High Court**") directed the tribunal to grant a further opportunity to Dexter to cross-examine, in view of the "*exceptional circumstances*".[iii] Serosoft subsequently moved a special leave petition before the Supreme Court.

Decision of the Supreme Court

The Supreme Court considered the statutory obligation of equal treatment of parties which demands that each party be given a full opportunity to present its case.[iv] The Supreme Court also considered the overriding statutory mandate of minimal judicial interference.[v] In light of this, the Supreme Court *prima facie* examined whether Dexter had been given a full opportunity to present its case. The Supreme Court opined that the tribunal had indeed given both parties a full opportunity, as is evident from the record. The Supreme Court observed that Dexter had undertaken an unrestrained cross-examination of RW-1, which had already exceeded 12 (twelve) hours.

The Supreme Court held that the High Court ought not have intervened in the arbitral proceedings. It referred to an earlier judgement of the High Court[vi] (which had also been relied upon in the impugned order of the High Court) holding that "*interference is permissible only if the order is completely perverse, i.e., that the perversity must stare in the face*."[vii]

The Supreme Court observed that the High Court had failed to state why it had found the impugned order to be perverse. It also observed that there was no denial of opportunity for an effective cross-examination of the witness and that the request of Dexter was "excessive".

Therefore, the Supreme Court set aside the order of the High Court.

Judicial Trend and Analysis

This judgment is a welcome move and keeps pace with the judicial trend and legislative intent to uphold arbitral autonomy. However, High Courts would have to carefully tread on the scope of "*complete perversity*". As had been previously noted by the Delhi High Court in Kelvin Air Conditioning and Ventilation System Pvt. Ltd. v. Triumph Reality Pvt. Ltd,[viii] it is prudent for High Courts to not exercise the powers under Articles 226 and 227 of the Constitution. One of the key factors for exercising such jurisdiction would also be the availability of remedies to the aggrieved parties under the A&C Act.[ix]

High Courts have in multiple cases upheld the principle of minimal judicial interference in procedural orders of the arbitral tribunal:

1. The Delhi High Court in *Hindustan Alloys Pvt. Ltd. v. Maa Sheetla Ventures Limited*,[x] dismissed a writ filed against an order of the arbitral tribunal whereby an application seeking (i) reopening of evidence to summon additional witnesses, (ii) issuance of directions to produce documents or (iii) approval to seek court assistance in taking evidence, was disallowed.
2. In *AMR-BBB Consortium v. Bharat Coking Coal Ltd.*,[xi] the Delhi High Court dismissed a writ which was filed against an order of the tribunal (i) allowing a request to amend the statement of defence and (ii) for framing additional issues.
3. In *Easy Trip Planners Ltd. v. One97 Communications Ltd.*,[xii] the Delhi High Court dismissed a writ which was filed against an order of the arbitral tribunal rejecting an application to bring on record additional evidence. The Delhi High Court took cognizance of the absence of a specific provision for appeal against procedural orders of an arbitral tribunal, which are not appealable under Section 37 of the A&C Act.[xiii] The High Court observed that the party would not be left remediless as they would be able to challenge the interim order of the arbitral tribunal under Section 34 of the A&C Act.[xiv] The High Court relied on *Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.*[xv] where the Supreme Court had previously interpreted the scope of judicial interference under Articles 226 and 227 of the Constitution. It had held that High Courts can only exercise such writ jurisdiction in cases where an order has been made in bad faith or specifically in the arbitral context, where the party assailing an order of the arbitral tribunal would otherwise be left remediless.

In the present case, it is arguable that Dexter would have the opportunity to challenge the arbitral award under Section 34(iii) of the A&C Act for being "*otherwise unable to present his case*".

While the judicial precedents indicate limited or minimal judicial interference under Article 226/227,[xvi] there have been certain situations where High Courts have indeed exercised such powers. For example, in *CP Rama Rao Sole Proprietor v. National Highways Authority of India*,[xvii] the Delhi High Court was deciding a writ petition filed against an order of the District Judge holding a set-aside petition under Section 34 to not be maintainable on the ground of lack of

jurisdiction. While exercising its supervising jurisdiction under Article 227 of the Constitution, the Delhi High Court held that the decision of the District Court was neither one setting aside / refusing to set aside the award and hence, not appealable under Section 37 of the A&C Act.

Nishith Desai Associates - Arjun Gupta, Shweta Sahu and Shruti Dhonde

Interested in contributing?

Get closer to winning business faster with Lexology's complete suite of dynamic products designed to help you unlock new opportunities with our highly engaged audience of legal professionals looking for answers.

Learn more