SUPREME COURT OF INDIA

I.T.I. Ltd.

Vs.

Siemens Public Communications Network Ltd.

C.A.No.3620 of 2002

(N. Santosh Hegde and D. M. Dharmadhikari JJ.)

20.05.2002

JUDGEMENT

Santosh Hegde, J.

1. Leave granted.

2. This appeal is filed directly to this Court against the judgment and order of the 10th Additional City Civil Judge, Bangalore made in Misc. Appeal No. 6 of 2002 dated 18th April, 2002.

3. The appeal before City Civil Judge was against an interim order made by the Arbitral Tribunal and that appeal was filed under S. 37(2)(b) of the *Arbitration and Conciliation Act, 1996* (the 'Act'). The learned Civil Judge dismissed the said appeal.

4. The principal question that arises for our consideration is whether a revision-petition under S. 115 of the *Civil Procedure Code* (the 'Code') lies to the High Court as against an order made by a Civil Court in an appeal preferred under S. 37 of the Act. If so, whether on the facts and circumstances of this case, such a remedy by way of revision is an alternate and effacious remedy or not.

5. Mr. K. Parasaran, learned senior counsel appearing for the appellants submitted that the right of second appeal is specifically taken away under S. 37(2) of the Act. Therefore, by implication it should be held that even a revision is not maintainable under S.115 of the Act. He pointed out that under S. 5 of the Act, there is a bar against judicial intervention by any judicial authority unless the same is specifically provided under Part I of the Act. It is his contention that since a revision is not specifically provided for and the Code not being made applicable to proceedings arising under the Act, a revision to the High Court does not lie. Therefore, he contends that the appellant's only remedy is to approach this Court by way of this appeal. He sought to take support from a decision of the Privy Council in the case of *R.M.A.R.A. Adaikappa Chettiar and another v. R. Chandrasekhara Thevar*[1] and two decisions of this Court in the case of *Shankar Ram-chandra Abhyankar v. Krishnaji*

Dattatreya Bapat[2] *and M/s. Central Coal Fields Ltd. and another v. M/s. Jaiswal Coal Co. and others*[3].

6. Mr. P. Chidambaram, learned counsel appearing for the respondent in reply contended that under S. 37 of the Act an appeal is provided to a Civil Court as defined under S. 2(e) of the Act. He pointed out that though there is no specific reference as to the application of the Code to the proceedings arising under S. 37, there is no express exclusion of the Code either. Therefore, in the absence of any such express exclusion, the appeal being provided to a Civil Court, the Code should apply to the proceedings before the Civil Court. He also argues that this question of availability of an alternate remedy by way of revision to the High Court is no more res integra because the same is concluded by a recent order of this Court though rendered at SLP stage in the case of Nirma Ltd. v. M/s. Lurgi Lentjes Energietechnik GMBH and another made in S.L.P. (C) No. 22106 of 2001 dated 14-1-2002.

7. Mr. K. Parasaran's reliance on the case of Adaikappa Chettiar (supra) is misplaced because the judgment does not support the case of the appellant, what was held by the Privy Council in that case was when an appeal lies under S. 96 of the Code of Civil Procedure the High Court cannot entertain an application for revision under S. 115 of the Code because the High Court has no jurisdiction to entertain a revision where an appeal lies. In the said case, the Privy Council overruling an earlier Full Bench judgment of the Madras High Court held that an appeal against an order made by the Civil Court under the Madras Agriculturists' Relief Act, 1938 is maintainable, therefore, the High Court could not have entertained a revision under S. 115 of the Act which finding, in our opinion, does not help the appellant in the present case. Mr. Parasaran has also relied on a judgment of this Court in Shankar Ramchandra Abhyankar (supra) wherein this Court held that a revision in effect is in the nature of an appeal. Mr. Parasaran relying on this judgment argued that if revision is in effect an appeal then the Act having prohibited a second appeal, any proceeding which is in the nature of an appeal will also be barred. We think this observation of this Court in the case of Abhyankar (supra) also does not apply to the facts of the present appeal before us. In the case of Abhyankar, this Court noticed that the trial Court had granted a decree for possession of certain rooms in the petition scheduled premises which order of eviction was confirmed by the appellate Court on the ground of equity. Against the said judgment of the appellate Court, the aggrieved party had preferred a revision-petition before the High Court which came to be dismissed by a single Judge. Having suffered an adverse order in the revision the aggrieved party then filed a writ petition under Arts. 226 and 227 of the Constitution of India challenging the very same appellate order which was confirmed in revision. On those facts, this Court held that a writ petition ought not to have been entertained by the High Court when the party had already chosen the remedy of filing a revision before the High Court under S. 115 of the Code. In these circumstances, this Court held that if there are two modes for invoking jurisdiction of the High Court and one of those modes having been chosen and exhausted, it would not be proper for the High Court to entertain another proceeding in respect of the same impugned order under Arts. 226 and 227. It is while discussing the propriety of entertaining a writ petition this Court had held that the aggrieved party had already exhausted a remedy by way of revision which is in the nature of an appeal. We do

not think the observations made by this Court in the case of Abhyankar (supra) can be usefully applied to the facts of this case.

8. The question still remains as to whether when a second appeal is statutorily barred under the Act and when the Code is not specifically made applicable, can it be said that a right of revision before the High Court would still be available to an aggrieved party? As pointed out by Mr. Chidambaram, this Court in the case of Nirma Ltd. (supra) while dismissing an SLP by a reasoned judgment has held : "In our opinion, an efficacious alternate remedy is available to the petitioner by way of filing a revision in the High Court under S. 115 of the Code of Civil Procedure. Merely because a second appeal against an appellate order is barred by the provisions of sub-section (3) of S. 37, the remedy of revision does not cease to be available to the petitioner, for the City Civil Court deciding an appeal under sub-section (2) of S. 37 remains a Court subordinate to the High Court within the meaning of S. 115 of the C.P.C."

9. But Mr. Parasaran contended that the said order is based on an earlier reported judgment of this Court in the case of *Shyam Sunder Agarwal and Co. v. Union of India*[4]. According to Mr. Parasaran, the Court in the case of Nirma Ltd. (supra) has erroneously founded its conclusion on the said judgment in Shyam Sunder Agarwal's case. Learned counsel argued that the case of Shyam Sunder Agarwal (supra) arose under the Arbitration Act, 1940 which Act had made the provisions of the Code specifically applicable to proceedings arising under the said Act in the Civil Court whereas in the present Act such provision making the Code applicable is not found. Therefore, there is a substantial difference in law between the cases of Shyam Sunder Agarwal (supra) and Nirma Ltd. (supra). Therefore, the order of this Court in Nirma Ltd. (supra) is not a good law, hence, requires reconsideration.

10. We do not agree with this submission of the learned counsel. It is true in the present Act application of the Code is not specifically provided for but what is to be noted is : Is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a Civil Court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.

11. |It has been held by this Court in more than one case that the jurisdiction of the Civil Court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the Civil Courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the Court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except of the extent stated in S. 37(2), we cannot draw an inference that merely because the Act has not provided the C.P.C. to be applicable, by inference it should be held that the Code is inapplicable. This general principle apart, this issue is now settled by the judgment of a three-Judge Bench of this Court in the case of Bhatia International v. Bulk Trading S.A. and another in C.A.No. 6527/2001 decided on 13-3-2002 wherein while dealing with a similar

argument arising out of the present Act, this Court held : "While examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion." reported in

12. In the said view of the matter, we are in respectful agreement with the view expressed by this Court in the case of Nirma Ltd. (supra) and reject the argument of Mr. Parasaran on this question.

13. We also do not find much force in the argument of learned counsel for the appellant based on S. 5 of the Act. It is to be noted that it is under this part, namely, Part I of the Act that S. 37(1) of the Act is found,which provides for an appeal to a Civil Court. The term 'Court' referred to in the said provision is defined under S. 2(e) of the Act. From the said definition, it is clear that the appeal is not to any designated person but to a Civil Court. In such a situation, the proceedings before such Court will have to be controlled by the provisions of the Code, therefore, the remedy by way of a revision under S. 115 of the Code will not amount to a judicial intervention not provided for by Part I of the Act. To put it in other words, when the Act under S. 37 provided for an appeal to the Civil Court and the application of Code not having been expressly barred, the revisional jurisdiction of the High Court gets attracted. If that be so, the bar under S. 5 will not be attracted because conferment of appellate power on the Civil Court in Part I of the Act attracts the provisions of the Code also.

14. Mr. Parasaran then contended that since it is an accepted fact that this Court also has the jurisdiction to entertain an appeal, this appeal should not be rejected on the sole ground that there is a remedy available by way of a revision before the High Court. In support of this contention, he relied on the judgment of this Court in the case of Ram Shankar (supra) wherein it is noticed that this Court had entertained an appeal directly against a judgment and decree of a trial Court by passing the High Court. It is true that the power of this Court to entertain an appeal directly is not taken away merely because another remedy is available but then the question is, should this Court encourage litigants to indulge in hop, skip and jump to reach this Court either for the reason that the remedy from this Court would be quick or more efficacious? The answer, in our opinion, should be no. The judgment of this Court in M/s. Central Coal Fields (supra) does not, in any way, take a contra view from what is expressed by us hereinabove. In that case because of the peculiar fact situation, this Court entertained an appeal without the party first appreciating the High Court but then it should be noticed that this Court did not entertain the appeal to decide the same itself, it did so to refer the matter to arbitration proceedings and when an award made by the learned arbitrator was acceptable to all parties then the same was made a rule of this Court. Such is not the situation in the present case. Therefore, we do not think the appellant can take much support from the above case of this Court.

15. Learned counsel for the appellant next contended that assuming that the remedy of revision is available even then the same is not an efficacious alternate remedy because this

appeal involves a very sensitive issue pertaining to the security of the country and which, according to the appellant, requires extreme urgency in deciding the same and the said requirement will not be possible if the appellant has to approach the High Court. We are not impressed with this argument addressed on behalf of the appellant because we notice from the record that the arbitration proceedings have started as far back as in the year 2001 and the parties instead of getting the arbitration concluded, have been litigating on interim applications till date. If indeed urgency was there then the party which feels the necessity of quick disposal would have concentrated more on completing the arbitral proceedings rather than spending its time in Court inviting orders of the High Court on interlocutory applications. Therefore, we are of the opinion that there is no such urgency which requires us to treat this case differently. In regard to the sensitivity of the matter and the national security involved, we do not think that these factors will, in any manner, be compromised by approaching the High Court; more so in the background of the fact that the parties had already approached the High Court nearly three times without raising any objection as to its jurisdiction or in view of its apprehension as to the security of the State. If the facts involving such sensitive matter could be handled by the High Court three times earlier, we think the appellant can very well trust the High Court to protect such interest of the country in future proceedings also. Therefore, this argument of sensitivity or urgency in our opinion, will not improve the appellant's case so as to make an exception or permit the appellant to take a short cut to this Court. Therefore, the above argument of the appellant should also be rejected.

16. For the aforesaid reasons, while holding that this Court in an appropriate case would entertain an appeal directly against the judgment in first appeal, we hold that the High Court also has the jurisdiction to entertain a revision-petition, therefore, in the facts and circumstances of this case, we direct the appellant to first approach the High Court. For the said reasons, this appeal fails and the same is hereby dismissed. We, however, make it clear that should the appellant present a revision-petition within 30 days from today, the same will be entertained by the High Court without going into the question of limitation, if any.

17. **PER DHARMADHIKARI, J. :-** (Concurring) I am in respectful agreement with the judgment of learned brother N. Santosh Hegde, J. I would like to add some additional reasons to agree with his conclusion.

18. Power conferred on the High Court under S. 115 of the Code of Civil Procedure, 1908 over all subordinate courts within its jurisdiction is a supervisory power and has been distinguished from its power of appeal to correct errors of fact and law. The power of revision under S. 115 being in the nature of power of superintendence to keep subordinate Courts within the bounds of their jurisdiction cannot be readily inferred to have been excluded by provisions of a special Act unless such exclusion is clearly expressed in that Act. The Arbitration and Conciliation Act of 1996 which is for consideration before us by provision contained in S. 37(3) of the said Act only takes away the right of second appeal to the High Court. The remedy of revision under S. 115 of the Code of Civil Procedure is neither expressly nor impliedly taken away by the said Act.

19. Revisional jurisdiction of superior Court cannot be taken as excluded simply because subordinate Courts exercise a special jurisdiction under a special Act. The reason is that when a special Act on matters governed by that Act confers a jurisdiction on an established Court, as distinguished from a 'persona designata,' without any words of limitation, then the ordinary incident of procedure of that Court including right of appeal or revision against its decision is attracted. The right of second appeal to the High Court has been expressly taken away by sub-section (3) of S. 37 of the Act, but for that reason it cannot be held that the right of revision has also been taken away. See National Telephone Company Ltd. v. Post Master General[5] and decision of the Privy Council in *Adakappa Chettiar v. Chandresekhara Thevar*[6] which have been relied by Supreme Court in case of *National Sewing Thread Co. Ltd. v. James Chandwick*[7]. In National Telephone Company's case (supra), Viscount Haldane L.C. observed thus:-

> "When a question is stated to be referred to an established Court without more, it in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches."

20. 'The true rule' is said by Lord Simonds (in Adaikappa Chettiar's case (supra)) that

> "Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

21. Provisions of S. 37 of the Act of 1996 bars second appeal and not revision under S. 115 of the Code of Civil Procedure. The power of appeal under S. 37(2) of the Act against order of Arbitral Tribunal granting or refusing to grant an interim measure is conferred on Court. Court is defined in S.2(e) meaning the 'principal Civil Court of original jurisdiction' which has 'jurisdiction to decide the question forming the subject-matter of the arbitration if the same had been the subject-matter of the suit.' The power of appeal having conferred on a Civil Court all procedural provisions contained in the Code would apply to the proceedings in appeal. Such proceedings in appeal are not open to second appeal as the same is clearly barred under sub-secton (3) of S. 37. But I agree with the conclusion reached by brother Hegde, J. that the supervisory and revisional jurisdiction of High Court under S. 115 of the Code of Civil Procedure is neither expressly nor impliedly barred either by the provisions of S. 37 or S. 19(1) of the Act. Section 19(1) under Chapter V of Part I of the Act merely states that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure. The said action has no application to the proceedings before Civil Court in exercise of powers in appeal under S. 39(2) of the Act.

22. The supervisory jurisdiction to be exercised by the High Court under S. 115 of the Code is for the purpose of correcting jurisdictional error if any committed by Subordinate Court in exercise of power in appeal under S. 37(2) of the Act. The approach made to the revisional Court under S. 115 of the Code is not a resort to remedy of appeal. In appeal, interference

can be made both on facts and law whereas in revision only errors relating to jurisdiction can be corrected. Such revisional remedy is not expressly barred by the provisions of the Act. We have also not found any implied exclusion of the same on examination of the scheme and relevant provisions of the Act.
Order accordingly.

[1]*(AIR 1948 PC 12)* [2]*(1969 (2) SCC 74)* [3]*(1980 Supp SCC 471)*
[4]*(1996 (2) SCC 132* [5]*(1913 Appeal Cases 546)* [6]*(AIR 1948 PC 12)*
[7]*(AIR 1953 SC 357)*