

Ador Samia Pvt. Ltd.

Vs

Peekay Holdings Ltd.

Special Leave Petn. (C) No. 10792 of 1999

(S. B. Majumdar, D. P. Mohapatra JJ)

20.08.1999

JUDGMENT

S.B. Majumdar, J.

1. This Special Leave Petition under Article 136 of the Constitution of India is moved by the petitioner challenging an order of the learned Chief Justice of the High Court of Bombay in Arbitration Petition No. 288 of 1998 moved before him under Section 11 sub-section (6) of the Arbitration and Conciliation Act, 1996 ('the Act' for short).

2. It has been held by a Bench of this Court in the case of *Sundaram Finance Ltd. v. NEPC India Ltd., 1999(2) SCC 479* that orders under Section 11 of the Act are not judicial orders. The relevant observations are found in paragraph 12 of the Report as under :

"Under the 1996 Act, appointment of arbitrator/s is made as per the provision of Section 11 which does not require the court to pass a judicial order appointing arbitrator/s. The High Court was, therefore, wrong in referring to these provisions of the 1940 Act while interpreting Section 4 of the new Act."

3. It is now well settled that petition under Article 136 can lie for challenging a judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. As the learned Chief Justice or his designate under Section 11(6) of the Act acts in administrative capacity as held by this Court in the aforesaid decision it is obvious that this Court in the aforesaid decision it is obvious that this order is not passed by any court exercising any judicial function not it is a tribunal having trappings of a judicial authority. Question of maintainability of such a petition under Article 136 is decided since long by a Constitution Bench of this Court in the case of *Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh, Additional Collector of Customs & others, 1964(6) SCR 594*.

4. In the said decision at page 601 the Constitution Bench of this Court speaking through Gajendragadhkar, C.J., has made the following pertinent observations :

"It is settled by decisions of this Court that the Customs Officer who initially acts under Section 167(12A) is not a Court or Tribunal, though it is also settled that in adjudicating upon the question as to whether Section 52A has been contravened by any ship and by such contravention the said ship has made itself liable to confiscation under Section 167(12A), the Customs Officer has to act in a quasi-judicial manner."

5. At page 603 it has been further observed as under :

"The result, therefore, is that it is no longer open to doubt that the Customs Officer is not a Court or Tribunal, though in adjudicating upon matters under Section 167 of the Act, he has to act in a judicial manner. It may be conceded that neither the Central Board of Revenue, nor the Central Government is a Court within the meaning of Article 136."

6. At page 603 it has been further observed as under :

"It is clear that before an appeal can be entertained in this Court under Article 136, two conditions have to be satisfied; the order impugned must be an order of a judicial or quasi-judicial character and should not be purely in administrative or executive order; and the said order should have been passed either by a Court or a Tribunal in the territory of India."

7. In view of this settled legal position, therefore, there is no escape from the conclusion that orders passed by the learned Chief Justice under Section 11(6) of the Act being of an administrative nature cannot be subjected to any challenge directly under Article 136 of the Constitution of India. Only on this short ground and without expressing any opinion on the merits of the controversy between the parties this Special Leave Petition is disposed of as not maintainable.

8. Whatever other remedy is available to the petitioner for challenging this order will obviously remain untouched by the present order.