Snehadeep Structures Private Limited

v.

Maharashtra Small Scale Industrial Development Corporation Ltd

(Supreme Court Of India)

HON'BLE MR. JUSTICE TARUN CHATTERJEE HON'BLE MR. JUSTICE V.S. SIRPURKAR

Snehadeep Structures Private Limited v. Maharashtra Small Scale Industrial Development Corporation Ltd

Civil Appeal No. 10 of 2010 | 05-01-2010

Tarun Chatterjee, J.

1. Leave granted.

2. This appeal by Special Leave arises from a judgment and order dated 5th of February, 2008 of the High Court of Bombay in Appeal No. 485 of 2006 whereby the Division Bench of the High Court had set aside the order dated 25th of January, 2006 of the learned Single Judge of the same High Court dismissing an Arbitration Petition being Arbitration Petition No. 499/2003 filed by the respondents.

3. The crucial question that arises for our consideration is with respect to the interpretation of the term 'appeal' appearing in Section 7 of the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 (hereinafter referred to as 'the Interest Act').

4. The facts of the case can be summarised as follows:

The appellant company is a Small Scale Industrial Undertaking for the purposes of the Interest Act. The Maharashtra State Electricity Board (in short 'MSEB') issued a Work Order dated 27th of March, 1995 in favour of Maharashtra Small Scale Industries Development Corporation (hereinafter referred to as 'the Corporation'). The order was for supply of pipeline, bends and fixtures to be used for laying a slurry pipeline at the Chandarpur Thermal Power Station. The Corporation, in their turn, issued a Supply Order dated 30th of March, 1995 in favour of the appellant-company. The work was completed and the bills were duly submitted by the appellant-company. However, there was a huge delay on the part of the Corporation in paying the said bills to the appellant company and no reasonable cause was shown. Resultantly, the appellant company demanded interest on delayed payment under the Interest Act by a letter dated 7th of December, 1999. The claim was allegedly denied by the Corporation by a letter dated 24th of April, 2000. On 21st of December, 2001, the appellant-company served a notice on the Corporation pointing out that the refusal of the Corporation to pay interest as demanded by the appellant company has given rise to a dispute which shall be referred to the Chairman of the Corporation/his nominee in accordance with clause 27 of the Supply Order, within 15 days from the date of service of notice. Though the Corporation acknowledged the delay and claim for interest vide a letter dated 05th of February, 2002, it held the view that the

liability to pay the interest lay on MSEB, which was the buyer, and not on the Corporation. Therefore, the letter stated that reference to arbitration at that stage was not warranted. Aggrieved by the refusal of the respondent to refer the matter to arbitration, the appellant-company preferred an Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short the 'Arbitration Act') before the High Court of Bombay. The High Court appointed a former Judge of the High Court Mr. Justice S.W. Puranik as the Sole Arbitrator. The Arbitrator by his Award dated 30th of June, 2003 directed the Corporation to pay a sum of Rs. 78,19,540.73 to the Appellant company.

5. Aggrieved, the Corporation filed an application under section 34 of the Arbitration Act before the High Court of Bombay for setting aside the award which came to be numbered as Arbitration Petition No. 499 of 2003. During the pendency of these proceedings the Appellant company pointed out that under section 7 of the Interest Act the Corporation has to deposit 75% of the amount awarded by Arbitrator under the Award.

6. The Learned Single Judge of the High Court, vide his order dated 23rd of August, 2005 dismissed the application filed under Section 34 of the Arbitration Act for setting aside the award of the Arbitrator. It was found that despite the statement made on behalf of the Corporation that a Bank Guarantee would be furnished to comply with Section 7 of the Interest Act recorded on 9th of August, 2005, they had not done so; nor have they asked for any extension of time. Hence, it was held that the petition under Section 34 of the Arbitration Act was liable to be dismissed.

7. On appeal preferred against the said order by the Corporation, which came to be registered as Appeal No. 855 of 2005, the Division Bench of the High Court, by its order dated 17th of November, 2005 had set aside the judgment and order of the learned Single Judge and restored the Arbitration Petition for consideration of the issue whether Section 7 of the Interest Act was applicable in the instant case.

8. The Learned Single Judge vide his judgment and Order dated 25th of January, 2006 held that an application made under Section 34 of the Arbitration Act is an 'appeal' for the purpose of Section 7 of the Interest Act. The learned Single Judge had taken into consideration the fact that the Interest Act was a beneficial piece of legislation. Since the term 'appeal' takes colour from its context, it must be given the widest meaning for t6he purposes of the case at hand. A learned Single Judge relied on a decision of this Court in the case of State of Gujarat v. Salimbhai Abdul Gaffar Shaikh, [(2003) 8 SCC 50] to understand the meaning of the word 'appeal' and held that the word 'appeal for the purposes of Section 7 of the Interest Act shall include an application filed under Section 34 of the Arbitration Act. The prerequisite to an appeal in form of deposit, hence, was held applicable. Admittedly, no deposit was made. Therefore, it was held that the application for setting aside the award under Section 34 of the Arbitration Act could not be entertained. The Learned Single Judge also found that the conditions in the Supply Order dated 30th of March, 1995 established the buyer-supplied relationship between the Corporation and the Appellant company and hence the liability to pay interest also lay on the Corporation.

9. The Corporation preferred an appeal before the Division Bench of High Court of Bombay, which came to be numbered as Appeal No. 485 of 2006. The Division Bench of the High Court by the impugned order dated 5th of February, 2008 allowed the appeal and directed that the Arbitration

Petition filed by the Corporation shall be heard. The High Court was of the opinion that the expression 'appeal' in Section 7 of the Interest Act cannot include an application under Section 34 of the Arbitration Act. The term 'appeal' is in the context of a decree and can only include 'a judicial determination by a Regular Civil Court considering the hierarchy of Courts'. After considering the general scheme of awards and appeals under the Arbitration Act, 1940 and under the Arbitration Act, 1996, the Division Bench of the High Court was of the view that an order passed under Section 34 of the Arbitration Act is an order setting aside or refusing to set aside an arbitral award. Therefore, the decision of the competent court under Section 34 is neither a judgment nor a decree. The order so passed is appealable under Section 37(1)(b) of the Arbitration Act. Remedy by way of appeal, therefore, is provided under the Arbitration Act itself. The Arbitration Act, therefore, in respect of an arbitral award makes a distinction between a challenge to an award and an appeal against an order refusing to set aside or setting aside an award in a Petition filed under Section 34(2) of the Arbitration Act. Under the Arbitration Act, in case, the award is not set aside under Section 34, an appeal can be preferred against that order under Section 37. The provisions of Section 7 may apply to such an appeal. Under section 34, the Court hearing the challenge has no power to issue alternative decisions binding on the forum below.

10. The High Court further held that Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 (in short 'the Act of 2006') cannot be made applicable to the present case as the reference to arbitration was not in terms of Section 19 of the Act of 2006. At the time when the challenge of pre deposit under section 7 of the Interest Act was heard by the learned Single Judge of the High Court, the Act of 2006 was not in force.

11. The Division Bench of the High Court after considering various decisions cited by both the parties before us and some of the dictionaries dealing with the term 'appeal' held:

"Applying these principles, in our opinion and considering the history of the Act and the Legislation which were in force when the Interest Act was enacted, it would be clear that the application to challenge the award under Section 34 apart from it not being a judicial proceedings or emanating from the court, cannot be considered as an appeal within the meaning of Section 7 of the Act."

12. As regards the question, whether the respondents were buyers, and not suppliers, the High Court was of the opinion that the said issue would have to be decided when the challenge to the award under Section 34 will be heard and finally disposed of. In sum, the High Court allowed the appeal and ordered that the pending petition to challenge the award be disposed of according to the law, as the preliminary objection in terms of the requirement of pre-deposit of interest awarded was ruled out.

13. It is this order of the High Court dated 5th of February, 2008 which is challenged before us by way of this special leave petition which on grant of leave was heard by us in presence of the learned Counsel for the parties.

14. The only question that arises for our consideration is:

Whether the expression 'appeal' used in Section 7 of the Interest Act includes an application to set aside the arbitral award filed under Section 34 of the Arbitration Act, 1996?

It may be pertinent to reproduce Section 7 of the Interest Act, before we proceed to interpret the word 'appeal'.

Section 7 of the Interest Act reads as under:

"Appeal- No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant company (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, other order in the manner directed by such court, or, as the case may be, such authority."

15. The learned counsel for the appellant company strenuously, contended before us that the term 'appeal' in the aforementioned section shall include an application under section 34 of the Arbitration Act and hence deposit of 75% of the amount awarded was a pre requisite for entertaining the application filed by the respondent corporation to set aside the award passed by the learned arbitrator.

16. The learned counsel for the corporation hotly contested this submission and argued that an "appeal" within the meaning of section 7 of the Interest Act cannot include an application filed under section 34 of the Arbitration Act and hence the corporation was not liable to deposit 75% of the amount awarded by the learned arbitrator for entertaining the application filed under section 34 of the Arbitration Act.

17. According to the learned counsel for the appellant company, no term can have a definite meaning independent of its context. The exercise of appellate jurisdiction can take various forms. There is no reason to read 'appeal' in a narrow sense as being an appeal under Section 96 of the Code of Civil Procedure (in short 'the Code') against a decree or against an order under Section 4 of the Code. The learned counsel further argued that the word 'award' in Section 7 cannot be ignored, nor can it be rendered meaningless and hence an "appeal" within the meaning of the said section could lie from an arbitral award as well.

18. The respondents, on the other hand, submit that when a statutory provision is clear and unambiguous, the Court is not empowered to read anything extraneous to the Statute into it. The words of the Statute shall be given effect to, irrespective of the consequence.

19. The contention of the appellant company that while interpreting a statutory provision, its context and the object behind the same cannot be lost view of, is no doubt, correct. At the same time, the contention of the respondents that when a term appearing in the Statute is clear and unambiguous, only the literal rule of interpretation will apply, must also be accepted. What then has to be seen is whether the term 'appeal' is one of clear and definite meaning. If it is so, that meaning shall be given

effect to irrespective of the consequences of such construction. If, on the other hand, the meaning of the 'appeal' is ambiguous, the interpretation that advances the object and purpose of the legislation, shall be accepted.

20. Before we proceed to consider the true meaning of the word 'appeal', we may note the contention of the learned counsel for the appellant company that no expression can have a meaning independent of its context. The Appellant company relied on a number of decisions in support of the proposition that:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

21. In Gramophone Company of India vs. Birendra Bahadur Pandey & Ors. [(1984) 2 SCC 534], while interpreting the term 'import', this Court observed that the dictionary was not helpful where word of common parlance with varied meanings is to be construed and it was held that such word shall be construed in the context in which it appears. Similarly in Central Bank of India v. State of Kerala, (in Civil Appeal no.95 of 2005, decided on 27th of February, 2009) while interpreting the term 'debt' and 'security interest', this Court has followed the principle as mentioned herein above. Similar view was also expressed in Santa Singh v. State of Punjab, (1976) 4 SCC 190 while dealing with the ambit of the expression 'shall hear' appearing in Section 235 of the Code of Criminal Procedure.

22. At this stage, we may now deal with the decisions cited by the learned counsel for the appellant in which the meaning of the word 'appeal' was an issue.

23. The case of State of Gujarat v. Salimbhai Abudul Gaffar Shaikh and others, [(2003) 8 SCC 50] on which the Single Judge of the High Court relied on while delivering his judgment, which was set aside by the Division Bench of the High Court by the impugned order, had categorically held that the term 'appeal' cannot have a universal meaning fitting all contexts and purposes.

24. In the case of Nagendra Nath v. Suresh, [AIR 1932 PC 165], their Lordships of the Privy Council were concerned with the construction of Article 182 Schedule 1 of the Limitation Act, 1908. The time of limitation under this provision would run from the date of the final decree or order of the appellate Court, if there was an appeal. However, in an application purported to be an appeal filed by one Madan Mohan, only the decree holders, not the judgment debtors, were made parties. Further, it was incorrectly stated that no decree was drawn up and the 'appeal' was purported to be from the 'order' of the Court below. It was contended that the application was not 'an appeal', but a merely abortive attempt to mean 'appeal' as not all necessary parties were made a party to it, and also because it did not imperil the whole decree. The Court held that: "any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate court, is an "appeal" within the ordinary acceptation of the term, and that it is no less appeal because it is irregular or incompetent." Their Lordships, in that case, adopted the literal meaning of the term 'appeal' and held that it was not open for them to read into the Statute any qualification as to the character of the appeal or as to the parties to it.

25. In the case of Raja Kulkarni v. State of Bombay, [AIR 1954 SCR 384], a similar question was raised in the context of Industrial Tribunals (Appellate Tribunal) Act, 1950 which prohibited a workman from going on a strike during the pendency of an appeal. Relying on the decision of Nagendra Nath (supra), this Court held that it was not necessary that such pending appeal should be a valid and competent appeal. This Court, however, unlike the Privy Council, looked into the object of the Act i.e. industrial peace should not be disturbed so long as the matter was pending in the Court of appeal, irrespective of the fact whether such an appeal was competent in law.

26. The case of Mela Ram v. CIT, [AIR 1956 SC 367] was also relied on as it was pertinent to the issue. In this case, it was held that an appeal presented out of time is an appeal, and an order dismissing it, as time barred is one passed in appeal.

27. In the case of Promotho Nath Roy v. W.A. Lee (AIR 1921 Cal 415), an order dismissing an application as barred by limitation after rejecting an application under Section 5 of the Limitation Act to excuse the delay in presentation was held to be one 'passed on appeal' within the meaning of Section 109 of the Code.

28. The learned senior counsel for the appellant-company further argued that an appeal may not necessarily always lead to the review of the impugned judgment on questions of fact and law. It may be an application for possible reversal of the impugned order or award on the ground of illegality or improper proceedings. Hence, an application under section 34 of the Arbitration Act which empowers the Court to set aside the arbitral award on limited grounds enumerated therein, can also be an appeal. In the case of S.R. Abhayankar v. K.D. Bapat, [(1969] 2 SCC 74], the question was whether the High Court could interfere under Articles 226 and 227 of the Constitution with the order of the Appellate Court in proceedings under an Act, when a petition for revision under Section 115 of the Code against the same order had been previously dismissed by a learned Single Judge of the High Court. The following paragraphs from the judgment are apposite to the issue. (Paragraphs 5 & 6)

"5. It would appear that their lordships of the Privy Council regarded the revisional jurisdiction to be a part and parcel of the appellate jurisdiction of the High Court. This is what was said in Nagendra Nath Dey v. Suresh Chandra Dey 59 I.A. 283

There is no definition of appeal in the CPC, but their Lordships have no doubt that any application by a party to an Appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term.....

Similarly in Raja of Ramnad v. Kamid Rowthen and Ors. 53 I.A. 74 a civil revision petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes nature. A full bench of the Madras High Court in P.P.P. Chidambara Nadar v. C.P.A. Rama Nadar and Ors. A.I.R. 1937 Mad. 385 had to decide whether with reference to Article 182(2) of the Limitation Act, 1908 the term "appeal" was used in a restrictive sense so as to exclude revision petitions and the expression "appellate court" was to be confined to a court exercising appellate, as opposed to, revisional powers. After an exhaustive examination of the case law including the decisions of the Privy Council mentioned above the full bench expressed the view that Article 182(2) applied to civil

revisions as well and not only to appeals in the narrow sense of that term as used in the Civil Procedure Code...[right of appeal] was one of entering a superior Court and invoking its aid and interposition to redress the error of the court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior Court and the power on the part of the former power on the part of the former to review decisions of the latter. In the well known work of Story on Constitution (of United States) vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the legislature may choose to prescribe. According to Article 1762 the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial. A writ of error is a process of common law origin, and it removes nothing for re-examination but the law. The former mode is usually adopted in cases of equity and admiralty jurisdiction; the latter, in suits at common law tried by a jury.

6. Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the CPC circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the Statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior Courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal".

29. The decision in the case of Triupati Balaji v. State of Bihar, [(2004) 5 SCC 1] may also be taken note of:

"Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior Court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand."

30. The High Court had considered this decision while delivering the impugned judgment and order.

31. It is the contention of the learned counsel for the respondent-corporation, on the other hand, that Section 7 is applicable only when an appeal is filed from a decree or order, under which the entire matrix of facts and law could be re-agitated. Section 34(2) of the Arbitration Act enumerates the limited grounds of challenge under Section 34 and such a challenge is not an "appeal".

32. On a perusal of the plethora of decisions aforementioned, we are of the view that "appeal" is a term that carries a wide range of connotations with it and that appellate jurisdiction can be exercised in a variety of forms. It is not necessary that the exercise of appellate jurisdiction will always involve re-agitation of entire matrix of facts and law. We have already seen in the case of Abhayankar (supra) that even an order passed by virtue of limited power of revision under Section 115 of the Code is treated as an exercise of appellate jurisdiction, though under that provision, the Court cannot go into the questions of facts. Given the weight of authorities in favour of giving such a wide meaning to the term 'appeal', we are constrained to disagree with the contention of the learned counsel for the respondent-corporation that appeal shall mean only a challenge to a decree or order where the entire matrix of law and fact can be re-agitated with respect to the impugned order/decree. There is no quarrel that Section 34 envisages only limited grounds of challenge to an award; however, we see no reason why that alone should take out an application under section 34 outside the ambit of an appeal especially when even a power of revision is treated as an exercise of appellate jurisdiction by this Court and the Privy Council.

33. According to the learned counsel for the respondent-Corporation, Arbitration Act treats 'appeals' and 'applications' separately under two distinct chapters: Chapter VIII and Chapter IX respectively. It was also strenuously contended by the learned counsel for the respondent that the Arbitration Act contains specific provisions for awarding interest and that Act being a special enactment will prevail over the Interest Act. He relied on the case of Jay Engineering Works v. Industry Facilitation Council & Anr., [2006 (8) SCC 677] to show that against the provisions of Interest Act, the provisions of Arbitration Act will prevail, as the latter is a complete code in itself. The Interest Act will apply only when the party prefers a suit to arbitration.

34. The preamble of Interest Act shows that the very objective of the Act was "to provide for an regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto." Thus, as far as interest on delayed payment to Small Scale Industries as well as connected matters are concerned, the Act is a special legislation with respect to any other legislation, including the Arbitration Act. The contention of the respondent that the matter of interest payment will be governed by Section 31(7) of the Arbitration Act, hence, is erroneous. Section 4 of the Interest Act endorses the same which sets out the liability of the buyer to pay interest to the supplier 'notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force.' Thus, Interest Act is a special legislation as far as the liability to pay interest, or to make a deposit thereof, while challenging an award/decree/order granting interest.

35. Section 6(1) empowers the supplier to whom payment is due, to recover the same by way of a suit or any other proceedings. Section 6(2), which was inserted by way of an amendment in 1998, states that any dispute can be resolved by reference to the Industries Facilitation Council who shall conduct arbitration or conciliation proceedings in accordance with the Arbitration Act.

36. It may be noted that section 6(1) empowers the buyer to obtain the due payment by way of any proceedings. Thus the proceedings that the buyer can resort to, no doubt, includes arbitration as well. It is pertinent to note that as opposed to section 6(2), Section 6(1) does not state that in case the parties

choose to resort to arbitration, the proceedings in pursuance thereof will be governed by Arbitration Act. Hence, the right context in which the meaning of the term 'appeal' should be interpreted is the Interest Act itself. The meaning of this term under Arbitration Act or Code of Civil Procedure would have been relevant if the Interest Act had made a reference to them. For this very reason, we also do not find it relevant that the Arbitration Act deals with applications and appeals in two different chapters. We are concerned with the meaning of the term 'appeal' in the Interest Act, and not in the Arbitration Act. The learned counsel for the respondent-corporation invited our attention to Rule 803 B and Rule 876 of the High Court of Bombay Rules to show the differences in procedures for filing and dealing with applications, on one hand and appeals, on the other hand. The difference in procedures with respect to application and appeal under the Bombay High Court rules is only indicative of the procedural aspect of the matter, that too with limited application for matters pending before that Court.

37. The learned counsel for the respondent-corporation relied on the decision of Morgan Securities and Credit Pvt. Ltd. v. Modi Rubber Ltd., [AIR 2007 SC 683] which held that: "The 1996 Act is a complete Code by itself. It lays down the machinery for making an arbitral award enforceable. In terms of Section 36 of the 1996 Act, an award becomes enforceable as if it were a decree; where the time for making the application for setting it aside under Section 34 has expired, or such application having been made, has been refused."

38. However, it can be seen that this case offers support, if any, to the case of appellant company. The question involved was whether the provisions of the Arbitration Act would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, 'SICA'). It was held that when there is a conflict between the Arbitration Act and the SICA, latter which have been made to seek to achieve a higher goal would be applicable despite non-obstante clause contained in Section 5 of the Arbitration Act.

39. The learned Counsel for the respondent-corporation relied on the decision of Hanskumar Keshavchand v. Union of India, [AIR 1958 SC 947]. In that case, a preliminary objection was taken to the maintainability of Civil Appeal on the ground that the judgment of the High Court passed in appeal under Section 19(1)(f) of the Defence of India Act, 1939 was an award and not a judgment, decree or order within the meaning of sections 109 and 110 of the Code of Civil Procedure, and that accordingly the appeal before the Court was incompetent. Thus, the question was whether an order made in an appeal under Section 19(1)(f) of Defence of India Act, 1939 will be a judgment, decree, or order to the effect that it is possible to file an appeal from such order under the appeal provisions of Code. The Court held that when the Court acts in the capacity of an arbitrator, as it does under the Section in question, the verdict rendered by it will not be a judgment, decree or order and hence an appeal will be incompetent under the provisions of Code.

40. The High Court, while delivering the impugned judgment had taken this decision into consideration. While we are in respectful agreement with the decision, we have already stated that the word 'appeal' appearing in Section 7 of Interest Act need not be necessarily interpreted within the meaning of that word in CPC.

41. In its impugned judgment, the Division Bench of the High Court had held that if one considers the expression "appeal" in the context of the expression decree, it can only be a judicial determination by a Regular Civil Court considering the hierarchy of courts. We fail to understand why the expression "appeal" shall be construed solely in the context of a decree or order when the Section clearly makes reference to 'Awards' as well. According to the Respondents, the word 'award' appearing in Section 7 relates to those that result from a reference made under Maharashtra Cooperative Societies Act to the Industry Facilitation Council. The provisions for such reference, which is to be governed by Arbitration Act, were incorporated in 1998 by way of an amendment in the Interest Act. However, section 7 contained the word 'award' even before such reference mechanism was incorporated in the Interest Act by way of the Amendment Act, 1998. Therefore, it is difficult to see why 'award' in section 7 should not include an arbitral award other than the one arising from reference made to the Industries Facilitation Council.

42. Further, if the word 'appeal' is not construed as including an application under section 34 of Arbitration Act, we are afraid that it would render the term 'award' redundant and the requirement of pre-deposit a total nullity with respect to all cases where a Small Scale Industry undertaking preferred arbitral proceedings, prior to the incorporation of the reference procedure in 1998. Arbitration necessarily has to result in an award. The only way of challenging an award in a Court, in accordance with section 5 read with the opening clause of section 34 is filing an application under the latter section. If such challenge is not construed as an 'appeal', the requirement of pre-deposit of interest before the buyer challenging an award passed against him, becomes a total nullity. The fact that an order passed on such application/challenge under section 34 is appealable under section 37 is of no consequence. As the learned counsel for the appellant company rightly argued, such appeal is filed against an order passed by the Court under section 34, not against an award passed against the buyer and in favour of the Small Scale Industry undertaking. In all cases where the Small Scale Industry undertaking enters into arbitration proceedings to obtain payment of interest, if we limit the requirement of pre-deposit to appeal under Section 37, therefore, we will be rendering the term 'award' a nullity, which we are not empowered to do. The requirement of pre-deposit of interest is introduced as a disincentive to prevent dilatory tactics employed by the buyers against whom the Small Scale Industry might have procured an award, just as in cases of a decree or order. Presumably, the legislative intent behind section 7 was to target buyers, who, only with the end of pushing off the ultimate event of payment to the small scale industry undertaking, institute challenges against the award/decree/order passed against them. Such buyers cannot be allowed to challenge arbitral awards indiscriminately, especially when the section requires pre-deposit of 75% interest even when appeal is preferred against an award, as distinguished from an order or decree.

43. In Sri Paravathi Parameshwara Cables, K.M. Valasa, represented by its Managing Partner, K. Surapu Naidu and Ors. vs A.P. Transmission Corpn. Ltd. represented by Chairman and Managing Director and Anr., [2006 (5) ALT 647], as case decided by the High Court of Andhra Pradesh the identical question of law was raised. The Court held, relying on the definition of 'appeal' laid down in the case of Nagendra Nath Dey v. Suresh Chandra Dey (supra), that:

"If we apply the tests whether an application under Section 34 of the Arbitration Act would amount to an appeal or not, one would come to the conclusion that it cannot be termed as an appeal. Whereas, the appeal is heard on questions of fact as well as on questions of law, an application for setting aside the order of award under Section 34 of the Arbitration Act can be heard on limited grounds, which are mentioned in Section 34 of the Arbitration Act. As a matter of fact, generally speaking, the questions of fact decided by an arbitrator cannot be gone into by the Court while hearing an application for setting aside an arbitral award. Secondly, where there is an appeal provided, it lies to a higher Court

from the decision of a lower Court, the application under Section 34 of the Arbitration Act lies to a Court against an award passed by an arbitrator and arbitrator cannot be termed as a Court inferior to the Court of appeal."

44. According to the High Court of Andhra Pradesh, thus "when the Court refuses to set aside an arbitral award under Section 34 of the Arbitration Act and an appeal is filed before an appellate Court, Section 7 of the 1993 Act would operate and not at the stage when an application under Section 34 of the Arbitration Act has been moved.

45. We have already stated that the term 'appeal' does not always indicate a process where all questions of fact and law can be re-agitated. We have already seen that various Courts have held even a revision petition to be an 'appeal', keeping in mind the object of the legislation.

46. It is true that in almost all definitions of 'appeal', there is reference to removal of a cause from an inferior Court to a superior Court. It is also trite that an arbitrator deriving his authority from a private agreement does not fit into the ordinary hierarchy of Court. In our opinion, however, an appeal need not necessarily lie from an inferior Court to a superior Court, especially within the meaning of Section 7, for the following reasons:

1) Section 7 itself uses the term 'before a Court or other Authority'. Hence, the inter se relation between an Arbitrator and Court is not relevant for the purpose of interpreting S. 7. If an appeal can lie only from an inferior court to a superior Court, the words 'other authority' in S. 7 will be rendered redundant. The terminology of the section indicates that it is intended to cover a wide range of judicial/non-judicial determinations and challenges instituted therefrom before Courts or any other authority empowered to entertain such challenge.

2) Section 37(2) provides for appeals from arbitral tribunals. Thus it is not impossible to have appeals lying from arbitral tribunals to Courts.

3) Though practically unknown in India, there are two tier arbitration mechanisms known to other jurisdictions. These contemplate appeal from an arbitral award to yet another appellate arbitral tribunal. The arbitrator and the appellate arbitral tribunal do not constitute inferior and superior Courts, but a challenge instituted against the award passed by the former before the latter is treated as an 'appeal' nonetheless.

4) There are other legislations in which the term 'appeal' is used when Courts are not in the context of reference. For instance, under the Right to Information Act, 2005 an appeal lies from the order of the Central/State public information officer to a senior official of higher rank. These officials, no doubt, can not be called Courts.

47. For these reasons, we are not in a position to agree with reasoning or conclusion of the High Court of Andhra Pradesh in the decision aforementioned.

48. In the case of Virgo Conductors Pvt. Ltd. represented by its Managing Director v. A.P. Transmission Corporation represented by its Chairman And Managing Director and Anr., [AIR 2008 AP 123], a case decided by the same High Court on 20 December, 2007, it was held:

"Section 7 contemplates filing of only 'appeal' against any decree, award or other order, but not any other proceeding like original petition. Section 7 casts a liability only on the 'appellant company' to deposit 3/4th of the amount awarded while filing the appeal. There is no prohibition contained in Section 7 of the Old Act with regard to filing of an original petition challenging the award under the provisions of the Arbitration Act without deposit of 3/4th of the awarded amount. On the other hand, filing of such original petition without deposit of any portion of the awarded amount is permissible under the provisions of the of Sub-section (2) of Section 6 of the Old Act. The earlier batch Arbitration Act, which provisions are made applicable by virtue of petitions filed by the Appellant company seeking a direction to the first respondent for deposit of the 75% of the awarded amount were accordingly dismissed by the learned Additional Chief Judge and the same was confirmed by this Court also while dismissing the civil revision petitions filed in that regard."

This case does not, however, give any cogent reason for holding that the old Act did not require deposit of any interest.

49. An application may sometimes be treated as appeal. As noted earlier, in the case of Promotho Nath Ray (supra) a decision passed on an application to condone the delay was held to be one passed on appeal.

50. The Law Commission, in its 176th Report on "Amendments to the Arbitration Act, 1996" has repeatedly referred to the need of providing appeals from certain orders of the Arbitrator under section 34. Further, this Court in the case of Sanshin Chemicals Industry v. Oriental Carbons and Chemicals Ltd. and Ors. [(2001) 3 SCC 341] had also made several references to 'an appeal' under section 34. The English Arbitration Act, 1996 provides that when the parties had excluded the 'right to appeal' (by way of what is known as an 'exclusion agreement') the right to file certain applications to invoke the Court's indulgence in the matter is also taken away. Hence, it is not difficult to see that ordinarily, an application under section 34 is referred to as an appeal.

51. The learned counsel for the Corporation contends that if an application under S. 34 is treated as an appeal, an appeal under S. 37 from the order disposing of such an application, then will be a second appeal, which is prohibited under Section 37(3) of the Arbitration Act.

Section 37(3) of the Arbitration Act reads:

"No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall effect or take away any right to appeal to the Supreme Court".

52. A second appeal is prohibited from an order that is passed under S. 37. This bar operates with respect to the period post such appeal, and not prior to it. The Section prohibits a second appeal only from an order passed in appeal under that very section. An award may be challenged by an application under section 34, which may be treated as an appeal for the purposes of Interest Act, and an order can be made either setting aside/remitting/or affirming the said award. Only when from that order when an appeal is filed under section 37, the bar of second appeal under section 37 applies which is clearly evinced by the use of the words: "from an order passed in appeal under this section." Further, this Court, in the case of M/S. Pandey & Co. Builders Pvt. Ltd. v. State of Bihar & Anr., (2007)1 SCC 467 held that the bar under Section 37(3) is inserted only by way of abundant caution since in view of Section 5 read with Section 37(1) and 37(2), a second appeal would not have been possible at any rate. The Court quoted from The Law and Practice of Arbitration and Conciliation by O.P. Malhotra and Indu Malhotra, page 1270:

"...Section 5 imposes a blanket ban on judicial intervention of any type in the arbitral process except 'where so provided under Part I' of this Act. Pursuant to this provision, Section 37(1) provides appeals against certain orders of the court, while Section 37(2) provides appeal against certain orders of the arbitral tribunal. However, Section 37(3) prohibits a second appeal against the appellate order under Section 37(1) and (2). However, in view of the provisions of Section 5, a second appeal against the appellate order under Section 37(1) and (2) would not be permissible, even if Section 37(3) had not been enacted. It was, therefore, not really necessary to enact this provision, and it seems to have been enacted by way of abundant caution."

53. This decision elaborates on the true scope of Section 37. Hence, we are afraid we will have to disagree with the learned counsel for the respondent in this respect.

54. The learned counsel for the appellant company further relied on the Act of 2006 which has repealed the Interest Act. Section 19 of this Act uses the term 'application' against award, decree or order while providing for a reasonable deposit. Therefore, the learned counsel for the appellant company argued that the Legislature uses the terms 'appeal' and 'application' interchangeably. In response, the learned counsel for the respondent-corporation argued that the provisions of the 2006 Act cannot be used for the purpose of interpreting the Arbitration Act.

Section 19 of the Act of 2006 reads as follows:

"No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant company (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers

reasonable under the circumstances of the case subject to such conditions as it deems necessary to impose."

55. This provision, no doubt, requires the deposit to be made before an application under Section 34 of the Arbitration Act is filed. However, we are not inclined to read this provision of a subsequent legislation into the provision in question. While the learned counsel for the appellant company urged that the Legislature had used the terms 'appeal' and 'application' interchangeably, we are of the view that we cannot conclusively infer the same. Use of the term 'application' appears to be in the context of the dispute resolution mechanism provided for under Section 17 which essentially comprises of conciliation and arbitration, to be governed by Arbitration Act, 1996. The legislature has intended to bring about improvements to the Interest Act as stated in the Statement of Objects and Reasons of the Act of 2006. Indeed, it might have contemplated a change in the legal position while enacting the Act of 2006, but we cannot make that change apply retrospectively. In this respect, we agree with the reasoning of the High Court and with the contentions of learned counsel for the respondents as we cannot read the provision of a subsequent enactment into an Act which was repealed by the former.

56. The learned counsel for the appellant company further contended that when there is doubt about the meaning of a word appearing in Legislation, the interpretation that harmonizes the object and purpose of the object of the Statute should be adopted, rather than the one which renders the legislation a futility. (See Nokes v. Doncaster Collieries, All ER 1940 HL 549, Supdt. and Remembrancer of Legal Affairs to Govt. of West Bengal v. Abani Maity, (1979) 4 SCC 85). The interest Act is a beneficial piece of legislation intended to expedite timely payment of money owed to Small Scale Industries. Most of the contracts of supply or sale that Small Scale Industries enter into contain arbitration clauses. These arbitration proceedings result in an 'award'. If the term 'appeal' is interpreted in the limited context of a 'decree or order' and as excluding an application to set aside or remit such awards, the very purpose behind the enactment of Interest Act will be defeated. We are in agreement with the learned counsel for the appellant company in this respect.

57. According to the learned counsel for the appellant company, if the term 'appeal' is restricted to challenges launched against a decree or an order, it will effectively lead to discrimination between Small Scale Industries who have an award in their favour, and the ones which have procured either a decree or an order in their favour, submitted that if there is a construction that leads to the constitutionality of the provision in question, that should be adopted even if straining of language is necessary, relying on the case of State of Kerala v. M.K. Krishnan Nair, 1978 1 SCC 552. In the light of our views expressed hereinabove, we do not need to delve into the question whether section 7 will lead to an unreasonable classification if pre-deposit of interest is not required before an award is challenged under section 34 of the Arbitration Act.

58. Keeping in mind the language of Section 7, object of the legislation and the contextual meaning of the term appeal, we are, therefore, of the view that the term "appeal" appearing in Section 7 of the Interest Act should include an application under Section 34 as well. The judgment and order of the High Court shall, therefore, stand set aside and the appeal is allowed to the extent indicated above. The respondent-corporation shall make a deposit of 75% of the amount awarded by the learned Arbitrator by his award dated 30thof June, 2003 in Court where the application for setting aside the

award is now pending decision. Such deposit shall be made within three months from this date. In the event, such deposit is made the court shall decide the application for setting aside the award filed under Section 34 of the Arbitration Act as expeditiously as possible preferably within six months from the date of deposit to the Corporation.

59. The appeal is thus allowed to the extent indicated above. There will be no order as to costs.

60. In view of the above judgment, the application for impleadment becomes infructuous and is dismissed as such.