



August 2025

The Supreme Court of India held that High Courts may grant interim relief in arbitration proceedings under Article 227 of the Constitution of India, in exceptional circumstances

The Supreme Court of India (“**Supreme Court**”), in the case of *Jindal Steel and Power Ltd. and Anr. vs. Bansal Infra Projects Pvt. Ltd. and Ors.*¹ disposed of an appeal challenging an interim order passed by the High Court of Orissa, Cuttack (“**Orissa HC**”) dated August 20, 2024. The Orissa HC had directed the parties to maintain *status quo* with respect to the bank guarantee, pending final disposal of the Section 9 petition of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), in the Commercial Court. The Supreme Court observed that if the interim measure was not granted and the appellants were permitted to invoke bank guarantee, the arbitration petition filed in the Commercial Court would likely become infructuous. Therefore, the interim measure to maintain the existing position regarding the bank guarantee was essential to protect the interests of the parties.

Brief facts

1. Jindal Steel and Power Limited (“**Appellant**”) issued a work order dated January 24, 2022, to M/s. Bansal Infra Projects Private limited (“**Respondent No. 1**”) for construction of 400 (four hundred) flats at Jindal Nagar, South Block (Sharmi’s Vihar) for a total value of INR 43,99,46,924.13 (Indian Rupees forty-three crores ninety-nine lakhs forty-six thousand nine hundred twenty-four and thirteen paise). For execution of this work, the Appellant gave an advance of Rs. 3,73,95,490 (Indian Rupees three crores seventy-three lakhs ninety-five thousand four hundred and ninety) and to secure this, the Respondent No. 1 furnished a bank guarantee dated March 8, 2022 (“**Bank Guarantee**”).
2. Initially, it was agreed between the parties that the project will be completed by September 30, 2022. However, the same was not done and the parties mutually agreed to extend the project completion date multiple times. Later on, the Appellants terminated the work order citing poor performance, non-compliance with contractual obligations, delay in timelines and missed deadlines. Subsequently, the parties mutually agreed and executed an amended work order, and the project completion date was extended up to September 30, 2023, with the express condition that the retention money would be forfeited in case of any further delay in handover.
3. Due to several factors resulting in delay in completion of project, the Appellant, *vide* letter dated March 25, 2024, requested Respondent No. 1 to refund the debit balance of Rs. 4,12,54,904 (Indian Rupees four crores twelve lakhs fifty-four thousand nine hundred and four) towards unadjusted advances and other deductions on or before April

¹ W.P. (C) No. 11848 of 2024 (decided on May 7, 2025)

30, 2024, failure to which the Appellant informed the Respondent No. 1 that it will encash the Bank Guarantee. It was the categorical stand of Respondent No. 1 that the delay was a result of Appellant's own lapses.

4. In view of the above, Respondent No. 1 filed an arbitration petition under Section 9 ("**Arbitration Petition**")² of the Arbitration Act in the Senior Civil Judge (Commercial Court), Cuttak ("**Commercial Court**") seeking an *ex-parte* interim measure to restrain the appellants from encashing the Bank Guarantee and not proceed with termination until constitution of the arbitral tribunal. The Commercial Court rejected the application to grant an *ex-parte* interim injunction *vide* order dated April 30, 2024, on the ground that the parties must be given an opportunity to be heard.
5. Subsequently, Respondent No. 1 approached the Orissa HC under Article 227 of the Constitution of India ("**Constitution**") for an interim measure *vide* writ petition³ bearing. As an interim measure during the proceedings in the Orissa HC, it directed the parties to maintain *status quo* with regards to encashment of Bank Guarantee until next hearing ("**Interim Order**"). Finally, in its final order dated August 20, 2024, the Orissa HC directed that the interim order granted earlier to maintain *status quo* will remain in force until final disposal of the Arbitration Petition in the Commercial Court, subject to extension of the Bank Guarantee.⁴
6. The Appellant challenged the Interim Order in the Supreme Court.⁵

Orissa HC's Reasoning

1. The Orissa HC held that an *ad interim ex-parte* injunction granted in a Section 9 application under the Arbitration Act is not appealable.⁶
2. The Orissa HC analysed various judicial precedents and reiterated the limited circumstances under which courts may interfere with or restrain the invocation of a bank guarantee, *inter alia* in cases of: (a) fraud; (b) grave or irretrievable injustice; (c) special equities in favor of the party seeking an injunction; and (d) where the invocation is not in accordance with the contractual terms, rendering it improper.⁷
3. The Orissa HC granted interim relief to maintain *status quo* of the Bank Guarantee on the ground that special equity existed in favor of Respondent No. 1. This finding was based on: (a) the Appellant's attempt to invoke the Bank Guarantee during the pendency of the writ proceedings; (b) the Appellant's conduct being contrary to the terms of the Bank Guarantee; and (c) that the encashment of Bank Guarantee would result in irretrievable injustice to Respondent No. 1.
4. The Orissa HC further observed that invocation of Bank Guarantee would render the Arbitration Petition infructuous. Accordingly, it directed the Commercial Court to ensure expeditious disposal of the arbitration proceedings and ordered Respondent No. 1 to extend the validity of the Bank Guarantee until December 31, 2024.

Issues

1. Whether the Orissa HC has the power to grant interim order to maintain *status quo* of an unconditional bank guarantee under Article 227 of the Constitution?
2. Whether an interlocutory order arising out of the Section 9 petition is appealable under Section 37(1)(b) of the Arbitration Act? If so, whether the writ jurisdiction under Article 227 of the Constitution can be invoked when there is an alternative remedy available?

² Arbitration Petition No. 14 of 2024

³ W.P. (C) No. 11848 of 2024

⁴ [42] – [43], W.P. (C) No. 11848 of 2024

⁵ Civil Appeal No. 6413 of 2025 (Arising Out of SLP (Civil) No. 21916 of 2024)

⁶ [13], W.P. (C) No. 11848 of 2024

⁷ [26], W.P. (C) No. 11848 of 2024

Findings and analysis

1. The Supreme Court reiterated the settled principle that the courts should not interfere with the invocation of bank guarantees, except in cases of fraud or where the encashment would result in irretrievable injustice.⁸ However, while considering the Orissa HC's reasoning for granting the Interim Order, the Supreme Court noted that the Interim Order was passed solely to safeguard the interest of the parties.
2. The Supreme Court noted that the arguments in the Arbitration Petition had already been concluded, the arbitral tribunal was constituted, and a hearing was held. In view of this, the Supreme Court held that maintaining the *status quo* on the Bank Guarantee was necessary to prevent the arbitration proceedings from being infructuous. Accordingly, the Supreme Court directed the Commercial Court to pass appropriate orders within a period of 8 (eight) weeks.
3. The Supreme Court further recorded the undertaking of Respondent No. 1 that the Bank Guarantee would be extended until final disposal of the Arbitration Petition. In light of this undertaking, the Supreme Court held that no prejudice will be caused to the Appellant. Consequently, the appeal was dismissed.

Conclusion

While the Supreme Court did not expressly rule on the scope of the High Court's power to grant interim reliefs concerning bank guarantees under Article 227 of the Constitution, it upheld the Orissa HC's direction to maintain *status quo* on the Bank Guarantee until final disposal of the Arbitration Petition.

This development raises concerns about the potential for prolonged litigation and legal uncertainty, particularly considering the absence of clear judicial guidelines delineating the scope of the High Court's jurisdiction to grant relief in Section 9 proceedings through its supervisory powers under Article 227 of the Constitution. Significantly, this appears to expand the ambit of Article 227 of the Constitution, enabling judicial intervention not only in arbitration proceedings but also in ancillary disputes between private parties, an extension that was not envisaged earlier. Such a precedent may open the floodgates to extensive litigation between private entities under Article 227 of the Constitution, thereby diluting the original constitutional intent behind the provision, which was confined to a limited supervisory role over subordinate courts and tribunals.

⁸ Hindustan Construction Co. Ltd. vs. State of Bihar, (1999) 8 SCC 436.

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