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## **Supreme Court of India clarifies scope of writ jurisdiction against orders passed under Section 16 of the Arbitration and Conciliation Act, 1996**

In a decision on the scope of writ jurisdiction in the context of arbitration proceedings, the Supreme Court of India (“**Supreme Court**”), in *M/s Tarini Prasad Mohanty vs. M/s Sunflag Iron and Steel Company Limited*,<sup>1</sup> has held that the exercise of writ jurisdiction under Articles 226<sup>2</sup> and 227<sup>3</sup> of the Constitution of India (“**Constitution**”) to set aside an order passed under Section 16<sup>4</sup> of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) was not justified, particularly where the arbitrator was seized of the arbitration proceedings.

The Supreme Court further held that: (a) where a writ petition is filed invoking both Articles 226 and 227 of the Constitution and the single judge does not clearly specify the constitutional provision under which jurisdiction is exercised, a writ appeal is maintainable; (b) any objection in relation to stamping of an agreement falls within the ambit of the arbitral tribunal and non-stamping or inadequate stamping is merely a curable defect; and (c) the writ court cannot enter into the merits of the dispute while adjudicating a challenge to an order passed under Section 16 of the Arbitration Act.

### **Brief facts**

1. An agreement for sale of iron ore came to be executed on February 12, 2004 between M/s Tarini Prasad Mohanty (“**Mine Owner**”) and M/s Sunflag Iron and Steel Company Limited (“**SISCO**”).
2. Disputes arose between the parties. These disputes were referred to arbitration. SISCO made various claims against the Mine Owner, who in turn filed a counter claim.
3. The Mine Owner filed an application under Section 16 of the Arbitration Act, arguing that the agreement for sale had been insufficiently stamped.
4. The arbitrator turned down the said objection. The Mine Owner challenged the same by filing a writ petition under Articles 226 and 227 of the Constitution before the High Court of Orissa (“**Orissa HC**”).

<sup>1</sup> SLP(C) No. 27534 of 2025 (decided on May 27, 2026)

<sup>2</sup> Article 226 of the Constitution empowers every High Court to issue directions, orders, or writs (*habeas corpus, mandamus, prohibition, certiorari, and quo warranto*) for the enforcement of fundamental rights and for ‘any other purpose’.

<sup>3</sup> Article 227 of the Constitution confers upon every High Court the power of superintendence over all courts and tribunals within its territorial jurisdiction. This jurisdiction is supervisory and corrective, intended to ensure that subordinate courts and tribunals act within the bounds of their authority, follow due process, and do not commit jurisdictional errors or manifest perversity.

<sup>4</sup> Section 16 of the Arbitration Act, grants the arbitral tribunal the power to rule on its own jurisdiction, including any objections regarding the existence or validity of the arbitration agreement.

5. The single judge entertained the writ petition and after finding that an 'exceptional' case for interference had been made out, proceeded to hold that unless proper stamp duty was paid on the sale agreement, the arbitrator did not have jurisdiction to arbitrate the disputes.
6. SISCO preferred a writ appeal. The Division Bench set aside the single judge order and held the same to be in excess of jurisdiction. It found that the view taken by the arbitrator could not be said to be perverse or that it lacked jurisdiction to entertain the arbitration proceedings.
7. The Mine Owner preferred the special leave petition.

## Issues

1. Whether, in the exercise of jurisdiction under Articles 226 and 227 of the Constitution, a challenge to an order passed under Section 16 of the Arbitration Act ought to have been entertained, especially when the arbitrator was seized of the arbitration proceedings?
2. The single judge having upheld the challenge to an order passed under Section 16 of the Arbitration Act, whether the Division Bench was right in interfering with such exercise of jurisdiction and setting aside that order?

## Findings and analysis

### Issue 1: Maintainability of the writ appeal preferred by SISCO

As a preliminary matter, the Mine Owner objected to the maintainability of the writ appeal preferred by SISCO contending that the single judge had merely exercised jurisdiction under Article 227 of the Constitution while setting aside the order passed under Section 16 of the Arbitration Act.

The Supreme Court rejected the said objection and observed that the perusal of the Mine Owner's writ petition made it clear that it was preferred under Articles 226 and 227 of the Constitution.

The Supreme Court held that the Mine Owner, having invoked jurisdiction under Articles 226 and 227 of the Constitution, and the single judge having exercised jurisdiction without clearly specifying any particular constitutional provision, it cannot be said that what was exercised by the single judge was jurisdiction only under Article 227 of the Constitution and not under Article 226 of the Constitution.

### Issue 2: Whether the learned single judge was justified in exercising writ jurisdiction to set aside the order passed under Section 16 of the Arbitration Act

#### The single judge failed to appreciate the jurisdiction and erred in entering into the merits of the dispute

The Supreme Court observed that the arbitrator was empowered to decide the objection raised by the Mine Owner as regards insufficient stamping of the agreement. If the arbitrator had the jurisdiction, it was impermissible for the single judge to undertake the exercise of entertaining a challenge to the said adjudication.

While exercising such power, one may err on merits, however, such error may not be beyond jurisdiction.

The Supreme Court further found that the single judge was not justified in going into the merits of dispute between the parties as regards the nature of the agreements while exercising writ jurisdiction.

The Supreme Court referred to the decision of the Constitution Bench in *M/s S.B.P. and Company vs. M/s Patel Engineering Limited and Anr.*<sup>5</sup> In the said decision, the Constitution Bench observed that certain High Courts had proceeded on the basis that any order passed by an arbitral tribunal during arbitration, could be challenged under

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<sup>5</sup> 2005 INSC 526

Articles 226 or 227 of the Constitution. The Supreme Court disapproved of such stand, holding that such intervention by the High Courts is not permissible.

The Supreme Court further referred to its decisions in *M/s Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and Anr.*<sup>6</sup> and *Bhaven Construction through Authorised Signatory Premjibhai K. Shah vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.*<sup>7</sup>. The Supreme Court reiterated the settled position that where a Section 16 application is dismissed, no appeal lies against such dismissal. The challenge to such dismissal must await the passing of the final award at which stage it may be raised under Section 34 of the Arbitration Act.

The Supreme Court also referred to the Constitution Bench decision in *Re: Interplay Between Arbitration Agreements Under The Arbitration And Conciliation Act, 1996 and The Indian Stamp Act, 1899*<sup>8</sup> wherein it was held that Section 16 of the Arbitration Act empowers the arbitral tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement.

### **Non-stamping or inadequate stamping is a curable defect**

The Supreme Court rejected the Mine Owner's submission that relegating the stamping objection to the post-award stage under Section 34 of the Arbitration Act would compel it to endure prolonged and expensive arbitral proceedings merely to vindicate a mandatory fiscal objection going to the root of the agreement. The Constitution Bench in *Re: Interplay* (supra), has held that non-stamping or inadequate stamping of an arbitration agreement is merely a curable defect.

### **The threshold for exercising writ jurisdiction is higher given the legislative intent of minimal judicial interference**

The Supreme Court held that the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the matters of arbitration is higher.

The Supreme Court also clarified that its observations were as regards the 'entertainability' of a writ petition under Articles 226 and 227 of the Constitution and not with regard to its 'maintainability'.<sup>9</sup>

The Supreme Court restricted itself to recording a conclusion that the single judge was not justified in exercising writ jurisdiction. The issue with regard to stamping was kept open for being raised by the aggrieved party under Section 34 of the Arbitration Act, if the need for the same arises.

## **Conclusion**

This judgment reinforces the principle of minimal judicial interference in ongoing arbitration proceedings and reiterates the importance of the statutory scheme under the Arbitration Act. It provides clarity on the following aspects:

1. the threshold for exercising writ jurisdiction against an order passed under Section 16 of the Arbitration Act is high and cannot be invoked merely because the order is erroneous;
2. non-stamping or inadequate stamping of an agreement is a curable defect that does not vitiate the agreement or deprive the Arbitral Tribunal of jurisdiction; and
3. interpretation of contracts ought not be undertaken in writ jurisdiction when the arbitral tribunal is seized of the proceedings and evidence is yet to be led.

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<sup>6</sup> 2019 INSC 1299

<sup>7</sup> 2021 INSC 9

<sup>8</sup> 2023 INSC 1066

<sup>9</sup> Paragraph 22; Referring to *M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority and others*, 2023 INSC 92, the Supreme Court observed that 'entertainability' and 'maintainability' of a writ petition are distinct concepts, and the question of 'entertainability' is entirely within the realm of discretion of the High Courts, writ remedy being discretionary.

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