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**(1995) 11 BOM CK 0028**  
**In the Bombay High Court**  
**Case No : Arbitration Petition No. 119 of 1995**

D.N. Deshpande

APPELLANT

Vs

Tata Finance Ltd.

RESPONDENT

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**Date of Decision :** 09-11-1995

**Acts Referred:**

Arbitration Act, 1940 — Section 30, 35

**Citation :** AIR 1996 Bom 120

**Hon'ble Judges :** S.M. Jhunjhunwala, J

**Bench :** Single Bench

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## Judgement

S.M. Jhunjhunwala, J.—By this petition, the Petitioner seeks to challenge the Award dated 20th April 1994 filed in this Court on the ground that the Sole Arbitrator did not properly consider the merits of the claim of the Respondents and that the Arbitrator proceeded with the proceedings of the reference even after filing of the suit by the Petitioner in the Civil Court Ambajogai challenging the agreement under which the claim in arbitration proceedings was made by the Respondents against the Petitioner.

2. An award is not vulnerable to any challenge thereto. The ambit and scope of challenge to an award u/s 30 of the Arbitration Act, 1940 (for short, "the Act") has now been laid down by the catena of decisions of the Supreme Court as also of this Court and other High Courts. Needless to say this when an arbitrator is made the final arbiter of the dispute between the parties, an award is not open to the challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate the facts. The appreciation of evidence by the arbitrator is never a matter which the Court questions or considers in the proceedings u/s 30 of the Act. An arbitrator is the sole judge of the quality and the quantity of the evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator. The merits of the claims of the Respondents against the Petitioner in the arbitration proceedings have been considered and adjudicated by the Arbitrator. In the arbitration

proceedings, this Court is not sitting in appeal over the adjudication of the Arbitrator and it is not permissible for this Court to go into the merits of the claim of the Respondents against the petitioner which have been considered and adjudicated upon by the Arbitrator. The said Award cannot be set aside on the ground that the Arbitrator has wrongly awarded the amount which has been awarded to the Respondents.

3. u/s 35 of the Act, no reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject matter of the reference. If the legal proceedings between the parties to the reference have been commenced with respect of the whole of the subject matter of the reference and notice of the commencement of the legal proceedings is given to the arbitrators or the umpire, all further proceedings before the arbitrators or umpire, as the case may be, would be invalid. Therefore, mere filing of the suit by the petitioner in the Civil Court at Ambajogai did not invalidate the arbitration proceedings or ipso facto rendered the Arbitrator functus officio. Admittedly, no notice of the suit filed by the petitioner was given to the Arbitrator. Hence, there is no merit in the submission of Mr. Reis that merely after filing of the suit by the petitioner against the respondents in the Civil court at Ambajogai further proceedings before the Arbitrator became invalid.

4. Since the petition is devoid of any merit, it deserves to be dismissed at the stage of admission itself. Hence, the petition is dismissed. There shall, however, be no order as to costs of the petition.

5. Mrs. Joshi, learned Advocate for the respondents, applies for judgement and decree in terms of the said Award dated 20th April 1974, a copy whereof is annexed as Exhibit I to the Petition, and submits that in view of dismissal of the petition, the respondents have under Rule 787(5) of the Rules of this Court as applicable on its Original Side become entitled to judgment and decree in terms thereof. Since Mrs. Joshi is right in her submission, judgment is pronounced and decree is passed in terms of the said Award dated 20th April, 1994, a copy whereof is annexed as Exhibit I to the petition. It is further ordered that the petitioner do pay to the respondents interest on the principal sum of Rs. 14,23,009/- at the rate of 18% per annum from the date hereof till payment of declension whichever is earlier.

Issuance of certified copy of the minutes of the order is expedited.

6. Petition dismissed.