(2019) 08 BOM CK 0039

In the Bombay High Court

Case No : Commercial Appeal No. 109, 111, 401 Of 2019, Chamber Summons (L) No. 911 Of 2018, Notice Of Motion (L) No. 238, 243, 244 Of 2019

Kakade Construction Company Ltd — APPELLANT

Vs

Vistra ITCL (India) Ltd And Ors — RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 8, 9(1)(d), 13, 16(2), 16(3), 17, 34, 36, 37, 37(3), 37(1)(a), 37(2)(a), 38, 39, 46, 48, 50

Commercial Courts And Commercial Appellate Division Of The High Courts Act, 2015 — Section 13, 13(1)

Code of Civil Procedure, 1908 — Section 47, 51(d), 115, 151, Order 21 Rule 22, Order 40 Rule 1, Order 43 Rule 1(s)

Citation : (2019) 08 BOM CK 0039

Hon'ble Judges : Pradeep Nandrajog, CJ;Nitin Jamdar, J

Bench : Division Bench

Advocate : Shivam Bhagwati, Shahzad Khajotia, Y.R. Shah, Rohit Kapadia, Kaustubh Thipsay, Rahul Soman, G.S. Godbole, Ketki Gadkari, Aspi Chinoy, Gaurav Joshi, Jatin Pore, Ankita Agrawal

Final Decision : Dismissed/ Disposed Off

Judgement

Nitin Jamdar, J

1. These three Commercial Appeals challenge the order passed by the learned Single Judge dated 24 August 2018 appointing court receiver on the properties. The impugned order was passed in a chamber summons taken out by the Respondents to execute a consent arbitral award. When the Appeals came up for admission, a preliminary objection was raised by the Respondents to the maintainability of the Appeals. By this judgment, we decide the preliminary objection raised by the Respondents. The narration of facts is thus limited to decide the maintainability of the Appeals.

2. Commercial Appeal No. 401 of 2019 is filed by Kakade Construction Company Ltd.; Commercial Appeal (Lodg.) No. 109 of 2019 is filed by Mr. Sanjay Kakade;

and Commercial Appeal (Lodg.) No. 111 of 2019 is filed by Mrs. Usha Kakade. Mr.Sanjay Kakade and Ms. Usha Kakade are the Directors of Kakade Construction Company Ltd.

3. There were certain financial transactions between Kakade Constructions and the Respondents - Vistra ITCL and IIRF Holdings (referred to as the Respondents). A default was committed by Kakade Constructions. Arbitration proceedings ensued. The parties arrived at a settlement. Under the consent terms, the Respondents agreed to accept the reduced amount of Rs.178 crores with interest at the agreed rate as and by way of a concession. A consent award was accordingly passed on 14 July 2014 in respect of arbitration between Kakade constructions and the Respondents. The arbitration between the Respondents and the Directors of the Kakade Constructions that is, Sanjay and Usha Kakade continued. On 25 July 2014, the first instalment of Rs.10 Crores as per the Consent Award was due and payable by Kakade Constructions. Kakade Constructions did not pay the instalments. Kakade Constructions sought to dispute the validity of the Consent Award that it violated the Foreign Exchange Management Act, 1999 (FEMA) but stated to have withdrawn the objection.

4. The Respondents filed an execution application on 30 March 2017 for the sum of Rs.276.73 crores, in this Court. By Chamber Summons (L) No. 137 of 2017, the Respondents sought an appointment of court receiver of the lands specified therein, under Order 21 Rule 22 of Civil Procedure Code, 1908.

5. By filing an affidavit in reply on 31 July 2017, Appellants again objected that the Consent Award is a violation of FEMA. On 19 January 2018, the learned Single Judge appointed court receiver regarding the land and permitted the Respondents to request the Receiver to take formal possession of the said 22.95 acres of land at Kothrud, Pune. The Appellants filed Chamber Summons Nos. 160 of 2018 in the execution proceedings and challenged the validity of the Consent Award on the ground it violated the FDI policy and FEMA Regulations. The Appellants also filed one more chamber summons, being Chamber Summons No. 161 of 2018 seeking a modification of the order dated 19 January 2018 passed by the Hon'ble Court.

6. In these execution proceeding parties again arrived at a settlement. On 21 February 2018, parties tendered handwritten consent terms. Formal consent terms were signed and executed and were tendered before the Court on 22 February 2018. The Appellants gave undertakings to withdraw the challenges to the consent award and the order dated 22 February 2018, and it was so incorporated in consent terms. It was agreed that that the Appellants would pay Rs.260 crores to the Respondents in four tranches within a period of one year in settlement of the dispute. It was provided that in default, payment would be of the entire amount under consent award and execution of the assets of the Appellants, including the Directors. On 27 February 2018, under the consent terms and the order dated 22 February, the court receiver took possession of, two immovable properties at Pune. The Appellants filed their respective affidavits

disclosing their respective assets before this Court on 8 March 2018. The Arbitral Tribunal terminated the pending arbitration proceedings against the between Usha and Sanjay Kakade, and the Respondents on 14 March 2018.

7. The Appellants challenged the consent award. Sanjay Kakade filed the Appeal (L) No. 234 of 2018 and Usha Kakade filed the Appeal (L) No. 235 of 2018. Kakade Constructions filed Appeal (L) Nos. 237 of 2018. The Division Bench (Coram: N.H. Patil and G.S. Kulkarni, JJ.) admitted the appeal on the question of law regarding maintainability and rejected the interim reliefs as prayed for.

8. The second instalment of Rs.55 crores by the appellants as per the consent terms dated 22 February 2018 was due on 21 June 2018. The Appellants failed to make the payments. On 22 June 2018, the Respondents sought to execute the order dated 22 February 2018 against the assets of Sanjay Kakade and Usha Kakade. The Respondents moved a Chamber Summons bearing (Lodg.) No. 911 of 2018. The Respondents prayed for the following reliefs :-

(a) That pending the hearing and final disposal of the present Execution Application, this Hon'ble Court be pleased to appoint Court Receiver, High Court, Bombay, with all powers under Order XL of the Code of Civil Procedure, 1908, as receiver in respect of the properties mentioned in Annexure B, Annexure C and Annexure D to the Affidavit in Support of this Chamber Summons;

(b) That pending the hearing and final disposal of the present Execution Application, this Hon'ble Court be pleased to pass an order and injunction restraining the Respondents by themselves, their servants and agents, and/or any person acting through and/or under them, from directly or indirectly dealing with in any manner/parting possession with/disposing of/creating third party interest/rights, in any manner of the properties mentioned in Annexure B, Annexure C and Annexure D to the Affidavit in Support of this Chamber Summons.

Sanjay Kakade, by filing an affidavit in reply to the execution application, took an objection to the territorial jurisdiction since all the assets were in Pune. The ground of violation of FEMA was once again taken up. Kakade Constructions also sought to question the lack of territorial jurisdiction of the executing court.

9. The chamber summons was argued at length before the learned Single Judge as can be noticed from the impugned order. The question that was debated before the learned Single Judge was as to whether the Court can appoint a receiver in execution only in respect of property within the territorial jurisdiction of the executing Court. This issue arose because the properties on which receiver was sought to be appointed were situated at Pune. The learned Single Judge, after having considered the law on subject, held that it was open to the Court to appoint a receiver in respect of properties situated outside its jurisdiction. The learned Single Judge also commented on the conduct of the Appellants of having agreed under the consent terms and thereafter not honoring the same. By order dated 24 August 2018, the learned Single Judge allowed the chamber summons

in terms of prayer clause (a) in respect of the properties specified at Annexure 'B', 'C' and 'D' to the affidavit in support of the chamber summons. The court receiver was appointed in all powers including the power of sale. The learned Single Judge directed that the court receiver before effects any sale, to seek necessary permission. The learned Single Judge also issued an injunction. This order is challenged in these Appeals.

10. We have heard Mr. Rohit Kapadia, Senior Advocate for the Appellant in Comm. Appeal (L) No.109 of 2019, Mr. G. S. Godbole for the Appellant in Comm. Appeal (L) No.111 of 2019 and Mr. Aspi Chinoy & Mr. Gaurav Joshi, Senior Advocates for the Respondents. The learned Counsel for the parties have referred to various decisions; however, we will refer to those decisions directly relevant to the issue at hand.

11. The Appeals are filed as Commercial Court appeals. The Respondents have taken an objection that the appeals are not maintainable since the impugned order is passed in execution of the arbitral award. It is contended that the proceeding being under the Arbitration and Conciliation Act 1996, only those appeals fall in the categories enumerated under Section 37 of the Act 1996 are maintainable, and the present appeals do not fall in any of the categories.

12. The Appellants in their appeal memo aver that the appeals are filed under Section 13(1) of the Commercial Courts and Commercial Appellate Division of the High Courts Act, 2015 r/w. Clause 15 of the Letters Patent Appeal. Section 13 of the Commercial Courts and Commercial Appellate Division of the High Courts Act, 2015 reads thus :-

13. Appeals from decrees of Commercial Courts and Commercial Divisions :- (1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

13. It is stated in the appeal memos that appeal is maintainable in respect of the

orders enumerated in Order XLIII of the Code of Civil Procedure as expressly provided under Section 13 of the Act of 2015. The Appellants contend that the order of appointment of receiver under Order XL Rule 1 of the Code is made appealable by virtue of Order XLIII Rule 1 (s) and therefore appeals are maintainable. Appellants also contend that a receiver can also be appointed in execution proceedings under section 51(d) of the Code and if section 13 of the Act of 2015 is meaningfully read, the scope of appeals is not restricted only to the Section 37 of the Act 1996 and Order XLIII.

14. The first aspect that we will consider is whether the impugned order is under the Code of Civil Procedure to make it appealable, or it is under the Act of 1996. If the order is under the Act of 1996, then the next question would be whether the order is appealable under that Act. Fortunately, there is sufficient guidance in the decisions already holding the field.

15. To take up the first point, that is whether the impugned order can be said to have been passed under the Code to make it appealable. The impugned order is passed in execution of an arbitral award. The execution of the award is governed by Section 36 of the Arbitration Act. According to the Appellants, Section 36 of the Arbitration Act stipulates that the award is to be executed as if it is a decree of the civil court and that being the position, the proceedings for execution of the arbitral award will be governed by the Code of Civil Procedure. Since the argument centres on Section 36 of the Act of 1996, it will be fruitful to reproduce the same. Section 36 of the Arbitration Act reads as under:-

36. Enforcement.-(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Thus Section 36 of the Act of 1996 states that award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court.

16. The ambit of Section 36 of the Act of 1996 came up for consideration of the Division Bench of this Court in the case of Jet Airways (India) Ltd. And Anr. V/s. Subrata Roy Sahara & Ors 2012 (2) AIR Bom 855. An appeal was filed challenging the order passed by the learned Single Judge in the execution application regarding an arbitral award. When the appeal came up for consideration, an objection was taken by the Respondents as regards the maintainability. The Appeal was admitted, and the question of maintainability was kept open. At the hearing of the appeal, the Division Bench went into the question of maintainability of the appeals. The applicability of Clause 15 of the Letters Patent Appeal of High Court, Bombay was also considered. The Court framed a question as to whether the order passed by the learned Single Judge in respect of the execution of the award was under Section 36 of the Act of 1996 or it was an order passed in the proceedings under the Code of Civil Procedure.

17. The Division Bench in Jet Airways examined the provisions of the Act of 1996 and the Code of Civil Procedure including Section 37 of the Act of 1996. The Court framed three questions for its consideration. One of which, as stated above, was whether proceedings under Section 36 of the Act of 1996 are proceedings under the Code of Civil Procedure. The Division Bench referred to the decision of the Supreme Court in Paramjeet Singh Patheja v/s. ICDS Ltd. 2006 (13) SCC 3228 where it was stated that an award is not a decree and this legal fiction ought not to be extended beyond its legitimate field. The Division Bench held that the proceedings before the learned Single Judge for the execution of the award were proceedings under the Act of 1996 and not proceedings under the Code of Civil Procedure. It was further observed that if the interpretation sought to be put by the appellant therein is accepted (that it is under the Code); it will lead to an incongruous result which will defeat the intention of the legislature to provide a quick and effective remedy, and of providing appeals only against certain specified orders. It was thus held that there is no appeal provided against the adjudication under section 36 of the Act of 1996 and the proceedings under section 36 cannot be held to be proceedings of execution under the Code of Civil Procedure.

18. The Appellants have sought to get over this position by contending firstly that what was under consideration in the case of Jet Airways, was the final order passed in the execution proceedings which is not the case in the present Appeals. They contend that the impugned order appoints a receiver which is not a final order in the execution proceedings. We do not find this distinction material for the position of law regarding Section 36 of the Act of 1996. The Division Bench has categorically held that adjudication of the proceedings under Section 36 is under the Act of 1996 and not under the Code of Civil Procedure. There is thus no warrant to distinguish between interim orders and final orders passed in the execution of the arbitral award.

19. The second argument of the Appellants is based on the decision of the

Supreme Court in the case of Sundaram Finance Ltd. v/s. Abdul Samad & Anr. 2018 (3) SCC 622 The decision in the case of Sundaram Finance was rendered on 15 February 2018 after the decision of the Division Bench in the case of Jet Airways which was on 17 October 2011. According to the Appellants, the Supreme Court has held that the proceedings under Section 36 of the Act of 1996 are to be construed as proceedings under the Code of Civil Procedure, and therefore the decision in Jet Airways is no longer a good law.

20. In the case of Sundaram Finance, the appellant before the Supreme Court had granted a loan to the respondent. A dispute arose over the defaults committed, and an arbitrator was appointed. The execution proceedings were filed in the jurisdiction of the Courts of Morena, Madhya Pradesh under Section 47 r/w. Section 151 and Order XXI Rule 27 of the Code of Civil Procedure. It was the case of the appellant that the award being enforceable as a decree under Section 36 of the Act of 1996, the execution proceedings had to be filed in the Civil Court. The Civil Court held that it lacked jurisdiction and the execution proceedings ought to have been first filed before the Court of competent jurisdiction in Tamil Nadu, the Court in Tamil Nadu ought to have transferred the decree, and then only proceedings could be filed in Morena. The Trial Court followed the decisions rendered by Madhya Pradesh High Court and Karnataka High Court. The appellant approached the Supreme Court directly since a view on law was taken by the Madhya Pradesh High Court, and there were conflicting views of the other High Courts. Two conflicting views were under consideration of the Supreme Court. Madhya Pradesh High Court and Himachal Pradesh High Court opined that for the transfer of a decree, leave should be first obtained before filing the execution proceedings before the courts where the assets are located. The Delhi High Court, Kerala High Court, Madras High Court, Rajasthan High Court, Allahabad High Court, Punjab and Haryana High Court and Karnataka High Court had taken a view that the award is to be enforced under the Code as if it were the decree of the Court does not mean that the award is a decree of that court, and only a legal fiction is created. The Courts held that therefore the Award could be filed for execution directly before the Court where the assets of the judgment debtor are located. After noticing the diversions of opinion amongst the High Courts, the Supreme Court considered the provisions of Section 38, Section 39, Section 46 of the Act of 1996 and Order XXI of the Code of Civil Procedure. Then the Supreme Court analyzed the fiction created under Section 36 of the Act of 1996 and held that Section 36 is only an enforcement mechanism akin to the enforcement of a decree, but the Arbitral Award itself is not a decree of the Civil Court, and no decree is passed by the Civil Court.

21. Section 36 of the Act of 1996 creates a legal fiction which is limited only to provide an enforcement mechanism. Without such an enforcement mechanism, the arbitral award cannot be executed. This legal fiction that the award is to be treated as the decree is thus for a limited purpose and cannot be stretched to include an appeal The decision of the Supreme Court in Sundaram Finance has not set aside or diluted the ratio in Jet Airways. The view taken by the Division

Bench of this court in Jet Airways is after following the decisions of the Supreme court and in tune with the legislative policy. We do not find any reason to deviate from the same. Therefore, we proceed further on the premise that the impugned orders cannot be considered as having been passed under Code of Civil Procedure to make it appealable.

22. Now to consider whether the impugned order being under the act 1996 is appealable under that Act. An important decision on this issue is of the Supreme Court in the case of Kandla Export Corporation and Anr. v/s. OCI Corporation and Anr. 2018 (14) SCC 715 rendered on 7 February 2018. In this case, an execution petition in respect of foreign award was filed under Section 48 of the Act of 1996 by the respondents before the District Court, Gandhidham, Kutch. The appellants filed their objection to the petition. The High Court transferred the execution petition to the Commercial Division of High Court of Gujarat. The High Court of Gujarat dismissed the objections and allowed the execution petition. When the appeal was filed, the Commercial Appellate Division dismissed the appeal holding that no appeal was provided under the Act of 2015. In this factual backdrop, the Supreme Court analysed the provisions of the Act of 2015 and the Act of 1996. The Supreme Court emphasized on the proviso to section 13(1) of the Act of 2011 and held that primary purpose of the proviso was to clarify the main part by providing an exception. The Supreme Court explained the ambit of the proviso to Section 13(1) of the Commercial Courts Act. Two paragraphs from this decision need to be reproduced, These are paragraphs 14 and 15 as under:-

"14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a), would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-Sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act."

(emphasis supplied)

The Supreme Court thus has clarified that in respect of the orders under the Act of 1996, only those appeals mentioned in Section 37 of the Act of 1996 are maintainable before Commercial Appellate Division. The Supreme Court held that the Act of 1996 is a self-contained code on the matters pertaining to arbitration, and which is exhaustive. The Supreme Court then adverted to the foundational logic of making the Arbitration Act a self-contained code. It was held that the Act of 2015 provided no additional right of appeal otherwise than the appeals under the Act of 1996. Though this case arose before the Supreme Court in a foreign award and under Section 50, the underlying principle equally applies to the Section 37 of the Act of 1996. The dicta in Kandla Export is clear that in respect of the orders arising from the Act of 1996; an appeal will lie only to the extent provided under Section 37 of the Act of 1996.

23. The Appellants sought to rely on the decision of the Supreme Court in the case of ITI Ltd. v/s. Siemens Public Communication Network Ltd. 2002 (5) SCC 510. In this case, an issue as regards maintainability of a revision to the High Court against the order of the Civil Court under Section 37 of the Act of 1996 came up for consideration. The Supreme Court held that there is no specific exclusion of the Code in the Act of 1996 and when there was no expressed exclusion, it could not be held by inference that the Code of Civil Procedure is not applicable. This discussion however was in the context of a revision as the Supreme Court explained that the power of revision under Section 115 is a different power than an appellate power. The power of revision is in nature of superintendence to keep subordinate courts within the bounds of their jurisdiction. The Supreme Court held that the approach of the revisional court under Section 115 of the Code is not the same as an appeal. The Supreme Court held that the right of a second appeal to the High Court has been expressly taken away by Section 37(3) of the Act of 1996, but the power of revision having been given for a different purpose and not specifically excluded would be available. This decision does not assist the Appellants.

24. The learned Single Judge by the impugned order has allowed the chamber summons filed by the Respondents - Claimants and has appointed receiver regarding the properties specified in the order. This order has been passed while exercising power under Section 36 of the Act of 1996 being an executory mechanism. This order not being under the Code of Civil Procedure, the only other category enumerated in Section 13 of the Commercial Courts Act, 2015 is Section 37 of the Arbitration Act, 1996. Section 37 of the Act of 1996 provides appeal only in limited cases. These are orders: refusing to refer the parties to arbitration under section 8; granting or refusing to grant any measure under Section 9; setting aside or refusing to set aside an arbitral award under Section 34. An appeal shall also lie to a Court from an order of the arbitral tribunal accepting the plea referred in sub-section (2) or sub-section (3) of Section 16; or granting or refusing to grant an interim measure under Section 17. These are the only orders that have been made appealable.

25. An argument was sought to be advanced by the Appellants that since the appointment of the receiver is an order under Section 9(1)(d) of the Act of 1996, an appeal is maintainable under Section 37 of the Act of 1996. There is no merit in this submission. Section 9 permits a party before or during arbitral proceedings or at any time after the making of the arbitral award but before it is

enforced in accordance with section 36, to apply for the appointment of a receiver. In this case, that stage has long past gone.

26. The Appellant - Mrs. Usha Kakade in Appeal (Lodg.) No. 111 of 2019 sought to argue that the Appellant not being party to the Award, it cannot be said that the order passed against her is under the Arbitration Act, and therefore, as for her case, it would be governed by Order 43 of the Code of Civil Procedure and thus, the Appeal would be maintainable under Section 13 of the Act of 1996. There is no merit in this submission. Arbitration proceedings were also pending against Usha Kakade and Sanjay Kakade before the same Arbitral Tribunal. The Arbitration Petition between the Respondents and Kakade Construction Company concluded in a consent award, and the arbitration between the Respondents and Sanjay Kakade and Usha Kakade remained pending. When the consent terms were executed on 22 February 2018 in execution, they provided that both Sanjay Kakade and Usha Kakade for themselves and on behalf of the Kakade Construction Company would be jointly and severally liable to make payment under the consent award, and the order and the consent award regarding the Respondents and the Kakade Construction Company would also be executable against Sanjay Kakade and Usha Kakade. Noting these consent terms dated 22 February 2018, the Arbitration proceedings were terminated by the Tribunal on 14 March 2018. Because of this position, there is no merit in the contention raised by the Appellant - Usha Kakade in Appeal (Lodg.) No. 111 of 2019 that her case be separately treated.

27. The Respondents have placed before us order passed by the Division Bench of this Court in the case of Vikram V. Vyas and Ors. v/s. Madhusudan G. Vyas and Ors. 2016 SCC OnLine Bom 12709 Following the decision in the case of Jet Airways, the Division Bench passed an order on 26 October 2016 in an appeal challenging the order passed in execution of an arbitral award, holding the same to be not maintainable. We have not been shown any contrary order or decision. Now the Supreme Court, in the case of Kandla Export, has clarified the position further.

28. The Counsel for the Appellants have sought to project before us various situations that may arise during the execution of an award. For instance, it was sought to be contended that a right of Appeal cannot be taken away from those who are not a party to the award or arbitral proceeding. We do not intend to enter into an analysis of hypothetical fact situations. A preliminary objection has been raised before us that the present Appeals are not maintainable. The Appellants are a party to the arbitral proceedings.

29. The Act of 2015 and the Act of 1996 reflect the legislative intent of time-bound resolution of commercial disputes. It cannot be the legislative intent to provide a speedy remedy of arbitration only till the award is passed, with no priority when the award is to be put to execution. The purpose of the arbitral process is not only to expedite the declaration of an award on paper but the actual receipt of the claim.

30. Thus we hold that the impugned order dated 24 August 2018 passed by the learned Single Judge of this Court being neither under Order XLIII of the Code of Civil Procedure nor appealable under Section 37 of the Act of 1996, these appeals are not maintainable.

31. The Commercial Appeals are dismissed as not maintainable. In view of the dismissal of the Appeals, the Notice of Motions do not survive and are disposed of.