

(2016) 09 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16586 of 2012

M/s. Auto Agencies

APPELLANT

Vs

The Arbitrator Shri Kukkaje Ramakrishna Bhat

RESPONDENT

Date of Decision : 21-09-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2017) 1 PLJR 423

Hon'ble Judges : Mr. Vikash Jain, J.

Bench : Single Bench

Advocate : Mr. S.D. Sanjay, Sr. Advocate and Mr. Gautam Kejriwal, Advocate, for the Petitioner; Mr. Chittranjan Sinha, Sr. Advocate, Mr. Jayanta Ray Chaudhary and Mr. Binay Kumar, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Vikash Jain, J. (Oral) - Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ petition has been filed for quashing the arbitration award dated 24.05.2012 passed by the respondent No. 1 in purported exercise of power under the provisions of the Arbitration and Conciliation Act, 1996 ("the Act") and communicated to the petitioner at Bettiah; for quashing the entire arbitration proceedings in connection with Arbitration Case in A.C. No. 33 of 2010 initiated in purported exercise of power under said Act; and to restrain the respondents from proceeding further at Bettiah in pursuance of the said arbitration award.

3. Learned senior counsel, Mr. S.D. Sanjay, appearing on behalf of the petitioner, in reply to the preliminary objection on behalf of the respondents with regard to the maintainability of the writ petition against an arbitral award, submits that the instant writ petition can be maintained inasmuch as the petitioner has challenged the assumption of the jurisdiction of the Arbitrator itself in absence of any subsisting agreement containing the arbitration clause, and not the merits of the

decision of the award itself. It is submitted that no doubt, statutory remedy under Section 34 of the Act is available for setting aside an award but, however, the existence of the alternative remedy is not always a bar against approaching this Court in its writ jurisdiction particularly where the validity of the arbitral award is under challenge on the ground of inherent lack of jurisdiction of the Arbitrator to pass such an order.

4. The submission on behalf of the petitioner that the merits of the award are not under challenge and that it is the inherent lack of jurisdiction on the part of the Arbitrator which is the subject matter of challenge, is of little consequence. It is a matter of record that the petitioner had earlier exercised its statutory right by filing objection before the Arbitrator in terms of its letter despatched through speed post on 05.01.2011, seeking a decision on the question of jurisdiction under Section 16 of the Act. It would appear that the Arbitrator has held that he had requisite jurisdiction to arbitrate the dispute between the parties and had accordingly proceeded to pass the impugned arbitral award. Apart from the merits of the award, the decision of the Arbitrator rejecting the objection raised with regard to his jurisdiction and continuance with the arbitral proceeding and making of the arbitral award is itself amenable to the statutory remedy in view of Section 16(6) of the Act.

5. Without however, going into the detailed merits of the matter, this Court takes note that indisputably the petitioner has adequate remedy under Section 34 of the Act for having the impugned arbitral award set aside by the appropriate Court. It must be borne in mind that status of an Arbitrator is created merely through a contract between the parties and constitutes a forum resulting from an agreement between the parties. In principle, the Supreme Court in its decision rendered in *S.B.P. and Company v. Patel Engineering Limited* and another, (2009)10 SCC 293 has disapproved of intervention by the High Court under Article 226 or 227 of the Constitution of India against any order passed by the arbitral tribunal. It has specifically been held that under section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act.

6. In view of the specific statutory mandate of Section 16(6) providing for remedy to the petitioner under Section 34 of the Act against an arbitral award passed upon assumption of jurisdiction by an Arbitrator, and also having regard to the status of an arbitral tribunal being a creature of a contract between the parties, therefore, this Court is not inclined to interfere in the matter in its extraordinary writ jurisdiction.

7. The writ petition accordingly stands dismissed.