

Shahnaz Hussain vs Suresh Dhanuka on 1 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 01st April, 2025

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CM(M) 600/2025, CM APPL. 18820/2025 & CM APPL. 18821/2025

SHAHNAZ HUSSAIN

Through: Mr. Vishal Tewari with M
Sinha, Advocate.

versus

SURESH DHANUKA

Through: Mr. Ganesh Khemka with M
Shreenath A Khemka, Advoca

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner is non-claimant before learned Sole Arbitrator and is aggrieved by order dated 04.03.2025 passed by learned Sole Arbitrator whereby his application seeking framing of an additional issue has been dismissed.

2. This Court has gone through the abovesaid order dated 04.03.2025 whereby learned Sole Arbitrator has declined to frame proposed additional issue holding that it did not emanate from the pleadings and also since the parties had, earlier, consented to the issues, which were accordingly framed. Thus, request has not been acceded to for the abovesaid reasons.

3. This Court has also gone through earlier order dated 10.01.2025. At that relevant time, the parties had been given opportunity to comment upon the issues framed by the learned Sole Arbitrator and, after confirming the same, the parties were directed to file their respective list of witnesses, which they even filed.

4. Naturally, merely because of the fact that, earlier, the issues were framed on the basis of the consent of the parties, it would not ipso facto mean and indicate that no additional issue can be permitted to be framed.

5. According to non-claimant, there is a requirement of framing a preliminary issue to the following effect: -

"Whether the expired goods have any market/commercial value, after the date of expiry" (onus on the claimant).

6. Undoubtedly, any Court or, for that matter, any Arbitral Tribunal has power to frame additional issue at any stage of the proceedings.

7. The claimant (respondent herein) has sought compensation of Rs. 88.50 lacs on account of expired goods and, as per the Statement of Defense (SOD), according to non-claimant, such demand

is wholly baseless and unsustainable in terms of policy, which was communicated through e-mail on 17.10.2017.

8. Learned Sole Arbitrator has framed ten issues and it is for the claimant to show that he is entitled to the claims, as prayed in the claim petition including the above claim related to compensation on account of expired goods. Looking to the same, there does not seem to be any real requirement of framing a separate issue as the proposed issue, for all practical purposes, looks to be in-built and implicit. The proposed additional issue, as canvassed by non-claimant, thus, seems to be a superfluous and unwarranted one.

9. Learned counsel for petitioner has placed reliance upon Union of India v. Delhi State Consumer Coop. Federation Limited: 2022 SCC OnLine Del 1377. In that case, however, the question was different as the proceedings had been terminated by the learned Arbitrator and, in that context, petitions were entertained and were also, eventually, allowed.

However, question in the present petition concerns whether additional issue should have been framed or not.

10. Learned counsel for respondent appears on advance notice and submits that there is no requirement of any interference in the present matter. It is argued by claimant that a bare perusal of the pleadings would indicate that the non-claimant does not seem to dispute that she had received such goods. So much so, she has not even raised any issue to the effect that these expired goods had no value.

11. Be that as it may, the prime and foremost aspect would be the fact that scope of interference, while dealing with any such petition under Article 227 of Constitution of India, is very constricted one.

12. This Court in Kelvin Air Conditioning & Ventilation System (P) Ltd. v. Triumph Reality (P) Ltd., 2024 SCC OnLine Del 7137 was considering the case of a petitioner who was defending a claim, and was aggrieved by the order of learned Arbitrator whereby the delay in filing the Statement of Defense was not condoned. The following observations were made with respect to the scope of interference under Article 227 of Constitution of India:-

"9. This Court is conscious of the fact that the petitioner has invoked jurisdiction of this Court by filing a petition under Article 227 of Constitution of India. Judicial inference in such type of matters has to be minimal and recourse to Article 227 of the Constitution of India has to be under exceptional circumstances when it is shown that such order is absolutely perverse.

10. Reference be made to IDFC First Bank Limited Vs. Hitachi MGRM Net Limited: 2023 SCC OnLine Del 4052 whereby Co- ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed

under Section 16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -

"24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be "extremely circumspect".

25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708] , this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC 706; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2020) 17 SCC 93 :

(2021) 4 SCC (Civ) 341; Virtual Perception OPC (P) Ltd.

v. Panasonic India (P) Ltd., 2022 SCC OnLine Del 566 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal, 2021 SCC OnLine Del 4023] has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

"24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.

(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) For interference under Articles 226/227, there have to be exceptional circumstances .

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in "exceptional rarity" or if there is, "bad faith" which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained."

13. In view of the above, this Court does not find any reason to invoke its supervisory power in the present matter as there is no exceptional rarity, bad faith or perversity in the impugned order and thus, there is no reason to interfere with the arbitral process.

14. As an upshot of above, present petition, along with all the pending applications, is, hereby, dismissed.

(MANOJ JAIN) JUDGE APRIL 1, 2025/sw/SS