

GAHC010122072017



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : CRP/51/2017

BINOD KUMAR BAWRI and 8 ORS.
RESIDING AT 12C, SUNNY PARK, BALLYGUNGE, KOLKATA- 700019.

VERSUS

DALMIA CEMENT (NORTHEAST) LTD and 30 ORS.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT 3RD and
4TH FLOOR, ANIL PLAZA-II, ABC, G.S. ROAD, GUWAHATI, ASSAM- 781005.

Advocate for the Petitioner : MR.P KHATANIAR

Advocate for the Respondent : MR.S SAIKIAFOR CAVEATOR

Linked Case : CRP/52/2017

SUBHANKAR GHOSH and 5 ORS.
S/O. SUBIMAL GHOSH
RESIDING AT 14
MT ROAD
DHAKURIA
KOLKATA- 700031.

2: RAMESH TRIMBAKRAO SHILEDAR

S/O. TRIMBAKRAO SHILEDAR

RESIDING AT PLOT NO. 87
SHANKAR NAGAR
NAGPUR
MAHARASHTRA- 440010.

3: SHAILESH PANTHI

S/O. RAM PRASAD PANTHI
RESIDING AT R/O. C-26/2
SHIVLOK COLONY LADPUR
DEHRADUN- 248001.

4: JANAKI PANTHI

W/O. RAM PRASAD PANTHI
RESIDING AT R/O. C-26/2
SHIVLOK COLONY LADPUR
DEHRADUN- 248001.

5: LAXMI PANTHI

S/O. RAM PRASAD PANTHI
RESIDING AT R/O. C-26/2
SHIVLOK COLONY LADPUR
DEHRADUN- 248001.

6: SARVESH KUMAR PANTHI

S/O. RAM PRASAD PANTHI
RESIDING AT R/O. C-26/2
SHIVLOK COLONY LADPUR
DEHRADUN- 248001.

VERSUS

DALMIA CEMENT (NORTHEAST) LTD and 33 ORS.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT 3RD and 4TH FLOOR
ANIL PLAZA-II
ABC
G.S. ROAD
GUWAHATI
ASSAM- 781005.

2:DALMIA CEMENT BHARAT LIMITED

A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT

1956 AND HAVING ITS REGISTERED OFFICE AT DALMIAPURAM
DIST TIRUCHIRAPPALI
TAMIL NADU- 621651 AND ALSO HAVING ITS CORPORATE OFFICE AT 11TH
FLOOR

HANSALAYA BUILDING
15 BARAKHAMBAA ROAD
NEW DELHI- 110001.

3:CHANDRASEKHAR KINI
WORKING FOR GAIN AT 3RD AND 4TH FLOOR
ANIL PLAZA-II

ABC
G.S. ROAD
GUWAHATI
ASSAM- 781005.

4:THYAGARAJAN VENKATESAN
WORKING FOR GAIN AT 3RD and 4TH FLOOR
ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI
ASSAM- 781005.

5:HARISH CHANDRA SEHGAL

WORKING FOR GAIN AT 3RD and 4TH FLOOR
ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI
ASSAM- 781005.

6:DHARMENDRA TUTEJA
WORKING FOR GAIN AT 3RD and 4TH FLOOR
ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI
ASSAM- 781005.

7:NIDHI BISARIA
WORKING FOR GAIN AT 3RD and 4TH FLOOR
ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI
ASSAM- 781005.

8:NARENDRA MANTRI

WORKING FOR GAIN AT 3RD and 4TH FLOOR
ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI
ASSAM- 781005.

9:AJIT ARAVINDAKSHA MENON
WORKING FOR GAIN AT 3RD and 4TH FLOOR

ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI
ASSAM- 781005.
10:VINAY CEMENT LIMITED

A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT JAMUNA NAGAR
UMRANGSHU
DIST. NORTH CACHAR HILLS
ASSAM- 788931 AND ALSO HAVING ITS CORPORATE OFFICE AT 3RD and
4TH FLOOR
ANIL PLAZA-II
ABC G.S. ROAD
GUWAHATI- 781005.

Advocate for : MS.N MODI
Advocate for : MR.P SAIKIAFOR CAVEATOR.R appearing for DALMIA CEMENT
(NORTHEAST) LTD and 33 ORS.

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. K.N. Choudhury,
Senior Advocate.

For the Respondents : Dr. A. Saraf,
Senior Advocate.

Date of Hearing : 29.05.2024.

Date of Judgment : 25.06.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. K.N. Choudhury, the learned senior counsel representing the petitioners as well as Dr. A. Saraf, the learned senior counsel appearing for the respondents.

2. Both the petitions are filed under Article 227 of the Constitution of India challenging the order dated 05.01.2017 passed by the National Company Law Tribunal Guwahati Bench in T.A. No.14/2016 (C.A. No.907 of 2016) in T.P. No.20/397/398/GB/2016 (C.P. No.143 of 2015).

3. During the pendency of these two petitions, the matters went to the Hon'ble Supreme Court and the Hon'ble Supreme Court directed this Court to consider the maintainability of the petitions under Article 227 of the Constitution of India.

4. The reason for which these two petitions were filed under Article 227 of the Constitution of India is that- the National Company Law Tribunal Guwahati Bench had allowed a Petition under Section 8 of the Arbitration and Conciliation Act, 1996 (for short referred to as, "the Act of 1996") and both sides were asked to go for arbitration.

5. The learned senior counsel Mr. Choudhury has submitted that what is the remedy available to a litigant when an application under Section 8 of the Act of 1996 is allowed by the Tribunal. According to Mr. Choudhury, Section 37(1)(a) of the Act of 1996 provides a remedy in case of refusal to refer the parties to arbitration. Mr. Choudhury has submitted that when a Petition under Section 8 of the Act of 1996 is allowed and if a party to a litigation is aggrieved by the order, where he will go? Mr. Choudhury has submitted that for this reason only the petition under Article 227 of India is maintainable.

6. Mr. Choudhury further submitted that the non obstante clause in Section 8 of the Act of 1996 cannot fetter the power of constitutional court to exercise its jurisdiction in appropriate case. Mr. Choudhury has relied upon the judgment of the Hon'ble Supreme Court that was delivered in Sushma Shivkumar Daga and Anr. v. Modhurkumar Ramkrishnaji Bajaj and Ors., (2023) INSC 1081), which relied upon Vidya Drolia v. Durga Trading Corporation, reported in (2021) 2 SCC 1 where it has been held that when cause of action and subject matter of dispute relates to actions in rem, the dispute stands excluded from the purview of private fora. Mr. Choudhury has pointed out that the respondent company is a public limited company and the rights of large sections of share holders are involved and therefore, it cannot be construed to be a dispute relatable to actions in personam.

7. *Per contra*, Mr. Saraf, the learned senior counsel, has submitted that according to Section 421 of the Companies Act, 2013, an appeal lies if a party is aggrieved by any order passed by the Company Law Tribunal.

8. In order to buttress his point, Mr. Saraf has relied upon a decision of the Hon'ble Supreme Court that was rendered in Sadhana Lodh v. National Insurance Company Ltd. and Anr., reported in (2003) 3 SCC 524. In this case, under the Motor Vehicles Act, the Apex Court has held where a statutory right to file an appeal has been provided for, it is not open for High Court to entertain a petition under Article 227 of the Constitution of India.

9. Similarly, in Mohamed Ali v. V. Jaya and Ors., reported in (2022) 10 SCC 477, the Hon'ble Supreme Court, in the matter of a case under Code of Civil Procedure, has held that when the trial court passes an *ex parte* judgment and decree, the High Court ought not exercise its revisional power under Article 226 of the Constitution of India.

10. I have considered the submissions made by the learned counsel of both sides.

11. Any party aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal under Section 421 of the Companies Act of 2013.

12. In Sadhana Lodh (*supra*), the Supreme Court has held as under:

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of the Act (see *National Insurance Co. Ltd. v. Niccolletta Rohtagi* [(2002) 7 SCC 456 : 2002 SCC (Cri) 1788]). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8. For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Articles 226/227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law.”

13. In Mohamed Ali (*supra*), the Supreme Court has held as under:

“19. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the *ex parte* judgment and decree passed by the learned trial court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the *ex parte* judgment and decree passed by the learned trial court

and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India."

14. The main grounds on which the High Court interferes under Article 227 of the Constitution of India are –

1. When the inferior Courts act arbitrarily.
2. When the inferior Courts act in excess of the jurisdiction vested in them.
3. When the inferior Courts fail to exercise jurisdiction vested in them.

15. It is pertinent to note that under Article 227, the High Court does not interfere for correcting mere error of facts or, with a finding of the subordinate court which is within the jurisdiction of such court. However, if, such finding is perverse in such a sense that no prudent person having the knowledge of law could have arrived at such finding, or the finding is not based on any material evidence or, such finding results in manifest injustice or if there is a misdirection in law then the High Court can interfere under Article 227 of the Constitution of India.

16. Under the aforesaid premised reasons, this Court is of the opinion that when there is a provision for appeal in the statute itself, a litigant should file an appeal instead of approaching this Court under Article 227 of the Constitution of India.

17. This Court finds that the revision petitions filed under Article 227 of the Constitution of India are not maintainable in law. Therefore, both the applications are dismissed and disposed of accordingly.

JUDGE

Comparing Assistant