

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT:THE HON'BLE JUSTICE SUGATO MAJUMDAR

CO/20/2026
(I.A. No. CAN/1/2026)

THE UNION OF INDIA ... ***PETITIONER***

VS.

M/S NAVAYUGA ENGINEERING
COMPANY LIMITED ... ***RESPONDENT***

For the Petitioner : Ms. S.S.Meena Kumary
Mr. V.D. Sivabalan

For the respondents : Mr. Jishnu Saha, Sr.Adv.
Mr. Abhinay Tyagi
Mr. Manas Arora
Mr. Tazeen Ahmed
Mr. Lokesh Chezian

Heard on : July 10, 2026

Judgment on : July 13, 2026

SUGATO MAJUMDAR, J.

1. This is an application under Article 227 of the Constitution of India directed against the Procedural Order No. 19 dated 17.02.2026 passed by the Arbitral Tribunal in a pending proceeding between the parties herein.

2. The short periphery of the case is that the Petitioner is the Chief Engineer and Administrator of Andaman Lakshadweep Harbor Works (ALHW), a supported Department under Ministry of Ports, Shipping and Waterways, Government of India entrusted with the responsibilities of developing and maintaining marine infrastructure across the Andaman and Nicobar as well as the Lakshadweep Islands. The Opposite Party is a company registered under Company Acts, 1956 having its office at Visakhapatnam who was awarded the contract for the work “Extension of Haddo Jetty Phase-II at Port Blair” in terms of Agreement No. ALHW/EE(Project)/AFT-04/2017-18 dated 27.06.2017 with estimated cost of Rs. 89,82,85,704.00.

3. The disputes arose between parties herein in respect of the work, so entrusted and, the matter was referred to arbitration.

4. Before initiation of evidence, a preliminary objection was raised by the present Petitioner on 12.01.2026 that the claim is barred by limitation and the arbitration proceeding is liable to be dismissed. On the next date namely on 13.02.2026, the learned Counsel for the Petitioner prayed for deciding the application on the point of maintainability of the claim as well as the point of limitation.

5. In terms of the order dated 17.02.2026, the learned Arbitral Tribunal imposed cost of Rs.1,00,000/- on the present Petitioner. Against the said order, the instant application has been preferred.

6. Affidavit-in-opposition was filed on behalf of the Opposite Party herein. It was contended that the arbitration proceeding is in full swing and presently it is in the stage of cross-examination of the Opposite Party witness. It was further contended that the arbitration clause did not stipulate any seat or venue of arbitration. The present arbitration proceedings are admittedly governed by Construction Industry Arbitration Council Rules, 2013 (CIAC Rules, 2013). In terms of Rule 29, in absence of any agreement between the parties specifying the seat or venue, the arbitration proceedings are to be conducted at New Delhi fixing thereby the seat of arbitral venue as New Delhi. The conducts of the parties unequivocally demonstrate that they are *ad idem* that New Delhi should be the seat of arbitration. Therefore, the Court of New Delhi shall have the sole territorial jurisdiction.

7. The second point is more foundational in nature. It was contended that the present application is not maintainable under Article 227 of the Constitution of India. It was submitted that the scope of interference under Article 227 is extremely limited and is to be exercised with utmost caution. The extraordinary jurisdiction under Article 227 cannot be invoked to interfere with the procedural orders passed by the learned Arbitral Tribunal.

The affidavit-in-opposition continued to make submission on merit of the claim and made para-wise reply. However, this Court is not an Arbitral Tribunal or substituted of that to consider the factual matrix at this stage.

8. Jurisdictional issue as to whether the instant application is maintainable at all or nor should be considered first before dealing with the territorial jurisdictional issue.

9. Learned Counsel for the Petitioner submitted that the impugned order caused injustice to the Petitioner. The extraordinary power of the High Court can be invoked for the instant grievance redressal and to set at naught the impugned order which injured and prejudiced the present Petitioner. According to the learned Counsel for the Petitioner, section 37 of the Arbitration and Conciliation Act, 1996 provides for approach to Court against the interlocutory orders. Hence, this Court can always be approached invoking the supervisory power under Article 227 of the Constitution of India.

10. *Per contra*, the learned Counsel for the Opposite Party submitted on the issue of maintainability of this application. It was submitted that settled legal principle is that the Article 227 cannot be invoked in an arbitration proceeding indiscriminately. On this issue, the learned Counsel mentioned a judgment passed by a seven Judges' Bench of the Supreme Court of India in **SBP & Co. v. Patel Engg. Ltd. [(2005) 8 SCC 618]** and submitted that

the Supreme Court of India disapproved the approach of the various High Courts entertaining challenges to the procedural orders passed by arbitral tribunals under the supervisory jurisdiction in terms of Article 227. There is no scope in the scheme of the Act to take recourse to such action. In view of seven-Judges' decision, as submitted by the learned Counsel for the Opposite Party, the instant application should be dismissed.

11. Rival submissions are considered.

12. The Arbitration and Conciliation Act, 1996, as amended from time to time, envisaged a specific scheme of settlement of disputes by arbitration. Various provisions are there for approach to courts. Section 9 provides for approach to the Court for interim measure. Section 11 provides that the party can approach the High Court or the Supreme Court for appointment of Arbitrator. Section 27 provides for assistance of Court in taking evidence. Section 34 provides for appeal against an award and section 37 provides for approach to a court against interim order of the arbitral tribunal. At the same time section 5 provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in Part I. Then section 37 of the Arbitration and Conciliation Act, 1996 provides:

“37. Appealable orders. - (1) [Notwithstanding anything contained in any other law for the time being in force, an appeal shall

lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

- (a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal –

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3). No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

13. Section 37 provides for appeal against an order passed by the Tribunal. Those orders, enumerated in the section itself, are meant to invite judicial intervention. Specific forums have been provided in the scheme. By no stretch of fantasy, the provision can be understood to open up any scope of invocation of the writ jurisdiction. Section 37 set up avenue to approach appropriate Civil Court only and an aggrieved litigant should follow that avenue. The submission made by the learned Counsel for the Petitioners on section 37 of the Arbitration and Conciliation Act is not acceptable.

14. In **SBP & Co. v. Patel Engg. Ltd., [(2005) 8 SCC 618]**, seven Judges' Bench of the Supreme Court of India observed:

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its 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. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under

Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.”

In Deep Industries Ltd. v. ONGC, [(2020) 15 SCC 706] three Judges’ Bench of the Supreme Court of India again observed:

“**16.** Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High

Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

Reference may also be made to another three Judges’ Bench decision of the Supreme Court of India in **Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.**[(2022) 1 SCC 75] :

“18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In *Nivedita Sharma v. COAI* [*Nivedita Sharma v. COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — *L. Chandra Kumar v. Union of India* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition

against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear “bad faith” shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.”

15. The proposition of law is clear. Pronounced presence of non-obstantate clause in section 5 of the Arbitration & Conciliation Act, 1996 has no effect of obliterating the applicability of Article 226 or 227 of the Constitution of India. But extraordinary writ jurisdiction should be invoked in a very rare and exceptional cases. More recently in **Tarini Prasad Mohanty vs**

Sunflag Iron and Steel Company Limited. [2026 SCC OnLine SC

973], the Supreme Court of India observed:

“22. Besides the well settled parameters to be borne in mind while exercising jurisdiction under Articles 226 and 227 of the Constitution, it is also necessary to be mindful of the statutory scheme of the concerned enactment from which the impugned order arises. If the enactment besides providing for a statutory remedy [herein, Section 34] also expects minimal judicial interference prior to the culmination of the arbitral proceedings [herein, Section 5], the said factor would be of relevance while considering the exercise of jurisdiction. In other words, the threshold to be satisfied before exercising discretion under Articles 226 and 227 of the Constitution in the light of such legislative intent would be higher. As held in *Re: Interplay* (supra), the non-obstante clause in Section 5 of the A and C Act must take precedence over any other law for the time being in force. It would have to be demonstrated that notwithstanding the availability of an alternate remedy at the conclusion of the proceedings, such challenge cannot await the final adjudication of the proceedings and despite the statutory expectation of minimal interference, intervention in exercise of writ jurisdiction at an interim stage is imperative.”

16. Coming to the case in hand, the impugned order noted that the respondent, being the present Petitioner herein, reiterated the earlier arguments on deciding the application on merit. In the impugned order, the Tribunal noted that the learned Counsel refused to listen the direction of the learned Arbitral Tribunal and kept on insisting the decision before commencing cross-examination. It was further noted that the cross-examination on behalf of present Petitioner could not commence. Considering wastage of time, the tribunal imposed the cost explaining the reasons for doing so. The impugned order shows that the Arbitral Tribunal imposed cost as the present Petitioner refused to proceed with the cross-examination and had been harping on the point for consideration of limitation. Now in this case, even if the Arbitral Tribunal proceeds with a time barred claim, the Petitioner's remedy would be to challenge the award by taking recourse to section 34 of the Act. It is not a case where there would be aberration of justice to wait till passing of the award. Plea of limitation is a common plea. More so, imposition of cost is a punitive action in order to secure and ensure speedy disposal of the arbitration proceeding. The situation is not such extraordinary one which can be considered as extraordinary or exceptional circumstances where constitutional supervisory jurisdiction can be exercised.

17. For the reasons stated above, this Court is of the opinion that the situation and the facts and circumstances of the case do not warrant and invite invocation of extra- ordinary writ jurisdiction.

18. The instant application is not maintainable and is dismissed hereby.

19. However, the petitioner is not without remedy. In **Srei Infrastructure Finance Limited v. Tuff Drilling Private Limited [(2018) 11 SCC 470]** the Supreme Court of India expressed the view and ruled that Arbitral Tribunal has jurisdiction to consider an application for recall of order terminating the proceeding under section 25(a). In this case, the proceeding is pending. The Arbitral Tribunal is in seisin of the proceeding. Therefore, the petitioner is given liberty to approach the Tribunal for recalling the order within 15 days from today. Reasonableness of cost may be considered then by the Tribunal.

20. The instant application under Article 227 of the Constitution of India is disposed of along with pending application.

21. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(SUGATO MAJUMDAR, J.)