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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 08<sup>th</sup> May, 2025*

+ CM(M) 871/2025 & CM APPL. 28021/2025

M/S KHANIJ IMPEX AND ANR .....Petitioners

Through: Mr. Saket Gogia with Ms. Sheetal Maggon, Ms. Gauri Pande and Mr. Man Singh, Advocates.

versus

M/S TRANSNATIONAL SHIPPING INDIA PVT LTD  
.....Respondent

Through: Mr. Shantanu, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Respondent herein is claimant before the learned Arbitral Tribunal.
2. Such claim is directed against three respondents and petitioners herein are respondent No.1 and respondent No.3 before the learned Arbitral Tribunal.
3. They seek to challenge order dated 07.11.2022 whereby their request to grant time to file *Statement of Defence* (SoD) and counter-claim has been declined.
4. Mr. Saket Gogia, learned counsel for the petitioners submits that after the abovesaid order dated 07.11.2022, they had moved an application seeking recall of the abovesaid order and their such application dated 20.12.2022 was also dismissed by the learned Arbitral Tribunal on 08.07.2023. He submits that non-claimants i.e. petitioners herein were represented by two counsel at the relevant time and it was only because of



the personal exigency of the counsel concerned that the requisite steps could not be taken. It is submitted that since the counsel for the petitioners herein were unable to appear before the learned Arbitral Tribunal and could not submit SoD within the time-frame given by the learned Tribunal, it is a fit case where the learned Tribunal should have, after appreciating all such facts, given them a chance to file SoD.

5. Learned counsel for respondent appears on advance notice and submits that the intent and objective of the petitioners herein is, merely, to delay the proceedings, on one pretext or the other and there is no merit in the present petition.

6. This Court has gone through the impugned order dated 07.11.2022 which, clearly, indicates that number of opportunities had been granted to the petitioners herein to submit their *statement of defence*, but they themselves are responsible for their miseries.

7. Undoubtedly, if the contentions made in application dated 20.12.2022 are to be believed, one of the counsel was undergoing mental trauma on account of the fact that her brother had met with a very serious car accident and, thereafter, when her brother got recovered, she herself got married and went to her native village and, since, she was engaged in her matrimonial obligations, there was no progress in the Arbitral proceedings from their side.

8. However, petitioners cannot always pass on the buck to their counsel. They themselves should have been watchful and active. Moreover, there were two counsel, who were representing them before the learned Tribunal and, if for whatever reasons, one such counsel was not in a position to do the needful, the other counsel should have been instructed by the petitioners to



take requisite steps, instead of suffering an *ex parte* order.

9. Such practice of passing on the buck to the previous counsel needs to be discouraged and rejected. Reliance in this regard is placed upon *Rahul Mavai vs. Union of India and Others: 2024 SCC OnLine Del 9050* wherein this Court while disapproving the practice of shifting the burden of negligence on the shoulder of the counsel observed that a litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

10. Moreover, this Court is also conscious of the limited scope of appreciation and judicial interference in such type of matters, while entertaining any petition under Article 227 of the Constitution of India.

11. 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.”*

12. 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.

13. As an upshot of the above, present petition is dismissed. Pending applications, if any, also stand disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**MAY 8, 2025**  
**st/js**