

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR**

<b>Arbitration Appeal No.</b>	<b>56 Of 2020</b>
<b>Parties Name:</b>	M/s. Upadhyay Constructions Pvt. Ltd. and others. Vs. M/s. Prism Infra Projects and others.
<b>Bench Constituted</b>	Hon'ble Shri Justice Vishal Dhagat
<b>Whether approved for reporting</b>	Yes
<b>Name of Advocates for parties</b>	<b>For Appellants:-</b> Akshay Sapre and Shri Dhruv Verma, learned counsel.  <b>For Respondent Nos.1 and 2:</b> Shri Amit Seth, learned counsel.  <b>For Respondent No.3:</b> Shri Rahul Rawat, learned counsel.
<b>Law laid down</b>	Madhya Pradesh High Court is not Principal Civil Court of original jurisdiction under Arbitration and Conciliation Act, 1996, therefore, appeal under Section 37(2) of Arbitration and Conciliation Act, 1996 will lie before Principal Court of original civil jurisdiction i.e. before District Judge or Additional District Judge.
<b>Significant paragraph numbers</b>	9 and 10

**(JUDGMENT)**

**09/09/2021**

Appellants have filed arbitration appeal against order dated 20.06.2020 passed by sole Arbitrator in Arbitration Case No. 119/2018.

2. The appellants, who were respondents No.2 and 3 before sole Arbitrator, moved an application under Section 17 of Arbitration and

Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for brevity). Appellants in their application made a prayer that they executed work for which they have not received any payment, therefore, B.S.N.L.-respondent No.3 may be directed to pay remaining amount to appellants after retaining claim amount of Rs. 1,25,94,574/-. Sole Arbitrator held that further payment by BSNL to appellants will complicate the matter and payment to be made by BSNL to appellants is crux of the issue. It was ordered that payment shall be made to appellants according to the outcome of the proceedings.

3. Appellants filed an appeal under Section 37 of the Act of 1996 before this Court challenging the aforesaid order. Notices were issued in this appeal and respondents on receiving notice, appeared and filed I.A. No. 2836/2021 for dismissal of arbitration appeal.

4. Counsel appearing for the respondents submitted that an order granting or refusing to grant interim relief under Section 17 is appealable to a 'Court'. 'Court' has been defined in Section 2 (1) (e) of the Act of 1996. As per definition of 'Court' under Section 2 (1) (e), 'Court' means Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. It is further submitted that Court does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes. It is further submitted that MP High Court does not exercise original jurisdiction in civil cases. From perusal of Section 37

of the Act of 1996, it is clear that appeal before High Court will lie only against an order passed under Sections 8, 9 and 34 of the Act of 1996. No appeal will lie to a High Court from an order which has been passed by a sole Arbitrator. There is no remedy to directly file an appeal before High Court. Remedy available to the appellants is to challenge the order before Principal Civil Court of original jurisdiction. Counsel appearing for the respondents relied on judgment passed by this Court in *Arbitration Case No. 03/2007, Lalit Oswal vs A.K. Trivedi and another*. In said judgment, this Court held that Madhya Pradesh High Court does not exercise any original civil jurisdiction. It would not be a 'Court' for the purposes of Section 2(1)(e) of the Act of 1996. Counsel for respondents also relied on judgments reported in *1988 MPLJ 435 (DB), Union Carbide Corp. vs Union of India and others, AIR 1999 MP 57, Nepa Ltd. vs Manoj Kumar, 2003(1) MPHT 558, The Industrial Gases Ltd. vs Kusum Ignots and Alloys Ltd.* and *2007 (3) ARBLR 22 MP, Asian Electronics Ltd. vs M.P. State*. Relying on strength of aforesaid judgments, respondents argued that in said decision, it was held that High Court of Madhya Pradesh is not a Court of original civil jurisdiction. M.P. High Court has not been vested with any power of any original civil jurisdiction under the High Court of Madhya Pradesh Rules, 2008. It is submitted that in view of same, appeal preferred by appellants be dismissed as not maintainable before this Court.

5. Counsel appearing for the appellants submitted that 'Court' has been defined under Section 2 (1) (e) of the Act of 1996 as Principal Civil Court of original jurisdiction in district and includes High Court in exercise of original civil jurisdiction. He laid emphasis on word 'includes' in said definition and submitted that wherever word 'include' is used in definition, Legislature does not intend to restrict the definition of that word. Definition of 'Court' is not exhaustive as the word 'includes High Court' is used in Section 2 (1) (e) of Act of 1996, therefore, High Court will be a Court within definition of Section 2 (1) (e) of the Act of 1996. It is submitted that word 'includes' widens the scope of definition and it is inclusive in nature. A restrictive approach cannot be taken of definition of word 'Court'. Counsel appearing for the appellants also relied on the High Court of Madhya Pradesh Rules, 2008. It is submitted by him that arbitration appeal has been classified in Chapter II of Rules of 2008. As per Rule 2, appeal under Section 39 of Arbitration Act, 1940 and appeal under Section 37, 50 or 59 of the Act of 1996 is to be registered as an arbitration appeal. High Court Rules and Orders does not draw a distinction between Section 37(1) and Section 37(2) of Arbitration and Conciliation Act, 1996 and orders passed whether under Sections 8, 9 and 34 of Act of 1996 as mentioned in Section 37 (1) or under Section 16 (2) (3), 17 mentioned in Section 37(2) is to be registered as Arbitration Appeal under High Court of Madhya Pradesh Rules, 2008. Since no distinction is drawn between Section 37(1) and 37(2) of Act of 1996 in Rule 2 Chapter II in the

Madhya Pradesh High Court Rules, 2008, therefore, an appeal filed against an order of Arbitration Tribunal under Sections 16 (2), 16 (3) and 17 is also to be registered as arbitration appeal under High Court of Madhya Pradesh Rules, 2008 and arbitration appeal before High Court is maintainable. He further submitted that Madhya Pradesh High Court exercises original civil jurisdiction in many cases and therefore, it cannot be said that Madhya Pradesh High Court is not a Principal Civil Court of original jurisdiction. In view of aforesaid, he made a prayer for dismissal of I.A. No.2836/2021.

6. Heard the counsel for the appellants as well as respondents on I.A. No. 2836/2021 regarding maintainability of arbitration appeal against an order passed by Arbitration Tribunal under Section 17 of the Act of 1996.

7. Relevant provisions of Arbitration and Conciliation Act, 1996 which are under consideration for deciding the issue raised in interlocutory application are quoted as under:-

**“Section 2 (1) (e) “Court” means-**

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

**Section 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 granting of the arbitral tribunal.—
- (a) accepting the plea referred 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.”

8. Relevant provisions of High Court of Madhya Pradesh Rules, 2008 are given in Chapter-II, Rule 1 (2), Rule 2, Rule 14 and Rule 22- are quoted as under:-

“1. Cases shall ordinarily be classified and abbreviated as follows-

**(2) Civil**

- (a) Civil Revision .....CR
- (b) Contempt Appeal .....CONA
- (c) Contempt Petition Civil ..... CONC
- (d) First Appeal ..... .FA
- (e) Miscellaneous Appeal ..... MA
- (f) Miscellaneous Civil Case .....MCC
- (g) Review Petition .....RP
- (h) Second Appeal .....SA

**2. Arbitration Appeal-** Ordinarily, following appeals shall be registered as an Arbitration Appeal-

- (1) An appeal under section 39 of the Arbitration Act, 1940;
- (2) An appeal under section 37, 50 or 50 of the Arbitration and Conciliation Act, 1996.

**14. Company Petition-** Ordinarily following petitions or references shall be registered as a Company Petition-

- (1) a reference under section 20 of the Sick Industrial Companies (Special Provision) Act, 1985; or
- (2) petitions under section 101, 391, 394, 439, 583 or 584 of the Companies Act, 1956.

**22. Election Petition-** A petition under section 81 of the Representation of [the People] Act, 1951, shall be registered as an Election Petition.”

**9.** Section 37 of Arbitration and Conciliation Act, 1996 will determine the forum before which an appeal will lie against the appealable orders. For determination of forum catchwords in Section 37 of Arbitration and Conciliation Act, 1996 is “appeal shall lie from

following orders to Court authorized by law to hear appeals from original decrees of the Court passing the order”. Order under Sections 8, 9 and 34 of Arbitration and Conciliation Act, 1996 are passed by Court. Word “Court” as per Section 2 (1) (e) of Act of 1996 means Principal Civil Court of original jurisdiction. Principal Civil Court of original jurisdiction is the Court of Additional District Judge or District Judge in Madhya Pradesh. Court subordinate to Court of District Judge and Additional Sessions Judge is not empowered to entertain any application under Arbitration and Conciliation Act, 1996. Since Principal Civil Court of original jurisdiction is Court of District Judge and Additional District Judge and as per law appeals from decree of such Court will lie to High Court, therefore, orders passed under Sections 8, 9 and 34 passed by District Judge or Additional District Judge are appealable before High Court.

**10.** Now, the question before the Court is whether an appeal against an order passed by Arbitration Tribunal under Section 16 (2) (3) and Section 17 of Arbitration and Conciliation Act, 1996 will also lie to a High Court. For the purposes of Section 37(2) of Arbitration and Conciliation Act, 1996, an appeal against order under Section 16(2) (3) and Section 17 will lie to a Court from an order of Arbitration Tribunal. Catchword in Section 37 (2) is word “Court”. Court has been defined in Section 2 (1) (e) as Principal Court of original civil jurisdiction. Whether High Court of M.P. is also Principal Civil Court of original



jurisdiction as per Section 2 (1) (e) of Arbitration and Conciliation Act, 1996. High Court has framed The High Court of Madhya Pradesh Rules, 2008 in exercise of power conferred under Article 225 of the Constitution of India, Section 54 of States Reorganisation Act, 1956 and Clauses 27 and 28 of Letters Patent and Section 3 of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005. As per Chapter II, Rule 2 of Rules of 2008, Civil Cases are classified as Civil Revision, Contempt Appeal, Contempt Petition Civil, First Appeal, Miscellaneous Appeal, Miscellaneous Civil Case, Review Petition and Second Appeal. Jurisdiction of High Court in civil cases is of Revision, Appeal, Miscellaneous Appeal, Review Petition, Second Appeal and Miscellaneous Civil Case. Original jurisdiction of civil side has not been conferred on High Court of Madhya Pradesh as per Rules of 2008. High Court of Madhya Pradesh has original jurisdiction to entertain petitions under Article 226 and 227 of the Constitution of India and to hear election petition and company petition. No original jurisdiction of civil side is conferred on High Court for entertaining civil suits or of cases which are arising from the Arbitration and Conciliation Act, 1996. Reading Section 2 (1) (e) of Act of 1996 along with High Court of Madhya Pradesh Rules, 2008 and also considering the previous judgments which have been passed by this Court, it has been held that High Court is not a Court of original civil jurisdiction. In view of same, High Court will not fall within the meaning of “Court” as defined in Section 2 (1) (e) in Arbitration and

Conciliation Act, 1996. In view of same, Court of District Judge and Additional District Judge are Principal Civil Courts of original civil jurisdiction and therefore an appeal against an order passed under Section 16 (2) (3) and Section 17 of Arbitration and Conciliation Act 1996 will lie before Court of Additional District Judge and District Judge of Civil Court.

**11.** In view of aforesaid discussion, arbitration appeal filed by appellants against order passed under Section 17 of the Arbitration and Conciliation Act, 1996 is not maintainable before High Court.

**12.** Counsel for appellants had raised the issue that there is no distinction drawn between Section 37 (1) and Section 37 (2) in Chapter II, Rule 2 of High Court of Madhya Pradesh Rules, 2008. As per classification made in Rule 2, appeal against orders passed under Section 16 (2) (3) and Section 17 will also lie to a High Court. In considered opinion of this Court, distinction is to be made in Chapter II, Rule 2 of High Court of Madhya Pradesh Rules, 2008 between 37 (1) and 37 (2) of Arbitration and Conciliation Act, 1996. In considered view of this Court, Chapter II, Rule 2 (Arbitration Appeal) is required to be amended that appeal arising from orders mentioned in Section 37(1) of the Arbitration and Conciliation Act will lie before High Court.

**13.** In view of same, copy of this judgment be placed before Rule Making Committee of the High Court for considering

clarification/amendment of Chapter-II, Rule 2 of the High Court of Madhya Pradesh Rules, 2008.

**14.** Arbitration appeal filed by appellants is **dismissed** with liberty to them to approach appropriate forum.

**(Vishal Dhagat)**

**Judge**

*vkt/sp/-*