

Violation of an interim order passed by the arbitrator constitutes contempt of court – Supreme Court.

The Supreme Court in *Alka Chandewar v. Shamshul Ishrar Khan* held, that if any party fails to comply with the orders of the Arbitral Tribunal under section 17 of the Arbitration & Conciliation Act, 1996 (“**the Act**”) then that party would be deemed guilty of contempt of the Arbitral Tribunal. The remedy available to an aggrieved party, is to then apply to the Arbitral Tribunal under section 27(5) of the Act, to make a representation to the Court, for taking appropriate steps against the party who is guilty of contempt.

Facts: On an application made by Alka Chandewar (“Applicant”) before the Arbitration Tribunal, the sole Arbitrator passed an interim order under section 17 of the Act, by which Shamshul Ishrar Khan (“Respondent”) was enjoined from transferring any flats in the disputed property without the leave of the Arbitral Tribunal.

Breaching the Arbitral Tribunal’s order passed under section 17 of the Act, the Respondent transferred five flats in the disputed property during the pendency of the proceedings without the leave of the Arbitral Tribunal. The Arbitral Tribunal on being informed about the breach of its order, issued certain interim directions and ultimately referred the contempt of its order to the High Court under section 27(5) of the Act, to pass necessary orders.

Issues: On receiving the reference from the Arbitral Tribunal, the Bombay High Court held that under section 27(5) of the Act, the Arbitral Tribunal is not empowered to make a representation to the Court for contempt, unless the orders passed by the Arbitral Tribunal with respect to taking evidence are violated by the parties. Against this order passed by the Bombay High Court, an appeal was preferred before the Supreme Court. Accordingly, the Supreme Court examined the question of maintainability of a reference to the Court for contempt under section 27(5) of the Act when the parties are in contempt of an order of the arbitral tribunal passed under section 17 of the Act.

Judgment: The Supreme Court took note of the relevant provisions of the Act, especially sub-section (5) of section 27 of the Act, which reads as follows:

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

The Supreme Court observed that on a literal reading of the above provision it is apparent that a person guilty of contempt during the pendency of proceedings is covered by section 27(5) and the extent and scope of this provision is not confined to cases where the orders pertaining to taking evidence are violated by the parties. The Supreme Court held that section 27(5) specifically provides that persons guilty of any contempt of the arbitral tribunal during the conduct of the arbitral proceedings is within its ken.

The Supreme Court while allowing the appeal took note of the observations made by the Delhi High Court in *Sri. Krishna v. Anand*, where the Delhi High Court held that any person failing to comply with an order of the arbitral tribunal under section 17 would be deemed to be “making any other default” or “guilty” of any contempt of the arbitral tribunal during the conduct of proceedings under section 27(5) of Act. The remedy of the aggrieved party would be to apply to the arbitral tribunal for making a representation to the Court to mete out appropriate punishment. On receiving a reference from the arbitral tribunal, the Court would be competent to deal with such

party in default as if it is in contempt of an order of the Court, i.e. either under the provisions of the Contempt of Courts Act, 1971 or under the provisions of Order 39 Rule 2A of the Code of Civil Procedure, 1908.

Conclusion: This judgment of the Supreme Court which interprets section 27(5) of the Act, would be of assistance to parties aggrieved by the violation of an order passed by an arbitral tribunal in arbitral proceedings which were initiated before the Amendment Act, 2015 came into force i.e. 23rd October, 2015. This judgment grants statutory enforceability and gives teeth to orders passed

by an arbitral tribunal in the same manner as that of the orders passed by a Court.

Section 17(2) in terms states that any order passed by an arbitral tribunal under section 17 shall be deemed to be an order of the Court and shall be enforceable as an order of the Court. In view of the addition of sub-section 2 to section 17 by the Amendment Act, 2015 the aforesaid cumbersome procedure of the arbitral tribunal having to apply to the High Court every time for contempt of its order is no longer required for arbitration proceedings initiated after 23rd October, 2017.

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.