(2023) 11 BOM CK 0009

Bombay High Court

Case No: Arbitration Appeal No.23 Of 2021

Ramchandra Udaysinh Jadhavrao		APPELLANT
	Vs	
Girishnavnathrao Avhad And Another		RESPONDENT

Date of Decision: Nov. 10, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227
- Code Of Civil Procedure, 1908 - Section 2(2), Order 7 Rule 11
- Arbitration And Conciliation Act, 1996 - Section 2(1)(c), 11, 12(3), 13(3), 14, 14(2), 32, 32(1), 32(2), 32(2)(a), 32(2)(b), 32(2)(c), 33, 34, 34(1), 34(2)

Hon'ble Judges: Manish Pitale, J

Bench: Single Bench

Advocate: Prathamesh Bhargude, Sharad Dhore, Sumit Sonare, Dormaan J. Dalal, Kritika Sethi

Final Decision: Dismissed

Judgement

Manish Pitale, J

1. The present appeal raises a question as regards remedy available to the appellant herein, in respect of an order dated 09.01.2014 passed by a sole arbitrator, for the reason that by the impugned judgement and order, the District Court has held that an application filed under Section 34 of the Arbitration and Conciliation Act, 1996, by the appellant was not maintainable. Since the District Court rendered a finding that the application under Section 34 of the said Act itself was not maintainable, there was no discussion on the correctness or otherwise of the order passed by the arbitrator.

2. The learned counsel for the parties have made submissions with regard to the scope of jurisdiction under Section 34 of the said Act, in the backdrop of the aspect

of termination of arbitral proceedings under Section 32 thereof, with particular reference to the concept of termination of mandate of the arbitrator touching upon Sections 14 and 15 of the said Act. The learned counsel for the parties have referred to various judgements in the said context pertaining to termination of the mandate of an arbitrator, as opposed to the termination of the arbitral proceedings themselves, which has become a bone of contention between the parties. This Court is called upon to consider the same and a finding on the said aspect would result in the present appeal being either allowed and the matter being remanded to the District Court, or the appellant being advised to resort to appropriate proceedings, particularly under Section 14 of the said Act.

3. A brief reference to facts would be necessary. The appellant, being the original claimant, is the owner of a piece of land at Village Wagholi, District Pune, Maharashtra. Respondent No.1 was a dealer of respondent No.2 - Indian Oil Corporation Limited. Respondent No.2 Corporation had granted the dealership to respondent No.1 for running a petrol pump at Wagholi. In that context, respondent No.1 approached the appellant and a lease deed was executed in favour of respondent No.1 for a period of 30 years, with an option for renewal of 10 years. As per the terms of the lease, respondent No.1 was to execute a sub-lease in favour of respondent No.2. Accordingly, in terms of the registered lease deed dated 29.09.2001, executed in favour of respondent No.1, he executed a registered sub-lease dated 15.03.2002 in favour of respondent No.2.

4. According to the appellant, respondent Nos.1 and 2 were never punctual in payment of rent and they also failed to pay taxes within time to the government, as also the grampanchayat. As a result of the default, the grampanchayat issued a demand notice to the appellant. In this backdrop, the appellant sent a letter to the respondents to remedy their breaches. Despite notice, the respondents failed to comply with the demands made in the said notice and in that light, as disputes had arisen between the parties, the appellant invoked the arbitration clause contained in the lease deed.

5. In the exchange of communications between the parties in that context, the respondent No.1 informed the appellant that respondent No.2 had appointed another person as a dealer of the petrol pump and effectively, respondent No.1 had been evicted from the premises. According to the appellant, this was also a serious breach of the lease deed as well as the sub-lease deed. The arbitrator, being an officer of respondent No.2, took up the proceedings and the appellant filed his claim petition. In the written submissions that were filed before the arbitrator, it came to light that respondent No.2 had withdrawn the letter of intent for dealership issued to respondent No.1 on the basis of a decision of the Committee of Judges appointed by the Supreme Court in its judgement and order dated 12.01.2007. In this backdrop, respondent No.2 filed a case under the Public Premises Eviction of Unauthorized Occupants Act, 1971 before the Estate Officer against respondent No.1 as well as one Tushar Kshirsagar, who was said to be in occupation of the said

premises.

6. The Estate Officer directed eviction of respondent No.1 and the said Tushar Kshirsagar from the said premises, within 15 days. Respondent No.1 challenged the said order of the Estate Officer before the District Court, Pune. The appeal was allowed by an order dated 27.02.2008 and the matter was remanded to the Estate Officer for giving full opportunity to the parties. Respondent No.2 as well as respondent No.1 filed Writ Petition Nos.2664 of 2008 and 3335 of 2008 against the said order. On 30.06.2008, this Court granted Rule in Writ Petition No.2664 of 2008 filed by respondent No.2, while the other writ petition filed by respondent No.1 was tagged to the said writ petition. Interim relief came to be granted in terms of prayer clause (b), while observing that respondent No.2 was in possession of the said premises. The appellant was not party to any of these proceedings before the Estate Officer, District Court and this Court.

7. In the backdrop of these events, which were brought to the notice of the arbitrator, in the arbitration proceedings, a preliminary issue was framed on the question as to whether the claim petition of the appellant was maintainable. On 09.01.2014, the arbitrator passed his order on the preliminary issue as to whether the petition filed by the claimant i.e. the appellant herein was maintainable due to pendency of the aforementioned writ petitions before this Court.

8. After considering rival submissions on the said preliminary issue, the arbitrator referred to the said interim order dated 30.06.2008 passed by this Court in both the writ petitions. Thereupon, the arbitrator reached a conclusion that it was not possible to act further or to continue the arbitral proceedings in the light of the order dated 30.06.2008 passed in the writ petitions, thereby answering the preliminary issue in the negative. On this basis, the arbitrator terminated the arbitral proceedings.

9. Aggrieved by the same, the appellant filed Miscellaneous Civil Application No.195 of 2014, being an application under Section 34(2) of the said Act for setting aside of the 'arbitral award'.

10. On 27.02.2020, the Court of Ad-hoc District Judge – 6, Pune (hereinafter referred to as the ‘District Court’) passed the impugned judgement and order rejecting the aforesaid application of the appellant on the ground that since the order on the preliminary issue passed by the arbitrator resulting in termination of the arbitral proceedings was not an arbitral award, the application filed under Section 34 of the said Act was not maintainable.

11. The present appeal was filed challenging the impugned judgment and order. The respondents were served and respondent No.2 came forward to contest the present appeal.

12. Mr. Prathamesh Bhargude, learned counsel appearing for the appellant submitted that in the present case, the District Court committed a grave error in

holding that the application filed by the appellant under Section 34 of the said Act was not maintainable. It was submitted that, in the present case, undisputedly, by the order dated 09.01.2014, the arbitral proceedings stood terminated. The learned counsel for the appellant relied upon Section 32 of the said Act, which pertains to termination of proceedings. He submitted that Section 32(1) of the Act specifically provides that arbitral proceedings stand terminated by a final arbitral award or by an order of the arbitral tribunal under sub-section (2). He submitted that in the facts of the present case, Section 32(2)(c) of the said Act would come into operation, as it provides that an arbitral tribunal shall issue an order for termination of the arbitral proceedings where it finds that the continuation of the proceedings had, for any reason other than those in Section 32(2)(a) and (b), become unnecessary or impossible. It was further submitted that the remedy to challenge the said order had to be placed in Section 34 of the said Act, which is the only available recourse of challenge. It was submitted that, as per settled law, a writ petition cannot be filed against an order passed by an arbitral tribunal, and therefore, recourse to Section 34 of the said Act is the only available option.

13. The learned counsel for the appellant submitted that there is a fundamental difference between termination of mandate of an arbitrator or arbitral tribunal on the one hand and the termination of the arbitral proceedings on the other. It was vehemently submitted that the contention raised on behalf of respondent No.2 before this Court, to defend the impugned order, to the effect that Section 14 of the said Act would apply, is wholly misplaced. It was submitted that Section 14 of the said Act applies in a situation where the mandate of the arbitrator is terminated when the arbitrator becomes de jure or de facto unable to perform his functions. It was submitted that Section 14 of the said Act, post its amendment in the year 2015, necessarily requires substitution by another arbitrator. In the present case, there was no question of termination of the mandate of the arbitrator, necessitating his substitution. As the arbitral proceedings themselves stood terminated, as specifically recorded in the order dated 09.01.2014 passed by the arbitrator in the present case, it was submitted that the only remedy would be under Section 34 of the said Act, which the District Court failed to appreciate. It was further submitted that the definition of 'arbitral award' in the aforesaid Act at Section 2(1)(c) does not provide much guidance in the matter, for the reason that it simply states that an 'arbitral award includes an interim award'. It was submitted that an analogy can be drawn from the definition of 'decree' in the Code of Civil Procedure, 1908 (CPC). It was further submitted that the definition of 'decree' specifically includes an order rejecting a plaint, against which a first appeal is maintainable. Similarly, the order passed by the arbitrator in the present case, effectively repudiated the claims of the appellant (original claimant) and therefore, it could be challenged through the only mechanism available under the said Act, which is by filing an application under Section 34 thereof. On this basis, it was submitted that the application filed in the present case on behalf of the appellant to challenge the order of the arbitrator could not have been dismissed as not maintainable. A situation cannot be

countenanced that an aggrieved party, like the appellant herein, is left remediless.

14. As regards the contentions raised on behalf of respondent No.2 by relying upon judgement of the Supreme Court in the case of Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi, (2014) 7 SCC 255, it was submitted that the case was distinguishable on facts, for the reason that it came up for consideration prior to the amendment of Section 14 of the Act in the year 2015. The aforesaid provision was amended to add the words in sub-section (1) "and he shall be substituted by another arbitrator". According to the learned counsel for the appellant, post amendment, Section 14 of the said Act mandatorily requires substitution of the arbitrator, which was not the situation in the present case. The judgment of this Court in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi, 2019 SCC OnLine Bom 250 was also sought to be distinguished on facts.

15. It was further submitted that in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra), the petitioners therein requested this Court to treat the petition as having been filed under Section 14(2) of the said Act and the Court proceeded to hear the parties on that basis. In the present case, the appellant has taken a clear stand that since the aspect of termination of mandate of the arbitrator does not arise, Section 14 of the Act would not apply and the only remedy would be under Section 34 of the Act.

16. The learned counsel appearing for the appellant fairly placed on record a number of judgements of this Court and the Delhi High Court, which have considered the manner in which an order passed under Section 32(2)(c) of the Act can be challenged or what could be the remedy to raise grievance against such an order. It is submitted that in none of the said cases, have the Courts considered that an order passed under Section 32(2)(c) of the Act would also amount to an award as the claims of the claimant stand repudiated. It was submitted that even an order passed under Order VII, Rule 11 of the CPC is a decree, against which a substantive first appeal is available. On this basis, it was submitted that the District Court, in the present case, erred in dismissing the application filed under Section 34 of the said Act, as being not maintainable.

16. On the other hand, Ms. Kritika Sethi, learned counsel appearing for the contesting respondent No.2 Corporation submitted that the position of law was clearly covered by the judgement of the Supreme Court in the case of Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi (supra). It was submitted that the Supreme Court took into consideration the nature of an order terminating the arbitral proceedings under Section 32(2)(c) of the said Act and thereupon found that the remedy for an aggrieved party against such an order is only under Section 14 of the said Act. Section 34 of the said Act is available only for challenging an award. It was submitted that an award necessarily requires the lis between the parties being decided on merits, after considering the rival contentions in the context of the issues arising in the dispute. It was submitted that in the present case, the order

passed by the arbitral tribunal terminating the proceedings, did not decide the lis between the parties on merits, and simply held that it was not possible for the arbitrator to act further or to continue the arbitral proceeding.

17. The learned counsel for respondent No.2 relied upon judgement of the learned Single Judge of this Court in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra), particularly paragraphs 24 and 25 thereof, in support of her contentions. She also relied upon judgements of the Delhi High Court referred by the learned counsel for the appellant and submitted that in all the said judgements, the Courts had reached a categorical conclusion that an order, as in the present case, terminating the arbitral proceedings, being an order under Section 32(2)(c) of the said Act, could be challenged only under Section 14(2) thereof. In the present case, if at all the appellant was aggrieved by the finding rendered by the arbitrator that it was not possible to continue the arbitral proceeding, the only remedy was to file a proceeding under Section 14(2) of the said Act. On this basis, it was submitted that the order passed by the District Court holding that the application filed under Section 34 of the said Act was not maintainable, did not deserve any interference, and that therefore, the present appeal deserved to be dismissed.

18. This Court has heard the learned counsel for the rival parties in the context of the provisions of the said Act, as well as the judgements brought to the notice of this Court. The sheet anchor of arguments raised on behalf of the respondent is the judgement of the Supreme Court in the case of Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi (supra). In the said judgement, the Supreme Court considered a situation where the arbitral tribunal terminated the proceedings as the presiding arbitrator informed that the arbitral proceedings stood terminated because the claimant took no interest in the matter and even the fees, as directed, were not paid. This led to an application being filed under Section 11 of the said Act for appointment of an arbitrator. But the said application was dismissed by the High Court as not maintainable. It was observed that the remedy for the applicant could lie in invoking writ jurisdiction of the High Court.

19. The Supreme Court held that the High Court was not justified in indicating that the applicant could have filed a writ petition. Reference was made to the judgement of the Supreme Court in the case of SBP & Co. Vs. Patel Engineering Limited, (2005) 8 SCC 618, wherein it was specifically held that the High Court cannot entertain writ petitions and interfere with the orders passed by the arbitral tribunals while exercising power under Articles 226 or 227 of the Constitution of India. In such circumstances, the Supreme Court found that since the order passed by the arbitral tribunal therein had to be treated as an order passed under Section 32(2)(c) of the said Act, the only remedy available was under Section 14(2) thereof. On this basis, the Supreme Court granted liberty to the appellants therein to approach the appropriate Court to raise their grievance.

20. The said judgement of the Supreme Court was followed subsequently by a learned Single Judge of this Court in a proceeding arising between the same parties i.e. in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra). In the said case, the petitioners before this Court specifically stated that their petition be treated as a petition filed under Section 14(2) of the said Act. In the said case also, the arbitral proceedings were terminated. In fact, as per the liberty granted by the Supreme Court in the aforementioned judgement, the parties invoked Section 14 of the said Act and this Court set aside the order of the three-member arbitral tribunal and restored the arbitral proceedings. Yet again, the arbitral tribunal held that the arbitration proceedings had come to an end as the respondents had not been able to pay the fees of the tribunal. This led to appointment of a sole arbitrator on the basis of an application filed under Section 11 of the said Act. The sole arbitrator passed an order declining the prayer made by the applicants for being substituted in the place of the original claimants, while allowing an application filed by respondent No.1 before the sole arbitrator for bringing legal heirs of respondent No.1 on record. It was argued before this Court that since the order passed by the sole arbitrator was in the nature of an award, the petition under Section 14 of the said Act was not maintainable.
21. This Court took into consideration the facts of the said case, the provisions of the aforesaid Act and held as follows:-

“24. To counter this argument, Mr. Dave submitted that the impugned order passed by the sole Arbitrator was in the nature of an Award and therefore could only be challenged under Section 34 of the Act. I am unable to agree with this submission. To my mind, an Award is passed by the Arbitral Tribunal, interim or final, when it decides the lis between the parties. There has to be some adjudication on the merits of the claim or part thereof (which may include limitation) for the order passed by the Tribunal to be termed as an Award. It is not as if every order passed by the Tribunal and which terminates the Arbitral proceedings can be termed as an Award. This is quite clear on reading Section 32 itself which contemplates that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2) of Section 32. This would clearly indicate that merely because the arbitral proceedings are terminated by an order of the Arbitral Tribunal would not necessarily make it an award. It would partake the character of an award if the lis between the parties on any issue is finally decided by the Arbitral Tribunal. In the facts of the present case, admittedly, the lis between the parties has not been decided at all. In fact, as mentioned from the narration of facts set out earlier, this litigation has a very checkered history. The impugned order rejected the application of the claimant to be formally brought on record. Having passed such an order, naturally the sole Arbitrator could not proceed any further with the arbitral proceedings, especially considering that the original claimant had expired on 7th August, 2012 and his heirs were not brought on record. There was no one to prosecute the arbitral proceedings. This order can never be termed as an arbitral

award as understood under Section 34 of the Act. I must mention that the Delhi High Court in the case of Joginder Singh Dhaiya (supra) appears to have taken a view that where the arbitrator holds that the proceedings have abated because of not bringing the legal heirs on record, the same would amount to an arbitral award which can be challenged under Section 34 of the Act. With great respect, I am unable to agree with the reasons of the learned Single Judge of the Delhi High Court. Though the decision of the Supreme Court in the case of Lalitkumar V. Sanghavi (supra) was brought to the attention of the Delhi High Court, it was sought to be distinguished by stating that in the facts of that case the Tribunal had terminated the arbitration proceedings as the claimant had taken no interest in the matter and it is in these circumstances that the Supreme Court held that such an order would be falling under Section 14 and 32(2) (c) of the Act and hence the remedy would be under Section 14 (2). The Delhi High Court proceeded on the basis that the apparent distinction between an order and an award lies in the fact whether the decision of the Arbitral Tribunal affects the rights of the parties, concluding the dispute as to the specific issue and has finality attached to the same. The Delhi High Court held that since the order of the Tribunal had resulted in termination of the arbitration proceedings and would bar the petitioners from re-agitating the same in any other proceedings, the said order would partake the character of an award since it has finality attached to it and determined the vital rights of the parties. I am unable to agree with the reasoning given by the Delhi High Court for the simple reason that Section 32 of the Act provides for the termination of arbitral proceedings. It provides that the arbitral proceedings shall stand terminated by pronouncement of the final arbitral award or by an order of the arbitrator under sub-section (2) of Section 32. In the facts of the present case, the Arbitral Tribunal has terminated the proceedings by virtue of not bringing the petitioners on record in the arbitral proceedings. There is no pronouncement of a final arbitral award in the facts of the present case as stipulated under Section 32(1). Every order of the Tribunal terminating the arbitral proceedings can never be terms as an award. This is clear from an ex-facie reading of section 32.

25. Furthermore, Section 34 of the Act provides for an application to be made to the Court for setting aside the arbitral award. The very heading of the above provision reflects that recourse to Section 34 is permissible only for setting aside the arbitral award on the grounds mentioned therein. It is not applicable where there is no award. As mentioned earlier, every order that terminates the arbitral proceedings would not amount to an award. There may be several situations and which are difficult to exhaustively set out, under which the Arbitral Tribunal may terminate the arbitration proceedings, as well as its mandate for reasons that this is impossible to continue with the arbitral proceedings. That would not mean that every such order would partake the character of an award. An award to my mind would be one which would decide the lis between the parties and which would have finality attached to it (subject, of course, to challenge under Section 34 of the Act). I am of the considered view, that the decision of the Supreme Court in the case of Lalitkumar V. Sanghavi

(supra) would clearly cover the issue raised before me. I am therefore unable to agree with the reasoning of the Delhi High Court and therefore overrule the preliminary objection."

22. Thus, the position of law laid down by the Supreme Court was specifically followed in the said judgement by applying the same to the facts of the said case. At this juncture, it would be necessary to deal with a specific contention raised on behalf of the appellant that the judgement rendered by the Supreme Court in the case of Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi (supra) was prior to the amendment of the aforesaid Act in the year 2015. Much emphasis was placed on behalf of the appellant on the fact that by the said amendment, brought into effect from 23.10.2015, the words 'and he shall be substituted by another arbitrator' were added to Section 14(1) of the said Act. The contention raised on behalf of the appellant is that, the said provision, post its amendment, mandatorily requires substitution of the arbitrator by another arbitrator, indicating that for invoking jurisdiction of Section 14(1) of the said Act, post amendment, a cause should arise for seeking substitution of the arbitrator. Since, according to the appellant, in the present case, no such cause had arisen, there was no question of invoking Section 14(1) of the said Act. It was also contended that this aspect of the matter was not brought to the notice of this Court when the aforementioned judgment of this Court was rendered in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra).

23. This Court is of the opinion that there is indeed change in the scope of Section 14(1) of the said Act, post its amendment in the aforesaid manner. Therefore, this Court had called upon the learned counsel for the parties to produce the statement of objects and reasons of the Arbitration and Conciliation (Amendment) Bill, 2015, leading to the Amending Act, which brought about significant changes in the said Act. A perusal of the statement of objects and reasons, particularly paragraph 6 thereof, which indicates the purpose for which such amendments were introduced, does not indicate specific reasons for addition of the above-quoted words in Section 14(1) of the said Act. In fact, the notes on clauses simply state in clause 9 that the Bill seeks to amend sub-section (1) of Section 14 of the Act to provide that on termination of mandate of the arbitrator, he shall be substituted by another arbitrator. Thus, there is hardly any indication as to why those words were specifically added in Section 14 of the said Act.

24. Nonetheless, the question is whether addition of the aforesaid words by way of amendment would take away the basis of the law laid down by the Supreme Court in the case of Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi (supra) and followed by this Court in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra). The said question can be answered by considering the other crucial aspects that arise for consideration and which were discussed in detail in the aforesaid judgement of this Court in the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra), as also a series of judgements of the

Delhi High Court.

25. The said crucial aspects are, as to whether, firstly, there is a distinction between an arbitral award and an order passed by the arbitrator. Secondly, whether an order passed under Section 32(2) of the said Act, particularly under clause (c) thereof, is equivalent to an arbitral award.

26. Section 32 of the said Act reads as follows:-

“32. Termination of proceedings.- (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.”

27. A bare perusal of the above-quoted clause would show that an arbitral award and an order of the tribunal are separately treated in the said provision. Section 32(2)(c) of the said Act is relevant in the facts of the present case, for the reason that the arbitrator has terminated the proceedings by holding that it had become impossible to continue the proceedings due to orders passed by this Court in the aforementioned writ petitions. The Supreme Court in the case of Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi (supra) specifically dealt with a case where the order passed by the arbitral tribunal was treated as an order passed under Section 32(2)(c) of the said Act, as opposed to an arbitral award. Having treated the order as an order under Section 32(2)(c) of the said Act, the Supreme Court categorically held that the remedy was only under Section 14(2) of the said Act. In the case of Neeta Lalitkumar Sanghavi Vs. Bakulaben Dharmadas Sanghavi (supra), in the above-quoted paragraph 24, this Court specifically held that the order passed by the arbitrator terminating the arbitral proceedings would not necessarily make it an award. It would partake the character of an award if the lis between the parties on any issue is finally decided by the arbitrator.

28. The Delhi High Court in the case of PCL Suncon Vs. National Highway Authority of India, 2021 SCC OnLine Del 313, in this context, held as follows:

“29. Thus, in order for a decision of the Arbitral Tribunal to qualify as an award, the same must finally decide a point at which the parties are at issue. In cases where the

same is dis-positive of the entire dispute referred to the Arbitral Tribunal, the said award would be a final award, which would result in termination of the arbitral proceedings.

30. Viewed in the aforesaid context, it is clear that an order, which terminates the arbitral proceedings as the Arbitral Tribunal finds it impossible or unnecessary to continue the arbitral proceedings, would not be an award. This is so because it does not answer any issue in dispute in arbitration between the parties; but is an expression of the decision of the Arbitral Tribunal not to proceed with the proceedings.

* * * * *

38. As noticed above, Section 32 of the A&C Act makes a clear distinction between an award and an order under Sub-section (2) of Section 32 of the A&C Act. Indisputably, an order under Sub-Section (2) of Section 32 of the A&C Act is not an award. It is relevant to note that that this position is accepted in The India Trading Company (supra) as well. In paragraph 8 of the said decision, the court has held in unambiguous terms that "an order under Section 32(2) would not be an award."

29. This position was earlier also indicated by the judgment of the Delhi High Court in the case of Rhiti Sports management Pvt. Ltd. Vs. Power Play Sports and Events Limited, 2018 SCC OnLine Del 8678.

30. Thus, it appears to have been consistently held that when an arbitrator terminates the arbitral proceedings under Section 32(2)(c) of the said Act, such an order cannot be treated as an award. Consequently, challenge under Section 34 of the said Act is not available. The opening words of Section 34(1) of the said Act i.e. ‘Recourse to a Court against an arbitral award may be made only by an application for setting aside such award’, clearly indicate that the remedy under Section 34 of the said Act is available only for challenging an award.

31. In this context, when definition of an ‘arbitral award’ under Section 2(1)(c) of the said Act is perused, it becomes evident that the same is not of much assistance. The definition simply states that, an arbitral award includes an interim award. It is for this reason that the learned counsel appearing for the appellant tried to draw a parallel with the definition of ‘decree’ under Section 2(2) of the CPC, as it states that a decree shall be deemed to include rejection of plaint. It was emphasized that while an order rejecting a plaint does not conclusively decide issues arising between the parties on merits, still it is treated as a decree, against which a first appeal is maintainable.

32. This Court is of the opinion that drawing such an analogy from the general procedural law manifested under the CPC may not be apt for deciding the question that arises in the present case, which concerns provisions of a special statute i.e. the aforementioned Act. The rival contentions have to be determined on the basis of the provisions of the said Act and the remedies provided thereunder.

33. As noted hereinabove, it has been held consistently by this Court as well as the Delhi High Court that an arbitral award must necessarily decide the lis between the parties and the issues arising between them on merits. Once the said position is accepted, an order terminating the proceedings under Section 32(2)(c) of the said Act cannot be said to have the character of an arbitral award. There can be no doubt about the fact that such an order terminating the arbitral proceedings, would, in effect, repudiate the claims raised by the claimant, but such repudiation of the claims is only a fall out of the termination of the arbitral proceedings. In such cases, there is no decision on the merits and the lis between the parties is clearly not decided on issues arising in the matter on merits. Therefore, under the provisions of the said Act an order passed under Section 32(2)(c) is distinct from an arbitral award as mentioned under Section 32(1) of the said Act. The peculiar situation that arises under the provisions of the said Act was noted in the judgement of the Delhi High Court in the case of Shushila Kumari & Anr. vs Bhayana Builders Private Limited, 2019 SCC OnLine Del 7243. It was observed that there appears to be a lacuna in the said Act as no clear remedy has been provided to an aggrieved party to challenge an order passed by an arbitrator terminating the arbitral proceedings under Section 32 of the said Act. This Court is also of the opinion that there is indeed a defect or a lacuna. But, the forum for remedying such a lacuna is the Legislature. Till such time, as this aspect of the matter is addressed by the Legislature, the law laid down by the Supreme Court and followed by this Court and various High Courts holds the field, indicating that the remedy in such a situation is only to approach the Court under Section 14(2) of the said Act.

34. The lacuna or defect is accentuated by the aforesaid words added in Section 14(1) of the said Act, whereby it is mandated that an arbitrator, who has become de jure or de facto unable to perform his functions, has to be substituted by another arbitrator. For instance, in the present case, while the arbitrator held that it had become impossible to continue the proceedings due to orders passed by this Court in the said writ petitions, no cause or occasion arose for seeking his substitution. In fact, neither party has raised any grievance against the particular arbitrator, conducting the arbitral proceedings.

35. Another aspect highlighted on behalf of the appellant was a distinction to be made between termination of mandate of an arbitrator and termination of the arbitral proceedings themselves. It was submitted that jurisdiction under Section 14 of the said Act could be invoked only in cases where the mandate of the arbitrator stood terminated, necessarily indicating that termination of the mandate had something to do with the particular arbitrator or arbitral tribunal. According to the appellant, termination of the arbitral proceedings, being a completely different situation, could not be covered under Section 14 of the said Act.

56. But a perusal of Section 32(3) of the said Act shows that the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. This is, of course, subject to Section 33 and Section 34(4) of the said Act. Nonetheless,

termination of the arbitral proceedings leads to termination of mandate of the arbitrator. That being so, a cause or occasion does arise for invoking Section 14 of the said Act. This is the only manner, at present, in which the provisions of the aforesaid Act can be reconciled to lead to a meaningful interpretation.

57. This is further clear from the words used in Section 14 of the said Act, which reads as follows:-

"14. Failure or impossibility to act .- (1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12."

58. A perusal of sub-section (2) of Section 14 of the Act, quoted hereinabove, would show that when a controversy arises concerning any of the grounds referred to in clause (a) of sub-section (1) i.e. questions pertaining to the arbitrator having become de jure or de facto unable to perform his functions, the party raising such an issue can apply to the Court to decide on the termination of the mandate. In other words, in the present case, if the appellant was aggrieved by the finding rendered in the order of the arbitrator, to the effect that continuation of the arbitral proceedings had become impossible due to orders passed by this Court in the aforesaid writ petitions, and the contesting party obviously disputed the same, such a controversy could be resolved only under Section 14(2) of the said Act, in the absence of any clear provision to challenge the order passed by the arbitrator under Section 32(2)(c) of the said Act. The contentions raised on behalf of the appellant to equate 'award' with 'order' and insisting upon Section 34 of the Act being a remedy against an order passed under Section 32(2)(c) of the Act, calls upon this Court to stretch the meaning of words and the scope of jurisdiction available to the Court under Section 34 of the said Act. It is for this reason that the Supreme Court and this Court, as also the Delhi High Court in the aforementioned judgements have zeroed in on Section 14 of the Act being the only remedy available against an order passed under Section 32(2)(c) thereof.

59. Hence, it is found that no error can be attributed to the District Court having held that the application filed under Section 34 of the said Act was not maintainable. The present appeal, therefore, is found to be without any merit and it deserves to be dismissed.

60. At the same time, since a party cannot be left remediless, liberty has to be reserved for the appellant to institute appropriate proceedings under Section 14 of the said Act, in order to raise his grievance in respect of the order passed by the arbitrator.

61. In view of the above, the appeal is dismissed, with liberty to the appellant to institute appropriate proceedings under Section 14 of the said Act, which shall be decided in accordance with law.

62. No costs.