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Electronics and Controls Vs. Wep Peripherals Limited

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Court : Karnataka

Decided On : Aug-22-2019

Judge : B.Veerappa

Appeal No. : RP 38/2017

Appellant : Electronics and Controls

Respondent : Wep Peripherals Limited

Advocate for Pet/Ap. : Sri. K.V. Satish

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF AUGUST, 2019 BEFORE THE HONBLE Mr. JUSTICE B. VEERAPPA REVIEW PETITION No.38/2017 IN CMP NO.15/2012

BETWEEN :
ELECTRONICS & CONTROLS POWER SYSTEMS PRIVATE LIMITED A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT,1956 HAVING ITS REGISTERED OFFICE AT No.29/A2D PHASE, PEENYA INDUSTRIAL AREA, BANGALORE-560 058. REPRESENTED HEREIN BY ITS MANAGING DIRECTOR, SRI RAJARAM RAMAMURTHY. ... PETITIONER (BY SRI. SIVARAMAKRISHNAN M S, ADVOCATE)

AND:

WeP PERIPHERALS LIMITED A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT,1956, HAVING ITS REGISTERED OFFICE AT No.40/1A BASAPPA COMPLEX, LAVELLE ROAD2BANGALORE-560 001. REPRESENTED HEREIN BY ITS MANAGING DIRECTOR SRI RAM AGARWAL.

... RESPONDENT

(BY SRI. K G RAGHAVAN, SR. COUNSEL SRI. K V SATHISH, ADVOCATE) THIS REVIEW PETITION FILED UNDER ORDER47RULE1R/W SECTION114OF CPC, PRAYING TO REVIEW THE ORDER DATED:20/11/2012 PASSED IN CMP No.15/2012, ON THE FILE OF THE HON'BLE HIGH COURT OF KARNATAKA, BENGALURU. THIS REVIEW PETITION COMING ON FOR FURTHER ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING;

ORDER

The present review petition is filed by the review petitioner under Order 47 Rule 1 read with Section 114 of CPC to review the order dated 20.11.2012 made in CMP No.15/2012 dismissing the application filed under the provisions of Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996. 3 2. There is a delay of 1495 days in filing the review petition. I Brief Facts of the case.

3. The present review petitioner who is the petitioner in CMP No.15/2012 which was filed before this Court under Section 11(5) and (6) of the Arbitration and Conciliation Act,1996 (for short hereinafter referred to as `the Act) for appointment of sole arbitrator or any other appropriate Tribunal comprising of sole arbitrator to adjudicate the disputes that have arisen between the petitioner and respondent under the agreements dated 29.09.2006 vide Annexures A and B therein. It is the case of the petitioner that the petitioner company was engaged in the business of design, development, manufacture, assembly, selling and maintenance of Uninterruptible Power Systems, inverters, hardware, software and parts, components thereof. The respondent company is engaged in the manufacture and 4 sale of computer peripherals, printers etc. The petitioner and respondent have agreed to have business growth of each other. Accordingly, on 29.09.2006 the

petitioner and respondent entered into a Business Partnership Agreement (BPA for short) to achieve the objective of participating and enhancing the business growth of each other. On the very same day, both the parties entered into another agreement styled as Distributorship Agreement (DA for short). In terms of the said agreements the petitioner agreed to concentrate on the design and manufacture of the UPS products and the respondent agreed to concentrate on marketing, sales and service of the UPS products. The BPA was for a period of 3 years from 29.09.2006.

4. Upon certain violation of the terms of the agreements, the petitioner filed an application before this Court for appointment of sole arbitrator. The 5 respondent filed objections therein and contended that there is no valid and subsisting agreement between the parties and the City Civil Court, Bengaluru in arbitration application No.239/2010 while deciding the petition filed under Section 9 of the Act has already determined that there is no valid subsisting arbitration agreement between the parties. The petitioner has nowhere in the petition referred to the order dated 30.03.2010 passed by the City Civil Court in arbitration application No.239/2010. By the Memorandum of Understanding (MOU for short) duly signed by the parties on 28.12.2007 the parties have entered into new arrangement altogether by terminating BPA and DA entered into on 29.09.2006 and consequently the arbitration agreement entered into between the parties pursuant to agreements at Annexures A and B also came to an end. Clause 22 of the MOU entered into between the parties depicts that all preceding 6 agreements/MOUs including the one signed in September 2006 stands cancelled. Therefore, sought to dismiss the petition.

5. This Court after hearing both the learned counsel for the parties has recorded a finding that contract is an outcome of agreement between the parties thereto and it is equally open to the parties to agree to bring it to an end or to treat it as if it never existed. It is also open for the parties to terminate the previous contract and substitute it by a new contract. In the instant case, since the agreements entered into between the parties vide Annexure A and B are put to an end, the arbitration clauses, which are part of the same also perished along with it. Section 62 of the Contract Act incorporates this principle when it provides that if the parties to the

contract agree to substitute a new contract or to rescind or alter it, the 7 original contract need not be performed. This Court further recorded a finding that when a question of breach of contract inter alia is raised after the termination of the contract, it is the performance of the contract that comes to an end on termination of the contract, but the same remains in existence for certain purposes in respect of disputes arising under it or in connection with it. The Court further held that it is also well settled that even if an agreement comes to an end the arbitration clause remains in force and any dispute pertaining to agreement should be resolved according to the conditions mentioned in the arbitration clause. But where there is substitution of old contract by a new contract or where there is alternation or rescission of the original contract the arbitration clause found in the original contract also perishes. It is also held that the arbitration clause contained in rescinded contracts vide Annexures A and B cannot be pressed into service by 8 the petitioner. The parties are governed by the substituted contract, that is, MOU entered into on 28.12.2007 and the same does not contain the arbitration agreement. Accordingly, the Civil Miscellaneous Petition came to be dismissed.

6. Aggrieved by the same, the petitioner filed SLP (Civil) No.36986/2012 before the Honble Supreme Court. The Supreme Court after issuing notice, heard the matter finally and on 12.07.2016, dismissed the SLP and observed that the pending application shall stand disposed of. Thereafter, the present review petition is filed by the petitioner to review the order passed by the learned Single Judge of this Court stated supra.

7. I have heard the learned counsel for parties to the lis. 9 II - CONTENTIONS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES8 Sri. K.G. Raghavan, learned Senior Counsel for respondent raised a preliminary objection with regard to maintainability of the petition to review the order passed by this Court exercising power under Section 11(5) and (6) of the Act. The learned Senior Counsel contended that admittedly in the present review petition the original order is passed by the learned Single Judge who was designated by the Chief Justice, High Court of Karnataka, exercising power under the provisions of Section 11(5) and (6) of the Act (unamended Act). Therefore, the very application filed under Order 47 Rule 1 CPC has no application to the provisions of Section 11 of the

Arbitration and Conciliation Act (either unamended Act or amended Act). The learned Senior Counsel would further contend that in view of the 10 provisions of Section 2(e) of the Act (unamended Act), the Court means 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 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.

9. The learned Senior Counsel further contended that in view of the un-amended provisions of Section 11(6)(c) of the Act, under an appointment procedure agreed upon by the parties, a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure unless the 11 agreement on the appointment procedure provides other means for securing the appointment. Either Chief Justice or designated judge by him under the unamended Act is not a Court. Therefore, review is not maintainable.

10. He further contended that the High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001 is not applicable to the proceedings initiated or conducted under the provisions of Section 11 of the Act. The said Rules are applicable only to the application under Section 14 and 34 of the Act made in writing duly singed and verified in the manner prescribed under Order 6 Rule 14 and 15 CPC, 1908. Rule 9 of the Rules is applicable only where an application is made for an interim measure under Section 9 of the Act the Court shall in all cases except where in appears that the object of granting interim 12 measure would be defeated by the delay, before passing the interim order direct notice of application be given to the opposite party. Therefore, he submits that present review petition filed by the review petitioner is not maintainable.

11. In support of his contention, the learned Senior Counsel has relied upon the following judgments. I. State of West Bengal and others Vs. Associated Contractors, 2015 (1) SCC32 relevant paragraphs 16 and 17 II. Shivrah Gyota Vs. Deshraj Gupta, ILR DLH2008 17-415 relevant paragraph 5 III. Sanjay Gupta Vs.

Kerala State Industrial Development Corporation Ltd., Kerala T-2009-147, relevant paragraph 1 13 Therefore, the learned Senior Counsel sought to dismiss the, Review Petition.

12. Per contra Shri Sivaramakrishnan M.S for Sri. K.V. Satish, learned counsel for petitioner contended that the order passed by the learned Single Judge exercising powers under Section 11(5) and (6) of the Act is a judicial authority. Therefore, the provisions of 2001 Rules is applicable and he specifically invited the attention of the Court to Rule 12 of the Rules stating that subject to what is provided for in the Arbitration Conciliation Act, these Rules, the provisions of CPC and Karnataka Civil Rules of Practice may be applied to the proceedings under the Act to the extent considered necessary or appropriate by the Court or judicial authority.

13. In support of his contention the learned counsel relied upon the judgment of the Supreme Court 14 in the case of SBP and Company Vs. Patel Engineering reported in (2005) 8 SCC618(relevant paragraph

44) and contended that in the said judgment the Supreme Court has held that on an order passed by the Chief Justice of India, the party will not have any further remedy in respect of the matters covered by the order of Chief Justice of India or the Judge of Supreme Court designated by him, he will have to participate in the arbitration before the Tribunal only on the merits of the claim. Therefore, he would contend that since in the present Civil Miscellaneous Petition the learned designated Judge by the Chief Justice has dismissed the case on merits, review is maintainable. III - POINT FOR DETERMINATION14 In view of the aforesaid rival contentions raised by the learned counsel for the parties, the only 15 point that arises for consideration in the present Review Petition is, Whether the review petition is maintainable under Order 47 Rule 1 CPC against an order passed by the learned designated Judge by the Chief Justice exercising powers under the provisions of Section 11(5) and (6) of the Act (unamended Act)?. IV - CONSIDERATION15 I have given my thoughtful consideration to the argument advanced by the learned counsel for the parties and perused the entire material on record carefully.

16. It is undisputed fact that the present review petitioner and the respondent had entered into a Business Partnership Agreement on 29.09.2006 and 16 subsequently, Distributorship Agreement on the very same day.

... Petitioner
wanted to enforce arbitration clause mentioned in the said agreements and hence, filed Civil Miscellaneous Petition before this Court for appointment of sole arbitrator to adjudicate upon the dispute that had arisen between the parties in terms of the agreements dated 29.09.2006 by raising various contentions. It is also not in dispute that the present respondent who opposed the application has contended that in view of the subsequent Memorandum of Understanding entered into between the parties on 28.12.2007 the earlier agreements came to be terminated and the arbitration clause, if any, in those agreements perished and the sole arbitrator cannot be appointed when the agreements entered into between the parties does not exist. 17 17. The learned Judge of this Court considering the matter on merits has come to a conclusion that in view of the new Memorandum of Understanding entered into between the parties on 28.12.2007, earlier agreements stood cancelled and the Civil Miscellaneous Petition filed by the petitioner came to be dismissed on merits. The said order dismissing the petition on merits has been confirmed by the Honble Supreme Court on 12.07.2016. Learned counsel for the petitioner contended that the Supreme Court has not passed reasoned order and by a one line order the matter was dismissed and therefore, the review petition is maintainable. Though, according to the learned counsel for the Review petitioner, contended that Rule 12 of the Rules is applicable to entertain the present review petition, this Court is afraid of the said submission made by the learned counsel. 18 18. In the instant case, admittedly, the Civil Miscellaneous Petition was filed under Section 11(5) and (6) of the Act (unamended) which reads as under:

11.

5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be

made, upon request of a party, by the Chief Justice or any person or institution designated by him. 11(6) Where, under an appointment procedure agreed upon by the parties,- (a) a party fails to act as required under that procedure; or (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure, or (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, 19 a party may request the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

19. Sub-section 10 of Section 11 of the Act (unamended Act) clearly depicts that the Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6) to him. A careful reading of the provisions of sub-sections (5), (6) and (10) of Section 11 of the Act (unamended Act) clearly depicts that on a request made by a party the Chief Justice or any person or institution designated by him to take the necessary measure, unless the agreement on the appointment procedure provides other means for 20 securing the appointment, can proceed with the provisions of the Act.

20. It is relevant to consider the definition of the expression `Court as contemplated under the provisions of Section 2(e) of the Act (unamended) which reads as under:

2. e) Court means 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.

21. A plain reading of the said provision makes it clear that `Court means principal civil Court of original 21 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 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. Learned Single Judge of this Court has exercised power under Section 11(5) and (6) of the Act not as a Court who as a designated Judge by the Chief Justice of High Court of Karnataka and it amounts to Court as defined under Section 2(e) of the Act. It is not in dispute that this Court has not exercised its ordinary original jurisdiction.

22. The Honble Supreme Court while considering the provisions of Section 2(1)(e), 8, 9, 11, 34 and 42 of the Arbitration Act, 1996, in the case of State of West Bengal and others Vs. Associated Contractors, reported 22 in (2015) 1 SCC32at paragraph Nos. 16 and 17 has held as under:

16. Similar is the position with regard to applications made under Section 11 of the Arbitration Act. In Rodemadan India Ltd. v. International Trade Expo Centre Ltd., a Designated Judge of this Hon'ble Court following the seven Judge Bench in S.B.P. and Co. v. Patel Engineering Ltd., held that instead of the court, the power to appoint arbitrators contained in Section 11 is conferred on the Chief Justice or his delegate. In fact, the seven Judge bench held (SBP & Co. case, SCC pp.644-45 & 648, paras 13 & 1

"13. It is common ground that the Act has adopted the UNCITRAL Model Law on International Commercial Arbitration. But at the same time, it has made some departures from the model law. Section 11 is in the place of Article 11 of the Model Law. The Model Law provides for the making of a request under Article 11 to the court or other authority specified in Article 6 to take the necessary measure. The words in Section 11 of 23 the Act, are the Chief Justice or the person or institution designated by him. The fact that instead of the court, the powers are conferred on the Chief Justice, has to be appreciated in the context of the statute. 'Court' is defined in the Act to be the principal civil court of original jurisdiction of the district and includes the High Court in exercise of its ordinary original civil jurisdiction. The of principal original jurisdiction the District India Court. The High Courts exercising civil jurisdiction are not too many. So in most of the States the court concerned would be the District Court. Obviously, the Parliament did not want to confer the power on the District Court, to entertain a request for appointing an arbitrator or for constituting an arbitral tribunal under Section 11 of the Act. in original is normally

ordinary civil court It has to be noted that under Section 9 of the Act, the District Court or the High Court exercising original jurisdiction, has the power to make interim orders prior to, during or even post arbitration. It has also the power to entertain a challenge that may ultimately be made. The framers of the statute must certainly be taken to have been conscious of the definition of 'court' in the Act. It is easily possible to contemplate that they did not want the the award to 24 power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention apparently was to confer the power on the highest judicial authority in the State and in the country, on Chief Justices of High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process. The argument that the power thus conferred on the Chief Justice could not even be delegated to any other Judge of the High Court or of the Supreme Court, stands negatived only because of the power given to designate another. The intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act was exercised by the highest judicial authority in the State or in the country concerned. This is to ensure the utmost authority to the process of constituting the arbitral tribunal.

18. It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief Justice of India or the Chief Justice of the High Court. One possible reason for 25 specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and the Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by Section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as persona designata. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not 26 sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial

power. It is obvious that Section 11 applications are not to be moved before the "court" as defined but before the Chief Justice either of the High Court or of the Supreme Court, as the case may be, or their delegates. This is despite the fact that the Chief Justice or his delegate have now to decide judicially and not administratively. Again, Section 42 would not apply to applications made before the Chief Justice or his delegate for the simple reason that the Chief Justice or his delegate is not "court" as defined by Section 2(1)(e). The said view was reiterated somewhat differently in Pandey & Co. Builders (P) Ltd. v. State of Bihar SCC at pp 470 & 473, Paras 9, 23-26. 27 17. That the Chief Justice does not represent the High Court or Supreme Court as the case may be is also clear from Section 11(10):

"The Chief Justice may make such scheme as he may deem appropriate for dealing with matters entrusted by sub- section (4) or sub-section(5) or sub-section (6) to him."

The scheme referred to in this sub-section is a scheme by which the Chief Justice may provide for the procedure to be followed in cases dealt with by him under Section 11. This again shows that it is not the High Court or the Supreme Court rules that are to be followed but a separate set of rules made by the Chief Justice for the purposes of Section 11. Sub- section 12 of Section 11 reads as follows:

"11. (12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and (10) arise in an international commercial arbitration, the reference to 'Chief Justice in those sub-sections shall be 28 construed as a reference to the "Chief Justice of India". (b) Where the matters referred to in sub- sections (4), (5), (6), (7), (8) and (10) arise in any other arbitration, the reference to Chief Justice in those sub-sections shall be construed as a reference to the Chief Justice of the High Court within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate and, where the High Court itself is the Court referred to in that clause, to the Chief Justice of that High Court."

It is obvious that Section 11(12)(b) was necessitated in order that it be clear that the Chief Justice of "the High Court" will only be such Chief Justice within whose local limits the Principal Civil Court referred to in Section 2(1)(e) is situate and the

Chief Justice of that High Court which is referred to in the inclusive part of the definition contained in Section 29 2(1)(e). This sub-section also does not in any manner make the Chief Justice or his designate "court" for the purpose of Section 42. Again, the decision of the Chief Justice or his designate, not being the decision of the Supreme Court or the High Court, as the case may be, has no precedential value being a decision of a judicial authority which is not a Court of Record.

23. By reading of the provisions of sub-section (6) of Section 11 of the Act (unamended) it is clear that the intention apparently was to confer the power on the highest judicial authority in the State and in the Country on the Chief Justices of the High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process and the intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act (unamended Act) was exercised by the highest judicial authority in the 30 State or in the Country. This is to ensure utmost authority to the process of constituting the arbitral Tribunal. The power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court but it is conferred on the Chief Justice of India or the Chief Justice of the High Court or designated Judge by the Chief Justice, specifying the authority as the Chief Justice could be that if it were merely the conferment of the power on the High Court or the Supreme Court the matter would be governed by the normal procedure of that Court including the right of appeal and Parliament obviously wanted to avoid that situation since one of the objections was to restrict the interference by the Courts in the arbitral process. Therefore, a combined reading of the provisions of Sections 2(1)(e) and 11(5)(6) and (10) clearly indicates that the Chief Justice or the designate is not a Court as defined in the Act. 31 24. The learned Single Judge of the Delhi High Court in the case of Shivaraj Gupta Vs. Deshraj Gupta, ILR DLH200817-415 while considering the provisions of Section 11(6) of the Act (Unamended Act) while holding that review petition is not maintainable in respect of an order passed by the learned designated Judge exercising power under Section 11(6) of the Act, at paragraph No.5 has held as under: (5) I have considered the arguments advanced by the learned counsel for the parties and given deep thought to what has been submitted. It is well settled that the power of review has to be given by the statute. Though, the high Courts,

being courts of plenary jurisdiction, have inherent powers of review. But the question that arises in the present case is whether an order passed under Section 11(6) of the said Act would amount to an order passed by the High Court or, for that matter, a Court. The answer is, in my opinion, provided by paragraph 18 of the Supreme Court decision in the case of SBP and co. (supra), which reads as under:-

"32 18. It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and the Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as persona designata. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an 33 administrative power and is not a judicial power. (underlining added) After reading the aforesaid portion of the Supreme Court decision, it immediately becomes clear that the power under section 11(6) of the said Act is not conferred on the High Court but is conferred on the Chief Justice of the high Court. The Supreme Court has also given one of the possible reasons for specifying the authority as the Chief Justice and for not conferring any power on the High Court. The possible reason given by the Supreme Court is that had the power been conferred on the High Court, then the matter would be governed by the normal procedure of that Court, including the right of appeal and Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by courts in the arbitral process. It is in this context that the Supreme Court concluded that the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. It is

obvious from a reading of the said observations of the Supreme Court that the power that is exercised under Section 11(6) by the Chief Justice or his designate is not a power which is exercised by them as a court and, therefore, 34 would not be governed by the normal procedure of that court which includes the right of appeal as well as the power of review, revision etc. In these circumstances, I am of the view that a review petition would not be maintainable in respect of an order passed under Section 11(6) of the said Act. This petition is dismissed.

25. In similar circumstances, learned Judge of the Kerala High Court in the case of Sanjay Gupta Vs. Kerala State Industrial Development Corporation Ltd., KERLT-2009-4-147, at paragraph No.1 has held as under: (1). This petition is filed for seeking review of an order issued by the nominee of the honourable the Chief Justice of this Court, in exercise of the power under S.11 of the arbitration and Conciliation Act, 1996, hereinafter referred to as the act. The said statute is a comprehensive one and is not one which confers powers on the High Court to pass any order under S.11. The power is with the Chief Justice of the High Court to take such measure as may be necessary when the request for such 35 measure is made in relation to an arbitration agreement, which does not relate to an international arbitration. The Chief Justice is empowered under the Act to have a nominee which may be even an institution de hors the High Court. Therefore, it is crystal clear that the request under S.11 does not lie to the High Court. Even when a Judge of the High Court acts as the nominee of the Chief Justice, he acts merely as a statutory authority as designated by the Chief Justice in terms of S.11 of the Act. Therefore, unless a power of review is expressly conferred under the Act itself, the general power of review as may be available to the High Court under other jurisdictions; civil, criminal or writ; cannot be extended to review the earlier order issued by Chief Justice or his nominee. For this reason, this Review petition is not maintainable and the same is accordingly dismissed.

26. The learned counsel for petitioner has relied upon Rule 12 of the High Court of Karnataka Arbitration (Proceedings Before the Courts) Rules, 2001. A careful reading of Rule 3 of the said Rules clearly 36 depicts that every application, except an application under Section 11 of the Act shall be headed in the matter of Arbitration and Conciliation Act, 1996 in the matter of Arbitration (State the

proceedings and its number) under Section more and save as otherwise provided in the form of petition. Rule 4 deals with applications filed under Section 14 and 34 of the Act and Rule 9 of the Rules deals with applications for interim measure under Section 9 of the Act. A careful reading of Rule 12 indicates that what is provided for in the Arbitration and Conciliation Act and these Rules, the provisions of the Code of Civil Procedure and Karnataka Civil Rules of Practice may be applied to the proceedings under the Act to the extent considered necessary or appropriate by the Court of Judicial Authority. The word used is `may and therefore it is only a procedure to conduct proceedings under the provisions of Sections 11 or 14 or 34 or 9 of Act and 37 does not give any power to file review. Admittedly, in the entire Act there is no procedure contemplated for review of the order passed by the learned Single Judge exercising power under Section 11 of the Act. In the absence of any provision in the Act, the contention of the learned counsel for the petitioner that Rule 12 is applicable to file a review cannot be accepted. Provisions of the Act shall prevail over the Rules. Therefore, this contention of the learned counsel for the petitioner would not assist the petitioner in any manner whatsoever.

27. Learned counsel for the petitioner has relied upon the observations made by the Honble Supreme Court in the case of SBP and Co., Vs. Patel Engineering Ltd. And another. In the said decision, at paragraph No.44 the Court has observed as under:

38. 44. Once we arrive at the conclusion that the proceeding before the Chief Justice while entertaining an application under Section 11(6) of the Act is adjudicatory, then obviously, the outcome of that adjudication is a judicial order. Once it is a judicial order, the same, as far as the High Court is concerned would be final and the only avenue open to a party feeling aggrieved by the order of the Chief Justice would be to approach the Supreme Court under Article 136 of the Constitution. If it were an order by the Chief Justice of India, the party will not have any further remedy in respect of the matters covered by the order of the Chief Justice of India or the Judge of the Supreme Court designated by him and he will have to participate in the arbitration before the Tribunal only on the merits of the claim. Obviously, the dispensation in our country, does not contemplate any

further appeal from the decision of the Supreme Court and there appears to be nothing objectionable in taking the view that the order of the Chief Justice of India would be final on the matters which are within his purview, while called upon to exercise his jurisdiction under Section 11 of the Act. It is also necessary to notice in this context that this conclusion of ours would really be in aid of quick 39 disposal of arbitration claims and would avoid considerable delay in the process an object that is sought to be achieved by the Act. V - CONCLUSION28 In view of the observations made by the Supreme Court in the aforesaid decision, according to the learned counsel for petitioner, since the Supreme Court is of the view that against any order passed by the Chief Justice of India or designated Judge the party will not have further remedy in respect of the orders covered and he will have to participate in the arbitration before the Tribunal only merits, cannot be a ground to file a review petition before this Court. The said judgment, in fact, has been considered by the Supreme Court in the case of State of West Bengal and others Vs. Associated Contractors, (2015) 1 SCC32relied on by the learned counsel for respondent. Therefore, the judgment relied on by the learned counsel for petitioner 40 has no application to the facts and circumstances of the present case. Learned counsel for the petitioner has not pointed out to the Court with any provisions of the Act or any authority regarding maintainability of the review petition.

29. For the reasons stated above, the point raised in the present review petition is to be held in the negative holding that the petitioner has not made out any ground to entertain the present review petition exercising power under Order 47 Rule 1 CPC, when an order is passed by the learned Single Judge exercising powers under the provisions of Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (Unamended Act).

30. In view of the above, the review petition filed by review petitioner is devoid of merits and not maintainable and accordingly, it is dismissed. 41 31. In view of the dismissal of the review petition, I.A. No.1/2017 filed for condonation of delay of 1495 days in filing the review petition is also disposed off as devoid of merits. Sd/- JUDGE LRS Ct- SM.

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