

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) No.122/2006 & CM Nos.4055/06, 10261-62/09

Wee Aar Constructive Builders .....Appellant through  
Mr. Harish Malhotra, Sr.  
Adv. with Mr.Vipul Gupta &  
Mr. Rajender Aggarwal,  
Advs.

versus

Simplex Concrete Piles (India) Ltd. ....Respondent through  
Mr. V.P. Chaudhary, Sr. Adv.  
with Mr. Nitinjya Chaudhary,  
Adv.

% Date of Hearing: January 20, 2010

Date of Decision: February 01, 2010

CORAM:

\* HON'BLE MR. JUSTICE VIKRAMAJIT SEN  
HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No  |
| 2. To be referred to the Reporter or not?                                | Yes |
| 3. Whether the Judgment should be reported in the Digest?                | Yes |

VIKRAMAJIT SEN, J.

1. The present Appeal impugns the Order of the learned Single Judge dated 16.12.2005, whereby the application for condonation of delay in filing Objections to the Award was rejected and consequently the latter were not looked into on the

premise that they were barred from consideration due to the laws of prescription.

2. The Appellant, at the very outset, has been confronted with the question of maintainability of the Appeal. Mr. Harish Malhotra, learned Senior Counsel for the Appellant, contends that the rejection of the application for condonation of delay has the effect of the dismissal of his Objections which, in turn, results in the refusal to set aside the subject Award. In these circumstances, goes the argument, it is contended that such Orders are appealable under Section 39 (1)(vi) of the Arbitration Act, 1940. The learned Senior Counsel also places reliance on the Letters Patent to submit that even in the Delhi High Court any judgment passed by a Single Judge is assailable before a Division Bench if the judgment or order has the effect of finally determining the rights of either of the parties. Mr. V.P. Chaudhary, learned Senior Counsel for the Respondent, however, contends that the present Appeal against the impugned Order is not maintainable in light of the law laid down by various Judgments of the Hon'ble Supreme Court and of this Court.

3. We think it apposite to immediately underscore that as postulated in Section 17 of the Arbitration Act, 1940 ('Act' for short), in the event Objections for setting aside the Award have

been refused consideration on the ground of limitation, a judgment must be pronounced according to the Award, and a decree would automatically follow. The statutory mandate is that “no appeal shall lie from such decree except on the ground that it is in excess of or not otherwise in accordance with the award”. It also needs to be emphasized that Section 39 of the Act itself takes pains to particularize that an appeal shall lie from the enumerated orders passed under the Act and from no others. Rejection of an application seeking condonation of delay does not feature in the six eventualities mentioned in the Section. In any event, such an order is not one passed under the Act. The only recourse, it appears, would then lie under Article 136 of the Constitution of India.

4. ***Nilkantha Sidramappa Ningashetti -vs- Kashinath Somanna Ningashetti***, AIR 1962 SC 666 as well as ***Essar Constructions -vs- N.P. Rama Krishna Reddy***, (2000) 6 SCC 94 considered the conundrum of whether an Appeal is maintainable under Section 39(1)(vi) of the Act, or under any other provision of that enactment against the dismissal of an application seeking condonation of delay in filing Objections to the Award. ***Essar Constructions*** is the later case and distinguishes the earlier one in the following manner:-

27. The first decision cited is *Nilkantha Sidramappa Ningashetti -vs- Kashinath Somanna Ningashetti*, AIR 1962 SC 666. In that case there was no application to set aside the award at all and no question of rejection of such an application arose. After the award was filed, Defendant 1 filed his “say” about the arbitrator’s award. He subsequently withdrew his “say”. Later, a guardian of a party who was a minor, filed a written statement claiming that the award was null and void on the ground that the award was without jurisdiction. This objection was not pressed before the trial court. The trial court, therefore, passed a decree in terms of the award. The appeal to the High Court was dismissed as not maintainable. The further appeal to this Court was dismissed saying:

When no party filed an objection praying for the setting aside of the award, no question of refusing to set it aside can arise and therefore no appeal was maintainable under Section 39(1)(vi) of the Arbitration Act which allows an appeal against an order refusing to set aside the award.

28. The case is not an authority for the proposition that where an application under Section 30 is made and is rejected, no appeal is maintainable. It does not apply to the facts of this case.

5. The confusion which has been created is because of the fact that a perusal of the *Nilkantha* depicts the factual matrix to be to the contrary, and the decision in the former case to be

diametrically opposed to that in the latter case. This is evident from a reading of the following paragraphs of ***Nilkantha***:

5. On August 24, 1949, the Civil Judge ordered that the award be filed, that a decree be drawn up in terms of the award and that the decree should further contain the terms as to the Bombay shop run in partnership with defendant No.11 as was mentioned in the order. It was said in this order that none of the parties except defendant No.1 put in any objections to the award, that defendant No.1 filed his objections beyond the period of limitation and subsequently withdrew them and that the objections filed by the guardian-ad-litem of defendant No.12 on November 9, 1948, was also filed beyond the period of limitation.

...

13. The second question is whether the order of the Civil Judge amounted to an order refusing to set aside the award and therefore appealable to the High Court. The High Court held that it was not such an order and we agree. When no party filed an objection praying for the setting aside of the award, no question of refusing to set it aside can arise and therefore no appeal was maintainable under S.39(1)(vi) of the Arbitration Act which allows an appeal against an order refusing to set aside an award.

6. Since we are of the view that ***Essar Constructions*** is irreconcilable with the earlier Judgment of a Larger Bench, namely, ***Nilkantha***, it becomes necessary to delve into one aspect of the principle of *stare decisis*, that is, the parameters

within which the later Bench of a High Court or the Supreme Court has liberty to move around with regard to a decision already rendered by a Bench of greater or similar strength.

7. We shall start our study with the decision of the Five-Judge Constitution Bench in *Union of India -vs- Raghbir Singh*, AIR 1989 SC 1933 : 1989(2) SCC 754. The question before their Lordships was whether under the Land Acquisition Act, 1894 the claimants are entitled to solatium at thirty per cent of the market value regardless of the date of the acquisition. In that context several Judgments of the Supreme Court came to be cited. It was in those circumstances the Supreme Court clarified the law in these terms:-

26. It is not necessary to refer to all the cases on the point. The broad guidelines are easily deducible from what has gone before. The possibility of further defining these guiding principles can be envisaged with further juridical experience, and when common jurisprudential values linking different national systems of law may make a consensual pattern possible. But that lies in the future.

27. There was some debate on the question whether a Division Bench of Judges is obliged to follow the law laid down by a Division Bench of a larger number of Judges. Doubt: has arisen on the point because of certain observations made by O. Chinnappa Reddy, J. in *Javed Ahmed Abdul Hamid Pawala v. State of Maharashtra* (1983) 3 SCC 39 : 1984 CriLJ 1909.

Earlier, a Division Bench of two Judges, of whom he was one, had expressed the view in *T. V. Vatheeswaran v. State of Tamil Nadu* (1983) 2 SCC 68: 1983CriLJ693 that delay exceeding two years in the execution of a sentence of death should be considered sufficient to entitle a person under sentence of death to invoke Article 21 of the Constitution and demand the quashing of the sentence of death. This would be so, he observed, even if the delay in the execution was occasioned by the time necessary for filing an appeal or for considering the reprieve of the accused or some other cause for which the accused himself may be responsible. This view was found unacceptable by a Bench of three Judges in *Sher Singh v. State of Punjab* (1983) 2 SCC 344 : [1983]2SCR582, where the learned Judges observed that no hard and fast rule could be laid down in the matter. In direct disagreement with the view in *T. V. Vatheeswaran* (supra), the learned Judges said that account had to be taken of the time occupied by proceedings in the High Court and in the Supreme Court and before the executive authorities, and it was relevant to consider whether the delay was attributable to the conduct of the accused. As a member of another Bench of two Judges, in *Javed Ahmed Abdul Hamid Pawala* (supra) *O. Chinnappa Reddy, J.* questioned the validity of the observations made in *Sher Singh* (supra) and went on to note, without expressing any concluded opinion on the point, that it was a serious question "whether a Division Bench of three Judges could purport to overrule the judgment of a Division Bench of two Judges merely because three is

larger than two. The court sits in Divisions of two and three Judges for the sake of convenience and it may be inappropriate for a Division Bench of three Judges to purport to overrule the decision of a Division Bench of two Judges. Vide *Young v. Bristol Aeroplane Co. Ltd.* (1944) 2 All ER 293. It may be otherwise where a Full bench or a Constitution Bench does so." It is pertinent to record here that because of the doubt cast on the validity of the opinion of *Sher Singh* (supra), the question of the effect of delay on the execution of a death sentence was referred to a Division Bench of five Judges, and in *Triveniben v. State of Gujarat* : AIR1989SC142 the, Constitution Bench overruled *T. V. Vatheeswaran* :1983CriLJ693 (supra).

28. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the Courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being

constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and, by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin v. State of West Bengal* 1975CriLJ637 a Division Bench of three Judges found it right to follow the law declared in *Haradhan Saha v. State of West Bengal* 1974CriLJ1479 decided by a Division Bench of five Judges, in preference to *Bhut Nath Mate v. State of West Bengal* 1974CriLJ690 decided by a Division Bench of two Judges. Again in *Smt. Indira Nehru Gandhi v. Raj Narain* [1976]2SCR347 Beg, 1 held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *His Holiness Kesavananda Bharati Sripadagalavaru v. State of Kerala*, AIR1973SC1461. In *Ganapati Sitaram Belvalkar v. Waman Shripad Mage (Since Dead) Through Lrs.*, AIR1981SC1956, this Court expressly stated that the view taken on a point of law by a Division Bench of four

Judges of this Court was binding on a Division Bench of three Judges of the Court. And in *Mattulal v. Radhe Lal* [1975]1SCR127 this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in *Acharaya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujarat* [1975]2SCR317, that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was re-affirmed in *Union of India v. Godfrey Philips India Ltd.* [1986]158ITR574(SC) which noted that a Division Bench of two Judges of this Court in *Jit Ram v. State of Haryana* [1980]3SCR689 had . differed from the view taken by an earlier Division Bench of two Judges in *Motilal Padampat Sugar Mills v. State of U. P.* [1979]118ITR326(SC) , on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later Bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

8. This ratio of **Raghubir Singh** was applied once again by the Constitution Bench in **Chandra Prakash -vs- State of U.P.**, AIR 2002 SC 1652. We think it instructive to extract the following observations from **Chandra Prakash** in order to underscore that there is a consistent and constant judicial opinion, spanning across decades, on this aspect of jurisprudence:

22. Almost similar is the view expressed by a recent judgment of a five-Judge Bench of this Court in Parija's case(supra). In that case, a Bench of two learned Judges doubted the correctness of the decision of a Bench of three learned Judges, hence, directly referred the matter to a Bench of five learned Judges for reconsideration. In such a situation, the five-Judge Bench held that judicial discipline and propriety demanded that a Bench of two learned Judges should follow the decision of a Bench of three learned Judges. On this basis, the five-Judge Bench found fault with the reference made by the two-Judge Bench based on the doctrine of binding precedent.

23. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on

the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh* held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of *Parija* (supra) held that-

“But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.”

9. We shall only mention *Union of India -vs- K.S. Subramanian*, AIR 1976 SC 2433 and *Indian Petrochemicals Corporation Ltd. -vs- Shramik Sena*, AIR 2001 SC 3510.

10. In this analysis, our conclusion on this extremely important aspect of the law, that is, *stare decisis*, is that when a Bench is faced with a decision of a previous Bench of equal strength (in modern legal parlance coordinate Bench or equi-bench), it is expected to follow the previous decision and apply its ratio. We can do no better than reiterate the pronouncement in *Mamleshwar Prasad -vs- Kanhaiya Lal*, 1975 (2) SCC 232 : AIR 1975 SC 907, followed in *Fuerst Day Lawson -vs- Jindal Exports Ltd.*, AIR 2001 SC 2293 which have reflected on the principle of *per incuriam*. Their Lordships held that –“Certainty of law, consistency of rulings and comity of courts – all flowering from the same principle – converge to the conclusion that a decision once rendered must later bind like cases. ....a prior decision of this court on identical facts and law binds the court on the same points in a later case. Here we have a decision admittedly rendered on facts and law indistinguishably identical, and that ruling must bind”.

11. Very recently, the Full Bench of the Bombay High Court has also considered this conundrum in *Sandeep Rammilan Shukla -vs- The State of Maharashtra*, 2009(1) MhLj.97.

References to the decision of the Division Bench of the Punjab High Court in **WP(C) No.2936/2002** titled **Rohtash -vs- State of Haryana** and a previous Full Bench of the Bombay High Court in Appeal Nol.370/2007 titled **Emkay Exports -vs- Madhusudan Shrikrishna** and of the Supreme Court in **K.S. Subramanian** was made. The conclusion of the Full Bench was that the ratio of the earlier decisions shall prevail. We also have the benefit of a detailed discussion of this aspect of the law undertaken by a coordinate Bench of this Court in Smt. *Gopa Manish Vora -vs- Union of India*, MANU/DE/0841/2009. Our learned Brother, Badar Durrez Ahmed, J., also speaking for V.B.Gupta, J. had to unravel the problem posed by the existence of two conflicting views of the Supreme Court. Reference was made to the Full Bench decision of the High Court of Allahabad in *Ganga Saran -vs- Civil Judge, Hapur, Ghaziabad*, AIR 1991 Allahabad 114 as well as to the Full Bench of the Punjab High Court in *Indo Swiss Time Ltd, Dundahera -vs- Umrao*, AIR1981P&H213. Our learned Brothers had thereafter ventured to voice the view that the High Court has the option to choose between the ratio set down by equi-benches. In paragraph 8 of *Indian Petrochemicals Corporation Limited -vs- Shramik Sena*, their Lordships have opined that when a Court is confronted with diametrically opposite decisions “it was expected of the

High Court to decide the case (writ petition) on merit according to its own interpretation of the said judgment". Placed in such a predicament, we would invariably choose to adhere to the earlier decision since doing so would be conducive to perpetuating consistency in the law. Salmond on Jurisprudence unworkably dilutes the efficacy of principle of *stare decisis* when it opines that – "Where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic court itself. The lower court may refuse to follow the later decision on the ground that it is the latest authority. Which of these two courses the court adopts depends, or should depend, upon its own view of what the law ought to be". This approach cannot but lead to uncertainty which is an anathema and abhorrence to law. If this is permissible, it would lead to multiplicity of views, all of which would inexorably create equivocation and ambivalence of what the law is, which is the very antithesis of the rule of *stare decisis*. If the judicial conscience of a coordinate Bench is so aroused that it finds it impossible to follow the existing ratio, it can do no more than refer the matter to a larger Bench. The rule of *stare decisis*, for obvious reasons, is equally annihilated by the so-called explanation of a precedent by a smaller Bench. The situation is exacerbated where it becomes palpably clear

that the interpretation by a later Bench of the earlier judgment of a Bench of greater strength is based on erroneous appreciation of the facts.

12. If the freedom to pick and choose between two decisions of the Supreme Court of India is bestowed on subordinate courts, it would run counter to Article 141 of the Constitution of India which simply and concisely states that – “the law declared by the Supreme Court shall be binding on all Courts within the territory of India”. In *Government of Andhra Pradesh -vs- A.P. Jaiswal*, AIR 2001 SC 499 it has been enunciated that- “consistency is the corner stone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the courts have evolved the rule of precedence, principle of *stare decisis* etc. These rules and principles are based on public policy and if these are not followed by courts then there will be chaos in the administration of justice”. This is precisely what their Lordships had said in *S.I. Rooplal -vs- Lt. Governor*, AIR 2000 SC 594, viz. –“A coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.”

13. Keeping this perception of the law in perspective, the approach to be taken by the Court, when confronted with ***Nilkantha*** and ***Essar Constructions***, is no longer a legal nodus. This is for two reasons. Firstly, contrary to the position narrated in the later case, an application for condonation of delay in filing Objections to the Award had been preferred in the earlier decision. Secondly, the smaller and the later Bench had no freedom other than to apply the law laid down by the earlier and larger Bench. Applying the ratio of ***Nilkantha*** to the facts before us leads to one conclusion only. Since the learned Single Judge had dismissed or rejected the presentation of facts for condoning delay, it would not tantamount to accepting or rejecting the Award as postulated in Section 39(1)(vi) of the Act. Division Bench decisions in *Hari Shankar Gupta -vs- Union of India*, ILR (1974) I Delhi 771, *Banwari Lal Radhey Mohan -vs- The Punjab State Cooperative Supply*, AIR 1983 Delhi 402, *MTNL -vs- Unibros*, 156(2009) DLT 774 express the same view. This is for the reason that in doing so the Court does not refuse to set aside an Award, but to the contrary, finds that the Award has not been assailed at all since Objections have not been filed within the stipulated period.

14. This brings us to the question whether it is possible to assail the Judgment of the learned Single Judge by traversing

the avenue of Letters Patent. In support of his contention, Mr. Harish Malhotra refers us to *Nagindas Motilal -vs- Nilaji Moroba Naik*, AIR 1924 Bombay 399. That case sought to interpret Letters Patent applicable to the Division Benches of Bombay High Court. Support is also sought on behalf of the Appellant on *Promotho Nath Roy -vs- W.A. Lee*, AIR 1921 Calcutta 415. It should be noted that both these High Courts were established by their respective Letters Patent one of the main features of which was to provide for an intra Court appeal (in the High Court) thereby removing the necessity of travelling to London to assail Orders/Judgment of Single Bench etc. In the case of the Delhi High Court it was established and created by statute, and that statute provides for and postulates appeals only under the Civil Procedure Code, 1908 or the enactment concerned.

15. This interesting aspect of the law has already been considered by a Bench of this Court in *Shivnath Rai Harnarain India Company -vs- Glencore Grain Rotterdam*, 2009 X AD (Delhi) 357. With regard to the Arbitration & Conciliation Act, 1996 ('A&C Act' for short), the Division Benches of this Court has considered *Cref Finance Ltd. -vs- Puri Construction Ltd.*, AIR 2001 Delhi 414, *Vidyawati Construction Company -vs- Rail India Technical & Economic Services Ltd*, 91 (2001) Delhi Law

times 538 (DB), *The East India Hotels Ltd. -vs- Jyoti Pvt. Ltd.*, 1996 III Apex Decision (Delhi) 242, **RFA (OS) No. 9/2006** titled ***ITE India (P) Ltd. -vs- Mukesh Sharma***, which is of a Bench comprising our learned Brothers, A.K. Sikri and Manmohan Singh, JJ. and *Hardayal Singh -vs- Joginder Singh*, 156(2009) DLT 28. It is necessary to draw a distinction between the Letters Patent as applicable to the High Courts of Bombay, Calcutta, Lahore, Madras etc. and the High Court of Delhi. All these Courts were placed on the same footing by virtue of the Letters Patent except that in the case of High Court of Delhi which was constituted by virtue of Delhi High Court Act, 1966. This is of historical significance and the dissimilarity between the High Court of Delhi and the aforementioned High Courts has been considered in detail by the Five-Judge Bench in *University of Delhi -vs- Hafiz Mohd. Said*, AIR 1972 Delhi 102 and *Union of India -vs- A.S. Dhupia*, AIR 1972 Delhi 108 in which the Court spoke through Rajindar Sachar, J. ***Hafiz Mohd. Said*** was overruled by a brief Order of a Two-Judge Bench in *Jugal Kishore Paliwal -vs- S. Satjit Singh*, (1984) 1 SCC 358, not on the question of whether Letters Patent applied to the Delhi High Court, but rather on the meaning of the word 'judgment' as has been expounded upon in *Shah Babulal Khimji -vs- Jayaben D. Kania*, (1981) 4 SCC 8. Their Lordships were faced

with the refusal to hear an appeal from the Order of the Single Judge who had declined to permit an amendment of the Written Statement at the stage of framing of Issues. Their Lordships opined that such an order would “certainly not be a purely interlocutory order against which no appeal before the LPA Bench would be maintainable”. The Supreme Court did not touch upon other aspects of the detailed judgment which analysed the history of Letters Patent and arguably came to the conclusion that “Letters Patent” were not available in the High Court of Delhi. In this context, the editorial comments in the Report are illuminating. So far as *Dhupia* is concerned, it has withstood the test of time. It was held that Section 10 of the Delhi High Court Act, 1966 does not provide the avenue of an appeal, especially keeping the language of Section 39 of the Act in view. After a detailed discussion by Three-Judge Bench in *Union of India -vs- Mohindra Supply Co.*, AIR 1962 Supreme Court 256, the following enunciation of the law was articulated. For ease of reference, two paragraphs of the said Judgment are reproduced:-

17. There is in the Arbitration Act no provision similar to section 4 of the Code of Civil Procedure which preserves powers reserved to courts under special statutes. There is also nothing in the expression "authorised by law to hear appeals from original

decrees of the Court" contained in section 39(1) of the Arbitration Act which by implication reserves the jurisdiction under the Letters Patent to entertain an appeal against the order passed in arbitration proceedings. Therefore, in so far as Letters Patent deal with appeals against orders passed in arbitration proceedings, they must be read subject to the provisions of section 39(1) and (2) of the Arbitration Act.

18. Under the Code of 1908, the right to appeal under the Letters patent was saved both by section 4 and the clause contained in section 104(1), but by the Arbitration Act of 1940, the jurisdiction of the Court under any other law for the time being in force is not saved; the right of appeal can therefore be exercised against orders in arbitration proceedings only under section 39, and no appeal (except an appeal to this Court) will lie from an appellate order.

16. In order to avoid prolixity, we are not reiterating the arguments and considerations which we had articulated in ***Shivnath***. All these Judgments have been considered by Division Benches of this Court. We, therefore, find that there is no material difference on the availability of an Appeal against an Order of the learned Single Judge in the A&C Act and the Act; in our view if such an Appeal is not available in the forum, a fortiori, it is not postulated by the latter.

17. Since the matter has already been discussed in detail by several Division Benches, of which both of us respectively were the authors, considerable time of the Court has been needlessly exhausted. The Appeal is dismissed as not maintainable with costs of Rupees 20,000/- to be deposited within four weeks with the Prime Minister Relief Fund. Pending applications also stand dismissed.

( VIKRAMAJIT SEN )  
JUDGE

February 01, 2010  
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( MANMOHAN SINGH )  
JUDGE