

**[NON-REPORTABLE]**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO.3479 OF 2022**

M/s. Kelkar & Kelkar

..Appellant

Versus

M/s. Hotel Pride Executive Pvt. Ltd.

..Respondent

**J U D G M E N T**

**M. R. Shah, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.08.2015 passed by the High Court of Judicature at Bombay in Writ Petition No.4442 of 1999 by which the High Court, in exercise of Articles 226 and 227 of the Constitution of India, has allowed the said writ petition preferred by the respondent herein and has quashed and set aside the award passed by the learned Arbitrator and has remanded the matter for de

novo consideration, the original claimant has preferred the present appeal.

1.1 The dispute arose between the parties which was the subject matter of arbitration before the learned Arbitrator. On the learned Arbitrator declaring the award, on an application filed by the original claimant – original plaintiff vide order passed in Exhibit 10 in Regular Civil Suit No.1022/1996, passed a decree in terms of the award made by the learned Arbitrator. By the said award the original respondents were directed to pay to the original claimants Rs.12,46,663/-.

1.2 Feeling aggrieved and dissatisfied with the award made by the learned Arbitrator as well as the order passed by the learned trial Court passed as per Exhibit 10 in making the award a decree, instead of preferring appeals under the Arbitration Act, 1940 (hereinafter referred to as 'the Act'), preferred a writ petition before the High Court under Articles 226 and 227 of the Constitution of India mainly on the ground that, before the learned Arbitrator was appointed, there was non-compliance of Clause 56 of

the Articles of Agreement and the procedure as required under Clause 56 was not followed. By the impugned judgment and order the High Court has set aside the award made by the learned Arbitrator on the ground that the procedure as required under Clause 56 had not been followed. Consequently, the High Court has remanded the matter for de novo consideration.

1.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original claimant has preferred the present appeal.

2. Having heard learned counsel appearing on behalf of the respective parties and considering the impugned judgment and order passed by the High Court, we are of the opinion that against the award made by the learned Arbitrator made under the Act and against an order passed by the learned trial Court making the award a decree and without availing the alternative statutory remedy available by way of appeal under the provisions of the Act, the High Court ought not to have entertained the writ petition under Articles 226 and 227 of the

Constitution of India. When the statute provides a further remedy by way of appeal against the award and even against the order passed by the learned trial Court making the award a decree of the court, the High Court ought not to have entertained the writ petition and ought not to have set aside the award, in a writ petition under Articles 226 and 227 of the Constitution of India. In that view of the matter the impugned judgment and order passed by the High Court is unsustainable and the same deserves to be quashed and set aside.

3. At this stage, learned counsel appearing on behalf of the respondent has prayed that in that view of the matter, liberty be reserved in favour of the respondent to take further recourse to law under the provisions of the Act which might have been available against the award made by the learned Arbitrator as well as the order passed by the learned trial Court as per Exhibit 10 making the award a decree. It is further prayed to make a suitable observation that whatever amount is already paid to the appellant – original claimant may be adjusted subject to

the ultimate outcome and the further order that may be passed in future.

4. In view of the above and for the reasons stated above, present Appeal succeeds. Impugned Judgment and Order passed by the High Court is set aside. However, liberty is reserved in favour of the respondent to take further recourse to law under the provisions of the Arbitration Act, 1940 and in accordance with law against an award made by the learned Arbitrator and the order passed by the learned trial Court passed as per Exhibit 10 making the award a decree of the court and if such proceedings are initiated within a period of four weeks from today, the same be considered in accordance with law and on its own merits without raising the issue with regard to limitation. It goes without saying that the amount already paid to the appellant – original claimant shall be subject to the ultimate outcome of the proceeding that may be initiated by the respondent.

5. In view of the above and for the reasons stated above, present appeal is allowed to the aforesaid extent only. However, there shall be no order as to costs.

.....J.  
**(M. R. SHAH)**

.....J.  
**(B.V. NAGARATHNA)**

New Delhi,  
May 04, 2022.