SYAM SUNDER AGARWAL AND CO. A

v.

UNION OF INDIA

JANUARY 9, 1996

[G.N. RAY AND G.T. NANAVATI, JJ.] B

Arbitration Act, 1940 :

Section 39—Appellate order passed under—Revision against such an order is permissible—Held there is no express provision in the Act which bars revision against appellate order. C

Rules for the Administration of Justice and Police in the Khasi and Janitia Hills, 1937 :

Rule 36-A-Revision against appellate order under section 39 of Arbitration Act held permissible—Revision power under Rule 36-A should be exercised in conformity with revision power under section 115 of Civil Procedure Code—Applicability of rules to non-tribals—Assistant to Deputy Commissioner and Commissioner held clothed with powers of Civil Court. D

Code of Civil Procedure, 1908 : E

Section 115—Revision—Special statute—Provision of finality—Does not take away revision power of High Court.

The appellant entered into a contract with the respondent. A dispute arose between the parties and the matter was referred to a sole arbitrator who passed an award for a sum of Rs. 6,72,645.56 in favour of the appellant. The Assistant to the Deputy Commissioner at Shillong made the award a rule of court and rejected the respondent's objection filed under section 30 of the Arbitration act, 1940. Respondent's appeal under Section 39 was dismissed by Deputy Commissioner, Shillong. A revision was preferred under Rule 36-A of the Rules for the Administration of justice and Police in the Khasi and Jaintia Hills, 1937 and a single Judge referred the revisions case to a Division Bench for adjudication of the issue as to maintainability of the revision. The Division Bench of the High Court answered the reference in favour of the maintainability of the revision and F G H

A held that (i) against an appellate order under section 39 of the Arbitration Act a revision lies before the High Court; (ii) there was no provision in the Arbitration Act which puts an embargo on the revisional jurisdiction of the High Court against the appellate order. In coming to this conclusion the Division Bench relied on a decision of the Allahabad High Court in *L. Charan Das* v. *L. Gur Saran Das*, AIR (1945) All. 146 and a decision of Pepsu High Court in *Lal Chand* v. *Dev Raj*, AIR (1951) Pepsu 115 and held that the contrary view expressed by a Single Judge in *Union of India* v. *D.S. Narula & Co.*, Civil Revision No. 33(H) of 1985 (1991) GLJ 400, was incorrect.

C In appeal to this Court it was contended on behalf of the appellant that (i) Rules 36A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, 1937 apply only to the disputes between the tribes known as the Khasi or the Janitias. They do not govern the disputes between the non triabal people of the area. Therefore, the revision application under Rules 36A was not maintainable; (ii) the Arbitration Act does not contemplate any revision of the appellate order; (iii) assuming that the High Court was clothed with revisional power under Section 115 of the Code of Civil Procedure, 1908 to revise an order passed by a court subordinate to it no such revisional application was filed and the revisional application filed under Rule 36A was alien to the scheme under the Arbitration Act; and (iv) the Assistant to the Deputy Commissioner and the Deputy Commissioner may be clothed with the power to entertain arbitration award for making the award Rule of Court or to entertain appeal but they cannot be held to be a civil court as contemplated under Section 115 CPC or a Court as defined in Section 2(c) of the Arbitration Act.

Dismissing the appeal, this Court

HELD : 1. A revisional application before the High Court against an appellate order passed under Section 39 of the Arbitration Act is maintainable. There is no express provision in the Act putting an embargo against filing a revisional application against appellate order under Section 39 of the Act. The Act is a special statute having limited application relating to matters governed by the said Act. Such special statute, therefore, must have its application as provided for in the said statute. The revisional jurisdiction of the High Court under the Code or under any other statute therefore shall not stand superseded under the

Arbitration Act if the Act does not contain any express bar against exercise of revisional power by the High Court provided exercise of such revisional power does not mitigate against given effect to the provisions of the Arbitration Act. [260-C-D]

Union of India v. *The Mohinder Supply Co.*, AIR (1962) SC 256; *Chhaganlal* v. *Municipal Coporation, Indore*, [1977] 2 SCC 409 and *R. Medil and Co. Ltd.* v. *Gauri Shankar Sarda*, [1991] 2 SCC 548, referred to.

L. Charan Das v. *L. Gur Saran Das*, AIR (1945) All. 146 and *Lal Chand* v. *Dev Raj*, AIR (1951) Pepsu 115, Approved.

Union of India v. *D.S. Narula & Co.*, Civil Revision No. 33(H) of (1985) (1991 GLJ 400), disapproved.

2. Even if a special statute expressly attaches finality to an appellate order passed under that statute, such provision of finality will not take away revision powers of the High Court under Section 115 of the code of Civil Procedure. There is also no such express provision in the Arbitration Act attaching finality to the appellate order under Section 39 of the said Act. The only bar under sub-section (2) of Section 39 is of a second appeal from an appellate order under Section 39. The impugned order of the High Court upholding maintainability of revisional application under Rule 36A of the Rules, therefore, is justified and no interference against such decision is warranted. [260-G-H; 261-A]

Hari Shankar v. *Rao Girdhari Lal*, [1962] Suppl. 1 SCR 933, Referred to.

3. The appellant filed the award in the court of the Assistant to the Deputy Commissioner for making the award rule of court and also conceded to the jurisdiction of the Deputy Commissioner in entertaining appeal under Section 39 of the Arbitration Act. In the aforesaid circumstances, the contention as to non applicability of Rule 36A of the Rules to non-Tribals by the respondent as sought to be raised only at this stage, could not be countenanced. [254-F-G]

4. The Assistant to the Deputy Commissioner, Shillong and the Deputy Commissioner, Shillong have been clothed with the jurisdiction to act as civil courts in some parts of Meghalaya. Under the Meghalaya Act

A No. 6 of 1972, the Rules have been made applicable to the whole of United Khasi Hills District and Janitia Hills District. The appellant, therefore, filled the arbitration award in the Court of the Assistant to the Deputy Commissioner and obtained the order making the award of rule of Court. The respondent-Union of India also preferred appeal under Section 39 of
B the Arbitration Act before the Deputy Commissioner accepting it as appellate civil court. No material has been placed to show that the Assistant to the Deputy Commissioner or the Deputy Commissioner have not been clothed with powers of Civil Court for decision of Civil disputes in general within the territorial limits but they have been empowered to
C decide only a special category of civil disputes confined to particular tribal people. In the aforesaid circumstances, the appellate order having been passed by a civil court, constituted under a special statute, subordinate to the High Court, the High Court does not cease to have revisional jurisdiction under Section 115 of the Code of Civil Procedure. [259-B-E]

D 5. The appellant Union of India filed a revisional application under Rule 36A before the Single Bench of the High Court because against an appellate order of Deputy Commissioner, no appeal is provided for under the Rules. Even if there was any provision for filing an appeal from such appellate order of the Deputy Commissioner under the Rules, such second
E appeal, being expressly barred by Section 39(2) of the Arbitration Act, would have been incompetent. In such circumstances revision application under Rule 36A is to be considered in conformity with Section 115 of the Code of Civil Procedure. Such limited application of revisional jurisdiction under Rule 36A in assailing an appellate order under Section 39 of
F the Arbitration Act is to be read otherwise revisional power under Rule 36A will have occasion to cause hostile discrimination. Revisional power under Rule 36A of the High Court therefore, must be exercised in conformity with the revisional power under Section 115 of the Code of Civil Procedure. [259-F-H; 260-A-B]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1536 of 1996.

From the Judgment and Order dated 8.10.91 of the Assam High Court in C.R. No. 74(SH) of 1989.

H H.L. Tikku, Kailash Vasdev and Ms. Aparna Bhat for the Appellant.

V.R. Reddy, Additional Solicitor General, Ms. Indira Sawhney, Ms. Sushma Suri (NP) for the Respondent. A

The Judgment of the Court was delivered by

G.N. RAY, J. Leave granted. B

Heard learned counsel, for the parties. This appeal is directed against the judgment dated October 8, 1991 passed by the Division Bench of Gauhati High Court in Civil Revision Case No. 74 (SH) of 1989. The aforesaid decision was made by the Division Bench of the High Court on a reference by a learned Single Judge of the Gauhati High Court in the said Civil Revision Case No. 74 C (SH) of 1989. The learned Single Judge having disagreed with a decision by a Single Bench of the Gauhati High Court in *Union of India* v. *D.S. Narula & Co.*, in Civil Revision No. 33(H) of 1985 (1991 GLJ 400) that no revision lies against the appellate judgment passed in the appeal under Section 39 of the Arbitration Act, referred the Revision Case to the Division Bench for deciding D the maintainability of the Revision Petition filed under Rule 36A of the Rules for the Administration of Justice and Police in the Khasi and Janitia Hills 1937, against the appellate order dated March 28, 1968 passed by the learned Additional Deputy Commissioner, East Khasi Nille. Shillong arising out of the order dated July 21. 1984 passed by the Assistant to the Deputy commissioner at Shillong rejecting the objections made under Section 30 of the Arbitration Act E and making the award in question, a rule of court.

A contract was awarded to the appellant by the respondent for levelling of the sites at Kashipur near Silcher, In view of dispute between the parties on the claim of the appellant for the aforesaid work, the dispute was referred F to the sole arbitrator being Engineer-in-Chief, Defence Headquarters, New Delhi by an order of Court. The sole arbitrator after hearing the parties made a non speaking award on July 28, 1982, for a sum of Rs. 6,72,645.56 in favour of the appellant with interest on the said sum at 10% from the date of award till realisation. G

On August 11, 1982 the appellant filed the award in the Court of the Assistant to the Deputy Commissioner at Shillong and the respondent filed objection to the award under Section 30 of the Arbitration Act to which the appellant filed their rejoinder. The learned Assistant to the Deputy Commissioner rejected the objection and made the award a rule of Court. H

A The respondent thereafter filed an appeal under Section 39 of the Arbitration Act against the said decision of the Assistant to the Deputy Commissioner before the learned Deputy Commissioner at Shillong and the said appeal was dismissed by the learned Deputy Commissioner. A decree was drawn up in terms of the said award.

B The respondent challenged the said appellate order by filing a revision petition under Rule 36 A of the Rules for the Administration of Justice and Police in the Khasi and Janitia Hills, 1937 before a Single Bench of the Gauhati High Court.

C The learned Single Bench was of the view that the said revision petition under Rule 36 A was maintainable by disagreeing with a contrary view expressed by another Single Bench of the said High Court in the case of *Union of India* v. *D.S. Narula & Co.* and referred the revision case for adjudication of the issue as to maintainability of the said revision application by a Division D Bench of the Gauhati High Court.

By the impugned Judgment, the Division Bench has held that under Section 39 of the Arbitration Act, a second appeal from appellate judgment and order has been expressly barred. There is no provision in the Arbitration Act which puts an embargo on the revisional jurisdiction of the High Court E against the appellate order. It has been held by the Division Bench that there is no provision conferring revisional jurisdiction on the High Court against an appellate order. But `Court' has been defined under Section 2 (c) of the Arbitration Act. The proceedings before the appellate court under Section 39 of the Arbitration Act are judicial proceedings and the Judge exercises a power F under Section 39 as a judicial officer. Section 115 Civil Procedure Code confers revisional powers on the High Court in respect of a decision of a court subordinate to it if no appeal lies against such decision of the subordinate court provided any of the three clauses under Section 115 Civil Procedure Code is fulfilled. It appears that relying on the decision of Allahabad High Court in *L. Charan Das* v. *L. Gur Saran Das*, AIR (1945) Allahabad 146 and a decision G of the *Pepsu High Court in Lal Chand* v. *Dev Raj*, AIR (1951) Pepsu 115 holding that against an appellate order under Section 39 of the Arbitration Act, revision lies before the High Court, the Division Bench of the Gauhati High Court answered the reference in favour of maintainability of the said revision application before the Gauhati High Court by indicating that the contrary view H expressed by a Single Bench of the said High Court in *D.S. Narula & Co.'s*

Case was incorrect. The Division Bench directed that the revision case being maintainable should be disposed of on merits by the appropriate Single Bench of the High Court . A

For the purpose of appreciating rival contentions of the parties to this appeal, it would be appropriate to refer to the provisions of sections 39, 40, 41 and 47 of the Arbitration Act. B

"39. *Appealable orders* - (1) an appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing an order : C

An order -

(i) superseding an arbitration

(ii) on an award stated in the form of a special case : D

(iii) modifying or correcting an award ;

(iv) filing or refusing to file an arbitration agreement;

(v) staying or refusing to stay legal proceedings where there is an arbitration agreement; E

(vi) setting aside or refusing to set aside an award;

Provided that the provisions of this section shall not apply to any order passed by a small Cause Court. F

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

"40. *Small Cause Court not to have jurisdiction over arbitrations save arbitrations in suit before it.* - A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save on application made under Section 2." G

"41. *Procedure and power of Court* - Subject to the provision of this Act and of rules made thereunder - H

A (a) the provisions of the Code of Civil Procedure, 190B, shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect
B of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court :

Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making
C orders with respect to any of such matters."

"47. *Act to apply to all arbitrations.* - Subject to the provisions of Section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder :
D

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending.

E It will also be appropriate at this stage to refer to the relevant provisions of the Rules for the Administration of Justice and Police in the Khasi and Janitia Hills. 1937 (hereinafter referred to as the Rules). The Rules were published under Notification No. 2618-A.P. dated March 29, 1937 after they were promulgated by the Government under the powers vested in him by
F Section 6 of the Scheduled Districts Act XIV of 1874. These Rules extend to the whole of the United Khasi Janitia Hills Districts excluding the areas which were known as the khasi State before the commencement of the Constitution of India. Rule 31 of the Civil Rules framed under Chapter 4 of the Rules deals with the exercise of original jurisdiction by the Deputy Commissioner and his
G Assistants. It appears that there is no dispute that the Assistant to the Deputy Commissioner was competent to entertain an arbitration award filed before it for the purpose of making it a rule of court. There is also no dispute that against such order of the Assistant to the Deputy Commissioner the party aggrieved by the order making the arbitration award a rule of court can prefer
H an appeal before the Deputy Commissioner. Rule 31 and Rule 36A of the

Rules are set out hereunder :

"31. Exercise of original jurisdiction by Deputy Commissioner and his Assistants. The Deputy Commissioner and his Assistants shall not ordinarily hear suits triable by sardars and dalois or other duly recognised village authorities, but they have a discretion to do so when they think right: and suits, which under these rules the village authorities cannot try, must be tried by the Deputy Commissioner, or his Assistants. A register of all suits tried by the Deputy Commissioner and his Assistants shall be kept in such form as the High Court shall direct."

"36-A. *Appeal and revision* - The High Court or the Deputy Commissioner may, on application or otherwise, call for the proceedings of any case decided by any officer subordinate to him and pass such orders as he may deem fit.

The Deputy Commissioner shall be a court of appeal from a decision of an Assistant. The High Court shall be a court of appeal from an original decision of the Deputy Commissioner if the value of the suit be rupees five hundred or over, or if the suit involves a question of tribal right or customs, or of right to, or possession of, immovable property."

The learned counsel for the appellant has submitted that the Rules apply only to the disputes between the tribes known as the Khasi or the Janitias. They do not govern the disputes between the non tribal people of the area. It, however, appears to us that the Rules provide for trial of certain categories of civil cases by village authorities like sardars and dolois and other chief village authorities as may be recognised by the Deputy Commissioner by samad under his signatures as competent to try cases without limit as to amount but with the reservations mentioned in clauses (a) and (b) of Rule 26. Rule 32 provides for reference of Civil disputes to Panchayat by Deputy Commissioner or his Assistant *in all cases in which the parties are indigenous inhabitants of the hills*. Rule 33 provides for appeal from decision of village authorities to Deputy Commissioner or an assistant to the Deputy Commissioner. (emphasis supplied)

Rule 36A provides for appeal and revision before the High Court and

A to the Deputy Commissioner as the case may be, as indicated in Rule 36A. Rule 36A provides that the Deputy Commissioner shall be a court of appeal from a decision of an Assistant. The High Court shall be a court of appeal from an original decision of the Deputy Commissioner if the value of the suit be Rupees five hundred or over or *if the suit involves question of tribal right or* B *customs or of right to or possession of immovable property.* (emphasis supplied).

The contention of the learned counsel for the appellant that the Rules apply to the disputes between the tribes known as the Khasi or the Janitias cannot be accepted. Such contention does not appear to have been raised C before the High Court. Moreover, no material has been placed before us to indicate that the Rules are applicable only to Khasi or Janitia tribes. It appears to us on a reference to Chapter IV of the Rules dealing with administration of civil Justice that a special forum for trial of civil disputes has been made in respect of the area where Rules have been made applicable. The specific D provision of referring all disputes to village Panchayats in which the parties are *indigenous inhabitants of the hill* in Rule 32 only indicates that such reference is to be made in respect of all indigenous inhabitants of the hill and not not only in respect of members of Khasi or Janitia tribes. Similarly, in Rule 36A, the High Court has been made a court of appeal from an original decision E of the Deputy Commissioner if the suit involves question of tribal rights and customs. Such provision indicates that the original decision of Deputy Commissioner may be in respect of other matters and in respect of persons other than Khasi and Janitia tribals.

F The appellant filed the award in the court of the Assistant to the Deputy Commissioner for making the award rule of court and also conceded to the jurisdiction of the Deputy Commissioner in entertaining appeal under Section 39 of the Arbitration Act. In the aforesaid circumstances, the contention as to non availability of Rule 36A of the Rules by the respondent as sought to be raised only at this stage, should not countenanced.

G

It has been very strongly contended that the Arbitration Act does not contemplate any revision of the appellate order. The very purpose of the Arbitration Act is to achieve adjudication within a short time by avoiding time consuming procedure in civil court in respect of the dispute between the H parties to the arbitration agreement as covered by such agreement, by a judge

to be chosen by the parties in terms of arbitration agreement or by the arbitrator to be appointed by court where parties have failed in selecting their arbitrator. In order to expedite the finality of an arbitration proceedings. Section 39 of the Arbitration Act clearly indicates that only one appeal will lie from such orders passed under the Arbitration Act as have been indicated in Section 39. Sub section (2) of Section 39 specifically indicates that no second appeal will lie from an order passed on an appeal made under Section 39. It has been submitted that although under Letters Patent, an appeal lies to the Division Bench from the decision of Single Bench of the High Court but it has been clearly held by this Court that within the Scheme of Arbitration Act, any second appeal from appellate order under Section 39 is barred and Letters Patent from an appellate order under Section 39 before a Division Bench is no exception to such embargo on a second appeal. For this contention, reference has been made to the decision of this Court in *Union of India* v. *The Mohinder Supply Co.*, AIR (1962) SC 256.

The learned counsel for the appellant has submitted that even if it is assumed that the High Court is clothed with revisional power under Section 115 Civil Procedure Code to revise an order passed by a court subordinate to it within the specified ambit indicated in clauses (a) to (c) of Section 115 Civil Procedure Code no such revisional application under Section 115 Civil Procedure Code has been filed before the High Court, but a revisional application under Rule 36A of the Rules has been filed before the High Court for the purpose of assailing the correctness of the appellate order under Section 39 of the Arbitration Act. Such revisional application under Rule 36A is alien to the scheme under the Arbitration Act.

The learned counsel for the appellant has submitted that Rule 36A contemplates revision of original or appellate decision of the Deputy Commissioner because under the Rules, there is no provision to approach the High Court against the appellate decision of the Deputy Commissioner. As a matter of fact, appeal before the High Court is contemplated against original decision of the Deputy Commissioner (i) if the value of the suit be rupees five hundred or over, or (ii) if the suit involves question of trial right or custom or (iii) if right to and possession of immovable property. As rule 36A contemplates revisional power of the High Court entirely in a different situation, the principle for exercise of revisional powers within the ambit of clauses (a) to (c) of Section 115, may not be strictly applicable to revisional power

A contemplated under Rule 36A of the Rules.

It has been contended by the learned counsel for the appellant that the Assistant to the Deputy Commissioner and the Deputy Commissioner may be clothed with the power to entertain arbitration award for making the award rule of Court or to entertain appeal from the decision of the Assistant to the B Deputy Commissioner but for such exercise of statutory powers with which the said authorities are clothed, they cannot be held to be a civil court as contemplated under Section 115 Civil procedure Code or a `Court as defined in Section 2(c) of the Arbitration Act. The Division Bench, therefore, erred in relying on the decisions of Allahabad High Court (AIR 1945 Allahabad C 146) and pepsu High Court(AIR 1951 Pepsu 115) which are not authorities for the decision of the question of maintainability of revision application under Rule 36A of the Rules. The learned counsel for the appellant has contended that revisional application under Rule 36A not being maintainable against an appellate order under Section 39 of the Arbitration Act. The impugned order D should be set aside and the revision application pending before the High Court should be dismissed in limine.

Mr. Reddy the learned Additional Solicitor General appearing for the respondent has submitted that Section 39 of the Arbitration Act has expressly E barred a second appeal against an appellate order under Section 39 of the Act. A bar of a second appeal does not *ipso facto* bar supervisory jurisdiction of the High Court. He has submitted exercise of revisional power by the High Court even when a statutory appeal is expressly barred has been recognised by various High Courts and also by this Court. In support of such contention. Mr. Reddy has referred to the decisions of Allahabad High Court (AIR 1945 F Allahabad 146) and Pepsu High Court (Allahabad 1951 Pepsu 115) since relied on by the High Court in the impugned decision. Mr. Reddy has also referred to a decision of this Court in *Chhaganlal* v. *Municipal Corporation, Indore*, [1977] 2 SCC 409. In that case, maintainability of a revisional application under Section 115 of Code of Civil procedure, against an order G passed by the appellate authority (District Court) on an appeal preferred against the decision of Municipal Commissioners was taken into consideration. Although Section 149(1) of M.P. Municipal Corporation Act provides that the order passed by the appellate authority (District Court) on an appeal against the decision of the Municipal Commissioners will be final, it has been H held by this Court that the District Court being subordinate to High Court, the

High Court can exercise revisional jurisdiction against such appellate order of the District Court and finality attached to such order does not oust the revisional jurisdiction of the High Court.

Mr. Reddy has submitted that Section 39 (2) only indicates that no second appeal from appellate order under Section 39 of the Arbitration Act can be filed. Because of such express bar of a second appeal, this Court in *Mohinder Supply Co.* a case (supra) has held that such bar of second appeal will also apply to any form of second appeal and even by way of appeal under Letters Patent. In the instant case, only revisional application under Rule 36A of the Rules has been made.

Mr. Reddy has submitted that considering socio political and economic situation prevailing in the United Khasi Hills District and Janitia Hills District, the Rules were framed for administration of justice and police in the said area. There is no dispute that such Rules are applicable in the area in question. Such Rules provide for forum for resolution of civil and criminal cases. In view of such provisions in the Rules the Assistant to the Deputy Commissioner and the Deputy Commissioner exercise power of Civil Courts. Such authorities exercising powers of civil court within the said territorial limits must be held to be civil courts subordinate to Gauhati High Court. Hence. High Court has revisional jurisdiction in respect of decision rendered by Deputy Commissioner under Section 39 of the Arbitration Act. Since Rule 36A specifically provides for revision before the High Court against the appellate decision of the Deputy Commissioner, such revisional application has been made. But there is no difficulty in treating the said revisional application also under Section 115 C.P. Code.

Mr. Reddy has submitted that bar of a second appeal before the High Court under Section 39 (2) of the Arbitration act does not operate as a bar to exercise of revisional powers in respect of a decision of civil court even if such decision has been made in exercise of appellate power. It is immaterial if such revisional power is to be exercised under Section 115 Civil Procedure Code or under any specific statutory provisions under which revisional application is permitted before the High Court. Mr. Reddy has submitted that the legal principle enunciated by the High Courts of Allahabad and pepsu and also by this Court in *Chhaganlal's* case (supra) that the bar of second appeal under Section 39(2) of the Arbitration Act or finality attached to in appellate order does not oust the revisional jurisdiction of the High Court, applies in all fours

A to the revisional application under Rule 36A and the contention decisions in respect of maintainability of revisional applications under Section 115 Civil Procedure Code have no application in deciding the maintainability of revisional application under Rule 36A should be discarded as devoid of any substance.

B Mr. Reddy has further submitted that although there is no indication in Rule 36A as to how and to what extent revisional powers under Rule 36A are to be exercised by the High Court, Judicial decisions are quite clear that revisional power is not co extensive with appellate power. Such power is quite limited in its application. In this connection. Mr. Reddy has referred to a C decision of this Court in *Hari Shankar* v. *Rao Giridhari Lal*, [1962] Suppl 1 SCR 933. In the said decision, scope of revision under Section 35 (i) of Delhi and Ajmer Rent Control Act was considered by this Court. In this Case, the trial Judge decreed the suit for eviction and the appeal court confirmed the decision under Section 34. In exercise of revisional jurisdiction under Section D 35 (i) of the said Act, a Single Bench of the High Court reconsidered the decision upon reappreciation of evidence and on such reconsideration interfered with the impugned decision of the appellate authority affirming the decision of trial Judge. This Court has held by the majority decision in the said case that distinction between appeal and revision is a real one. A right of E appeal carries with it right of rehearing on law as well as on fact unless the statute conferring right of appeal limits the rehearing in some way. It has been indicated by this Court that power of revision is generally to a superior court so that it may satisfy itself that a particular case has been decided according to law. The phrase according to law appearing in Section 35 of the said Rent F Act, according to the majority decision of this Court, refers to the decision as a whole and not to be equated to errors of law or of fact simplicitor. It has been indicated that all that the High Court can see that there has been no miscarriage of justice and the decision is according to law in the sense mentioned. This Court has held that in exercise of revisional power under Section 35 of the Rent Act, the High Court was not justified in reassessing the G value of the evidence and substituting its own conclusion on facts in place of those reached by courts below. Mr. Reddy has submitted that the High Court in exercising revisional Jurisdiction will not act as a court of appeal but will consider the propriety of the appellate order within the limited scope of revisional jurisdiction. He has, therefore, submitted that the impugned judg- H ment of the High Court being just and proper does not warrant any interference

by this Court and the appeal should be dismissed. A

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel, for the parties, it appears to us that the Assistant to the Deputy Commissioner. Shillong and the Deputy Commissioner, Shillong have been clothed with the jurisdiction to act B as civil courts in some parts of Meghalaya. Under the Meghalaya Act No. 6 of 1972, the Rules have been made applicable to the whole of United Khasi Hills District and Janitia Hills District. The appellant, therefore, filed the arbitration award in the Court of the Assistant to the Deputy Commissioner and obtained the order making the award a rule of Court. The respondent union of India also preferred appeal under Section 39 of the Arbitration Act C before the Deputy Commissioner accepting it as appellate civil court, it has already been indicated that no material has been placed before us to show that the Assistant to the Deputy Commissioner or the Deputy Commissioner have not been clothed with powers of Civil Court for decision of Civil disputes in general within the territorial limits but they have been empowered to decide D only a special category of civil disputes confined to particular tribal people. In the aforesaid circumstances, such appellate order having been passed by a civil court, constituted under a special statute, subordinate to the High Court, the High Court does not cease to have revisional jurisdiction under Section 115 of the Code of Civil Procedure. E

The appellant Union of India filed a revisional application under Rule 36A before the Single Bench of the High Court because against an appellate order of Deputy Commissioner, no appeal is provided for under the Rules. Even if there was any provision for filing an appeal from such appellate order F of the Deputy Commissioner under the Rules, such second appeal, being expressly barred by Section 39 (2) of the Arbitration Act, would have been incompetent. In the facts and circumstances of the case, revision application under Rule 36A is to be considered in conformity with Section 115 of the Code of Civil Procedure. Such limited application of revisional jurisdiction under Rule 36A in assailing an appellate order under Section 39 of the Arbitration G Act is to be read, otherwise revisional power under Rule 36A will give occasion to hostile discrimination. For example, in the State of Meghalaya where the Rules are not applicable, a litigant can only move the High Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure against an appellate order under Section 39 of the Arbitration Act but another H

A litigant where the Rules are applicable, will avail larger rights in exercise of revisional power by the High Court under Rule 36A against a similar appellate order under Section 39 of the Arbitration Act. Such a situation is not permissible. Revisional power under Rule 36A of the High Court in such case therefore, must be exercised in conformity with the revisional power under B Section 115 of the Code of Civil Procedure.

In our view, a revisional application before the High Court against an appellate order passed under Section 39 of the Arbitration Act is maintainable. There is no express provision in the Arbitration Act putting an embargo against filing a revisional application against appellate order under Section 39 C of the Act. The Arbitration Act has put an embargo on filing any second appeal from appellate order under Section 39 of the Act. The Arbitration Act is a special statute having limited application relating to matters governed by the said Act. Such special statute, therefore, must have its application as provided for in the said statute. The revisional jurisdiction of the High Court under the D Code or under any other statute therefore shall not stand superseded under the Arbitration Act if the Act does not contain any express bar against exercise of revisional power by the High Court provided exercise of such revisional power does not mitigate against giving effect to the Provisions of the Arbitration Act.

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It may also be indicated that in *R. Mecil and Company Ltd.* v. *Gauri Shanker Sarda*, [1991] 2 SCC 548, this Court has held that Section 41 of the Arbitration Act provides that the provisions of Civil Procedure Code shall apply to all proceedings before a Court under the Act. As the Arbitration Act F has not expressly taken away the applicability of Order 23 of the Civil procedure Code in an application under Section 34 of the said Act, such provision of Order 23 of the Civil Procedure Code is applicable.

It may be stated that even if a special statute expressly attaches finality to an appellate order passed under that statute, it has been held by this Court G in the case of *Hari Shanker* (Supra) that such provision of finality will not take away revisional powers of the High Court under Section 115 of the Code of Civil Procedure. There is also no such express provision in the Arbitration Act attaching finality to the appellate order under Section 39 of the said Act. As already indicated, only bar under sub-section (2) of Section 39 is of a second H appeal from an appellate order under Section 39. The impugned order of the

High Court upholding maintainability of revisional application under Rule 36A of the Rules, therefore, is justified and no interference against such decision is warranted. This appeal, therefore, fails and is dismissed without any order as to costs. As the revision application is pending for a long time, the High Court is directed to dispose of revisional application on merits as early as possible but not exceeding four months from the date of communication of this order. A B

T.N.A. Appeal dismissed.