IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.4676 of 2025

(Under Article 226 and 227 of the Constitution of India)

Bipra Charan Patra and Another .... ***Petitioners***

-versus-

Managing Director, Odisha State Cooperative Bank Limited, Bhubaneswar ... ***Opposite Party***

Advocate(s) appeared in this case:-

For Petitioners	:	Mr. Ramachandra Panigrahy, Advocate
For Opp. Party	:	Mr. Patanjali Tripathy, Advocate

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

25th February, 2026

B.P. Routray, J.

1. Heard Mr. R. Panigrahy, learned counsel for the petitioners and Mr. P. Tripathy, learned counsel for the opposite party.

2. Present writ petition is directed challenging the arbitral award dated 6th December 2024 under Annexure-1 passed by the Additional Registrar of Cooperative Societies (Legal and Scheme), Bhubaneswar, in Dispute Case No.172 of 2004.

3. The wife of Petitioner No. 1 initially took a loan amounting Rs.10 lakhs from the Odisha State Cooperative Bank (opposite party) vide loan sanction order dated 29th April 1999 (Annexure-B). Petitioner No.1 was the guarantor and petitioner No. 2 is the legal representative of the original loanee. Original loanee died subsequently who was the proprietor of M/s. Asian Marketing. After death of the loanee, repayment of loan became due on the part of the petitioners. For default of repayment of loan amount notices were issued to the petitioners and subsequently the matter was referred to the Registrar of Cooperative Societies in terms of the provisions contained in Section 68 of the Odisha Cooperative Societies Act, 1962 (hereinafter referred as 'the Act, 1962') raising dispute for arbitration. The Registrar, in exercise of its power in terms of Section 70 of the Act, 1962 appointed the Additional Registrar as the Arbitrator and finally the award is passed on 6th December, 2024 under Annexure-1 directing the petitioners to repay the loan amount of Rs.11,99,933/- as on 31st December 2003, along with pendent lite and future interest @ 17.25% per annum as per agreement till full and final realization of the loan amount.

4. Mr. Panigrahi, learned counsel for the petitioners submits that the matter was referred for arbitration in terms of Section 70 of the Act, 1962 on 11th March 2004 and it was kept pending before the Arbitrator till the date of award, i.e. 6th December, 2024, which is more than twenty years. It is submitted that in terms of the definition of Arbitration contained in Section 2(4) of the Arbitration and Conciliation Act, the provisions of said Act is applicable to all such arbitrations in so far as the provisions are not inconsistent with such other enactment. Mr. Panigrahi contends that as per Section 29A of the Arbitration and Conciliation Act, 1996, the time limit for completion of arbitration proceeding cannot continue for more than 18 months at best, and continuation of the arbitration proceeding beyond such period would be a nullity. Therefore, when it is admitted in the present case that the proceeding continued for more than 20 years without any mandate for such extended period, the award of the arbitrator becomes a nullity and in this regard he relies on the decision of Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Limited v. State of Rajasthan and Others***, ***(2021) 19 SCC 206***.

5. On the other hand, Mr. Tripathy, learned counsel for the opposite party submits that the statutory provision to appeal against the award has not been availed by the petitioners in terms of Section 109 of the Act, 1962 and thus, the writ petition in the present form is not maintainable. He further submits that the loanee including the petitioners are the deliberate defaulters and therefore, the proceeding initiated against them in terms of Section 68 read with Section 70 of the Act, 1962 resulting grant of the award to such amount as per Annexure-1 cannot be termed as illegal. It is also submitted that the order of sanction contains the terms of the loan including repayment of loan amount with interest @ 17.25%, which has been accepted by the loanee while taking the loan amount.

6. So far as the preliminary objection raised by the opposite party with regard to maintainability of the writ petition in view of the provisions for appeal is concerned, it is submitted by Mr. Panigrahi, learned counsel for the petitioners that as the continuance of the arbitration proceeding beyond the statutory prescribed period is violated and the arbitration proceeding continued for more than 20 years without any mandate for further time period, the arbitral award becomes a nullity and without jurisdiction. As such it is not mandatory on the part of the petitioners to avail the remedy of appeal since the Appellate Authority is only authorized to hear the appeal on merit.

7. The Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Ltd.*** (supra) have held as follows:-

> "15. The order dated 06.08.2012 is a nullity and runs contrary not only to the provisions of MSMED Act but contrary to

> various mandatory provisions of Arbitration and Conciliation Act, 1996. The order dated 06.08.2012 is patently illegal. There is no arbitral award in the eye of law. It is true that under the scheme of the Arbitration and Conciliation Act, 1996 an arbitral award can only be questioned by way of application under Section 34 of the Arbitration and Conciliation Act, 1996. At the same time when an order is passed without recourse to arbitration and in utter disregard to the provisions of Arbitration and Conciliation Act, 1996, Section 34 of the said Act will not apply. We cannot reject this appeal only on the ground that appellant has not availed the remedy under Section 34 of the Arbitration and Conciliation Act, 1996…….”

8. Here it is important to reproduce Section 109 of the Odisha Cooperative Societies Act, 1962, which reads as follows:-

> “**109. Appeals** – (1) An appeal shall lie under this section against the following orders and decision, namely:
>
> Xxx xxx xx
>
> (j) a decision or award under Section 70;
>
> Xxx xxx xx”

9. Section 68 of the Act, 1962 prescribes that, notwithstanding anything contained in any other law for the time being in force, any dispute touching the Constitution, Management or the Business of a Society, other than .. .. xx, shall be referred to the Registrar if the parties thereto are among the following namely, ... xx.

10. So, in terms of the provisions of Section 68 of the Act, 1962 after the dispute is referred to the Registrar, he by exercising his power in terms of Section 70 referred the dispute for arbitration to the Additional Registrar of Cooperative Societies. As per Section 2(4) of the Arbitration and Conciliation Act, the provisions of said Act will apply to all such arbitration proceedings under any other enactment except in so far as the provisions are not inconsistent with that other enactment or with any rules made thereunder. For ready reference Sub-Sections (4) of Section 2 of the Arbitration and Conciliation Act, 1996 is reproduced bellow:-

> "**2. Definitions** – (1) In this Part unless the context otherwise requires-
>
> xx xx xx
>
> (4) This Part except sub-section (1) of Section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.
>
> xx xx xx"

11. As explained by Hon'ble Supreme Court in ***Jharkhand Urja Vikas Nigam Limited'***s case (supra), an arbitral award can only be questioned by way of application under Section 34 of the Arbitration and Conciliation Act, but when the order is passed without recourse to arbitration and in utter disregard to the provisions of Arbitration and Conciliation Act, 1996, Section 34 of the said Act will not apply. But, here is a case where Section 109 of the Act, 1962 prescribes for statutory appeal against the arbitral award passed under Section 70. It is true that while continuing with the Arbitration proceeding, the provisions of Arbitration and Conciliation Act is held applicable to such proceedings of arbitration in view of the general provision contained in Section 2(4) of the Arbitration and Conciliation Act, 1996. It is also true that a proceeding under Section 109(J) of the 1962 Act is akin to the provisions contend in Sections 34 and 37 of the Arbitration and Conciliation Act. But that does not demean the statutory force of the appeal prescribed under Section 109(J) of 1962 Act. The question of authenticity of valid continuance of the arbitration proceeding beyond the statutory period violating provisions of Section 29A of the Arbitration and Conciliation Act is definitely a matter of concern to be looked into by the Arbitrator. It is the specific contention of the petitioners that they have raised such question by filing a separate petition before the Arbitrator on 26th May 2023 (Annexure-16). But in the award itself, the Arbitrator has not referred to such contention of the petitioners nor put any effort to answer the same in the award itself.

12. Nevertheless, when the Act provides for statutory remedy of appeal in terms of Section 109(J) and the Appellate Authority has all such powers prescribed under Section 67-B read with Section 109 (2), it would be prudent on the part of the petitioners to avail the appellate remedy as provided in the 1962 Act. Here is a distinction as seen from Section 2(4) of the Arbitration and Conciliation Act that the provisions of the said Act will not apply in respect of such other enactments where the provisions of the Arbitration and Conciliation Act is found inconsistent with the provisions of other enactment. Thus, taking note of such provisions contend in Section 2(4) of the Arbitration and Conciliation Act and the power as well as remedy of Appeal provided under the Act, 1962, the writ petition is disposed of permitting the petitioners to prefer appeal before the Appellate Authority. In the event the Petitioners prefer appeal within a period of 45(forty-five) days from today, no coercive action shall be taken against them till such period or till filing of the appeal, whichever is earlier. It is also left open for the petitioners to seek any interim relief before the Appellate Forum.

13. Considering the power of the Tribunal as Appellate Authority in terms of Sub-section (5) of Section 109, the appeal, if any, preferred by the Petitioners may be entertained upon deposit of the principal amount directed by the Arbitrator at Annexure-1.

(B.P. Routray)
Judge

M.K. Panda/P.A/ P. Barik, Jr. Steno