



2025:AHC:154454

A.F.R.

Reserved on : 29.08.2025

Delivered on : 02.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 8841 of 2023

Union Of India Thru C.W.E. Air Force Maharajpur
Gwalior

.....Petitioner(s)

Versus

M/S Bhular Construction Company And Others

.....Respondent(s)

Counsel for Petitioner(s)	: Harish Chandra Dubey, Rajesh Tripathi
Counsel for Respondent(s)	: Bharat Bhushan Paul, Salil Kumar Rai, Saurabh Paul

Court No. - 9

HON'BLE MANISH KUMAR NIGAM, J.

1. Heard learned counsel for the parties and perused the record.

2. This petition has been filed challenging the order dated 25.3.2010 passed by the District Judge Agra in Misc. Case No.454 of 2002 (Union of India Vs. M/S Bhular Construction Company) by which objections filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award dated 27.5.2002 given by sole arbitrator has been rejected. Initially, this petition was filed under Article 226 of the Constitution of India being Writ C No.37880 of 2010. This court by order dated 3.7.2010 issued notices thereafter, it appears that the case was listed on 22.10.2021 wherein the counsel for respondent no.1 raised an objection with regard to maintainability of the petition under Article 226 of the Constitution of India. Later on, an amendment application was filed by counsel for the petitioner for converting this petition to a petition under Article 227 of Constitution of India. The said application was allowed by this Court by the

order dated 21.7.2022 and the petition has been converted in a petition under Article 227 of the Constitution of India. When the matter was taken up, an objection was raised by learned counsel for the respondents that against an order passed under Section 34 of the Arbitration and Conciliation Act, rejecting or allowing the objections filed against the arbitral award, an appeal lies under Section 37 of the Arbitration and Conciliation Act, and therefore, this petition cannot be entertained even under Article 227 of the Constitution of India.

3. Learned counsel for the petitioner relied upon a case being **Matter Under Article 227 No. 4762 of 2024 (U.P. Awas Vikas Parishad through Housing Commissioner, Lucknow and others Vs. M/S Universal Contractors and Engineers Ltd.)** decided on 3.10.2024 wherein, this Court has taken a view that a petition filed under Article 227 of the Constitution of India challenging the order passed by the Arbitral Tribunal cannot be entertained.

4. It has been submitted by learned counsel for the respondents that since the petitioner has statutory alternative remedy under Section 37 of the Arbitration and Conciliation Act, 1996 this petition may not be entertained.

5. Confronted with the arguments raised by learned counsel for the respondents, learned counsel for the petitioner submitted that it is correct that petitioner has a remedy of filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 but further submitted that since the petition has been entertained by this Court therefore he may be permitted to convert this petition into an appeal filed under Section 37 of the Act as the jurisdiction to entertain an appeal is also with the High Court.

6. Learned counsel for the respondents further submitted that such a permission cannot be granted and the proper course for the petitioner is to withdraw this petition and file an appeal wherein he may seek for condonation of delay in filing the appeal taking recourse under Section 5 read with Section 14 of the Limitation Act. Learned counsel for the respondents in this regard relied upon a judgment of this Court in case of **Ram Mohan Lal Brij Bhushan Lal Vs. Union of India** reported in **1980 SCC Online All 319 : (1980) 6 ALR 573** wherein relying upon a Supreme Court judgment in case of **Vishesh Kumar Vs. Shanti Prasad** reported in **1980 All. CJ 233**, this Court has rejected the prayer for permission to

convert the revision into the writ petition.

7. This Court in case of **Kailash Chandra Vs. Ram Naresh Gupta** reported in **1982 All. CJ 608** held that conversion of a revision into writ petition under Article 226/227 is permissible. The judgment in case of Vishesh Kumar (supra) was distinguished by this Court. Paragraph Nos.3, 4, 5, 6, 7, 8, 9 and 10 of judgment in case of Kailash Chandra Vs. Ram Naresh Gupta (supra) are quoted as under:

3. Counsel for the opposite party however, urged that this cannot be done, as revision and a writ petition are distinct proceedings. In support of this contention he has relied upon the observations of the Supreme Court in Vishesh Kumar's case, which are to the following effect :-

"It has been urged by the appellant in Vishesh Kumar v. Shanti Prasad (Civil Appeal No. 2844 of 1979 : 1980 All. CJ 233) that in case the court is of the opinion that a revision petition under section 115, Code of Civil Procedure, is not maintainable, the case should be remitted to the High Court for consideration as a petition under Article 227 of the Constitution. We are unable to accept that prayer. A revision petition under section 115 is a separate and distinct proceedings from petition under Article 227 of the Constitution, and one cannot be identified with the other. I will consider the impact of these observations a little later, from I am of the view that the question as to whether a revision can be converted into writ petition was not canvassed before the Supreme Court in Vishesh Kumar's case, and these observations do not lay down any such proposition.

4. To begin with, it will be convenient to consider as to whether it is possible to convert a revision into a writ petition under Article 226/227 of the Constitution of India.

5. There is preponderance of judicial opinion that this can be done. In Naqshe Ali v. U. P. Sunni Central Waqf Board (1970 ALJ 815) , a revision had been filed against the order of the Civil Judge, constituted as a Tribunal under section 10 of the U. P. Muslim Waqfs Act, and the question arose as to whether a revision under section 115 of the C. P. C. lay against his order. It was held that no revision was maintainable against any order of the said Tribunal K. B. Asthana, J., as he then was, however, held that although a revision against the order of the Tribunal was not maintainable under section 115 of the C. P. C., powers under Article 227 of the Constitution can be exercised for quashing the order of the Tribunal. This is what he said:-

"Here I may dispose of an argument raised on behalf of the opposite party that I ought not to exercise my powers under Article 227 of Constitution as according to the Rules of the court, the application under Article 227 will not be in order, the procedure for its admission by a Bench of the judges having not been complied with. I do not think there is any substance in this ultra technical objection. The question that I am considering is of the exercise of power of this court under Article 227 of the Constitution. The Rules of the court permit a single judge of this court to give the necessary final directing under Article 227 of the Constitution. The learned counsel for the opposite party was not able to point out any prejudice being caused to the opposite party. The whole record is here and all the material on which the decision will turn is before the court. In these circumstances the filing of affidavits by the parties can be dispensed with without causing any hardship or prejudice to any of the parties.

6. My lord the Chief Justice in the case of Kirat Singh and another v. Madho Singh and others (19 9 AWC 296) exercised powers under Article 227 of the Constitution in a case where a revision was filed. Similarly in Smt. Abida Begam and others v. Rent Control & Eviction Officer, LucLuow (AIR 1958 Allahabad 675) a Division Bench exercised powers under Article 226 of the Constitution in special Appeal filed against the decision of a single judge, see page 681 of the report.

7. In Smt. Deepika Alizabath Couto v. Babriel Anthony Couto (AIR 1978 All. 27: 1978 All CJ 57 FB), an objection under section of the Divorce Act of 1869 was filed in this court for confirmation of the decree of dissolution of marriage passed by the District Judge under section 10 of the Act. The petition was held to be not maintainable; but never the less the court exercised powers under Article 227 of the Constitution and quashed the order.

8. That the courts have treated revision as appeals or permitted them to be converted into appeal is amply illustrated by the decisions in Bhoori v. Vidya Ram (AIR 1978 All. 299: 1978 All. CJ 186), Akkanagamma and others v. R. Nageswariah and another (AIR 1968 Mysore 226).

9. The conversion of one proceedings into another viz., an appeal into a revision has been approved by the Supreme Court in the Raliable Water Supply Service of India (Pvt.) Ltd. v. The Union of India and others (AIR 1971 Supreme Court 2083). These cases clearly establish that the power of converting a particular proceeding into another, exists in the Court. The principle appears to be founded on the consideration that when a cause is before the court and justice requires that the matter be decided finally, matters of procedure and technicalities should not be allowed to

stand in the way of dispensation of justice. The conversion can also be justified on the principle of avoiding multiplicity of proceedings.

10. The decision in Phul Kumart v. State and another (AIR 1957 All. 495) does not strike a different note, for all that the case lays down is that a revision cannot be treated as an application under Article 227 of the Constitution of India. Now, the request for treating a revision as a petition under Article 226 of the Constitution of India, in my view is entirely different from a request for converting a revision into a petition under Article 227 of the Constitution. The reasons being that in one case the applicant wants, without any further do, that his application under section 115 of the C. P. C. should be treated as a petition under Article 226/ 227 of the Constitution, while in the other he wants to take further steps, viz., by paying the necessary court fee filing necessary affidavits etc., so as to comply with the Rules of the court relating to petitions under Article 226/ 227 of the Constitution of India, so that the revision is substituted by a proper petition under Article 226/227 of the Constitution. In the first case the request cannot obviously be allowed, for the revision petition would not comply with the formalities, of a petition under Article 226/ 227 of the Constitution, while in the other case after conversion is effected it would so. The observations of the Supreme Court relied upon by the counsel for the opposite party only negated the first approach, viz., request for treating a revision as a petition under Article 226/227 of the Constitution. The Supreme Court while refusing such a request cannot be taken to have dissented from the established practice of the courts permitting conversion of one particular type of proceeding into another. I think, that while interpreting this decision of the Supreme Court, one should keep in mind the principle that unless a decision clearly intends so, it should not be read as up setting the law declared and the procedure followed by High Courts for a long number of years.

8. In case of R. Rajagopal @ R.R. Gopal and another Vs. State of T.N. and others reported in **AIR 1995 SC 264** in paragraph No.27, the Hon'ble Supreme Court held as under :

27. Lastly, we must deal with the objection raised by the respondent as to the maintainability of the present writ petition. It is submitted that having filed a writ petition for similar reliefs in the Madras High Court, which was dismissed as not maintainable under a considered order, the petitioners could not have approached this Court under Article 32 of the Constitution. The petitioners, however, did disclose the above fact but they stated that on the date of their filing the writ petition, no orders were pronounced by the Madras High Court. It appears that the writ petition

was filed at about the time the learned single Judge of the Madras High Court pronounced the orders on the office objections. Having regard to the facts and circumstances of the case, we are not inclined to throw out the writ petition on the said ground. The present writ petition can also be and is hereby treated as a Special Leave Petition against the orders of the learned single Judge of the High Court.

9. In view of the case law discussed above, I am of the opinion that there is no impediment in case a particular kind of proceeding is not maintainable and a different kind of proceeding lies in respect thereof, the Court has jurisdiction to convert one into other subject to limitation and court fees as the case may be. Thus, following the earlier decisions of this Court as well as of the Supreme Court and the established practice of permitting one particular type of proceedings to be converted into another, I permit the petitioner to convert this petition under Article 227 into an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and grant him three weeks time to do so.

10. After conversion, this petition be listed before appropriate Bench having jurisdiction in the matter.

September 2, 2025
S. Singh

(Manish Kumar Nigam,J.)