

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (C) NO.5430/2016

Axon Construction Pvt. Ltd.

Petitioner (s)

VERSUS

Om Astha Construction Pvt. Ltd.
& Ors.

Respondent(s)

ORDER

1) This SLP is filed by defendant No. 1 of Title Suit No. 789 of 2013 against the order dated 08.12.2015 passed by the Single Judge of the Patna High Court in C.W.J.C. No. 10572 of 2015, which in turn, arises out of the interim order dated

04.01.2014 passed in Title Suit No. 789 of 2013 pending in the Court of sub-Judge VI, Patna.

2) By impugned order, the High Court declined to entertain the petitioner's writ petition filed under Article 227 of the Constitution of India on the ground that the order sought to be impugned in the writ petition by the petitioner was an appealable order under Order 43 Rule 1 of the Code of Civil Procedure, 1908 and hence the writ petition is not entertainable to examine the legality and correctness of the interim order dated 04.01.2014.

3) Learned counsel for the petitioner, at the outset, submitted that it may not be necessary for this Court to go into the question as to whether the view taken by the High Court while dismissing the petitioner's writ petition is correct or not and the petitioner would be satisfied if this Court directs the

trial Court (Sub-Judge VI, Patna) who is seized of the application made by the petitioner under Section 8 of the Arbitration Act in the aforementioned suit and is also seized of the injunction application to ensure their expeditious disposal on merits in accordance with law because no orders one way or other have so far been passed since long causing inconvenience and injury to all parties concern.

4) In our view, the prayer made by the petitioner is reasonable and accordingly we dispose of this special leave petition and direct the Sub-Judge VI, Patna to decide the application made under Section 8 of the Arbitration Act in T.S. No 789 of 2013 and the injunction application on their respective merit in accordance with law after affording an opportunity to the parties preferably within 6 weeks

from the date of production of this order by the petitioner uninfluenced by any of our observations.

5) Special Leave Petition stands accordingly disposed of.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi,
February 29, 2016.

JUDGMENT