IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO. 4 OF 2015
WITH
CIVIL APPLICATION NO. 4097 OF 2015

Mrs. Kapila W/o Sandeep Karwa,
Age: 40 years, Occ: Insurance Business,
R/o Plot No. 39, SURAJ, Ahinsa Nagar,
Jalna Road, Aurangabad. ...APPELLANT

versus

1. HDFC Standard Life Insurance Company,
Limited Regd Office : Lodha Excelus, 13th Floor,
Apollo Mills Compund, N.M. Joshi Marg,
Mahalaxmi, Mumbai 400 011
Through Mr. Jayesh Tiwaskar,
Senior Vice President Agency.

2. HDFC Standard Life Insurance Company,
Limited Branch Office at Saakar,
1st Floor, CTS No. 18030,
Adalat Road, Kranti Chowk,
Aurangabad – 431 003
...RESPONDENTS

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Mr. R.F. Totla, Advocate for appellant
Mr. Pradeep Deshmukh, Advocate for respondents

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 8th JULY, 2015

ORAL JUDGMENT :-

1. Appeal admit. Heard the learned counsel for the parties finally, with consent.

2. This appeal is preferred against order dated 25-02-2015 passed by the Principal District Judge, Aurangabad on Miscellaneous

Application Requiring Judicial Inquiry (hereinafter referred to as "MARJI" for the sake of brevity) No. 424 OF 2014, refusing to grant interim relief in exercise of powers pursuant to section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act of 1996" for the sake of brevity).

3. Succinctly stated, case of the appellant is, she had been associated with respondents for business under Memorandum of Understanding (hereinafter referred to as "MOU" for the sake of brevity) executed between the parties. It is being claimed that, due to efforts of the appellant, business of the respondents had grown, developed and increased. For about six years there was no complaint of misconduct by the appellant. On 03-12-2014, without assigning any reason, purportedly invoking clause 7 of MOU, association of appellant with respondents is sought to be truncated on expiry of 30 days from the date of receipt of notice. MOU provides for arbitration. After reply to termination notice, arbitration clause was invoked. Appellant had invoked section 9 of the Act of 1996 seeking interim relief in the form of stay to operation and effect of termination notice.

4. On appearance, respondents had filed their say and written statement to the application made by the appellant pointing out various facts *inter-alia* that, activities of the appellant and, particularly, her husband in collusion with one of the ex-employees of respondents had been detrimental to the interest of respondents and that has in resulted issuance of notice of termination of association of the appellant. After hearing parties, points were framed for decision. Viz; regarding

territorial jurisdiction, *prima facie* case, balance of convenience and irreparable loss. The Principal District Judge held in favour of the territorial jurisdiction of the court, however, has found that three ingredients, while granting interim relief cannot be said to be available in favour of appellant and, he, as such, went on to reject MARJI No. 424 of 2014.

5. Mr. Totla, learned advocate for appellant vehemently submits that terms of MOU are entered into by and between weaker and stronger parties. There was no reason assigned in the notice for termination of association with appellant. He submits that principles of natural justice ought to have been followed before issuing termination notice.

6. Mr. Totla, learned advocate purports to rely on a decision reported in *AIR 1988 Calcutta 143 (M/s. Om Prokash Pariwal and another Vs. Union of India and others*.). In said case, the court had found that in the agreement executed between parties, most of the clauses were unreasonable and unconscionable and one sided and the contract of agency was terminated by F.C.I. without giving any reasons. It appears to be the case based on the agreement, huge economic investment had been made by the petitioners therein and abruptly notice came to be issued for termination of agency. The action of termination of contract was in facts considered to be arbitrary and the court found clauses being unreasonable and unconscionable, putting weaker side to huge loss, and as such, had interfered with exercising extra ordinary powers.

7. Mr. Totla further relies on another decision reported in *AIR 2003 Andhra Pradesh 126 (G. Sreenivasa Reddy Vs. Manager LIC of India, Hyderabad and ors*.) In said case, purportedly agency of the petitioner had been terminated on the allegation of false claim regarding travelling allowance. The court, in fact, found that termination had taken place on suspicion with regard to the amount which the petitioner was admittedly entitled to. Looking at triviality of the issues chosen to inflict the fatal blow, that was found to be unacceptable, by the court. The court had also considered that the agent who had fetched business of crores of rupees for LIC, is being meted out with such a treatment on so trivial a charge. Under the circumstances, the court interfered with termination of agency.

8. In present matter, learned advocate Mr. Deshmukh appearing for respondents has taken me through say and written statement to the application filed before the Principal District Judge, particularly, paragraphs No. "m" and "n." With reference to the same, he submits that appellant, particularly, her husband were diverging the business and indulging in such activities and had been causing injury to the business of the respondents and that their allegiance had been more to other corporations rather than for which association had been formed between appellant and respondents. He submits that termination being consequential, would not call for interim measure. He further submits that as a matter of fact, validity of notice is subject-matter of the arbitration and, if its effect is stayed, it would tantamount to granting final relief without considering the matter on merits, and the appellant has to substantiate her claims by evidence. This is not such a case,

wherein interim measure can be granted.

9. Mr. Totla, learned advocate submits that reasons for refusal to grant relief are unsustainable and the basic purpose underlying is to preserve properties. Unless her right is preserved to run business under association, powers under section 9 would be rendered of no efficacy.

10. This submission is being countered by learned counsel for respondents that loss, if at all, is caused to the appellant, that would depend on the validity of notice which is the subject-matter of challenge and, in such a case, it would be responsibility of the appellant to show extent of damage sustained by her under termination. Same is contingent upon its establishment. As such, interim measure is not at all called for.

11. Having regard to the submissions and particularly clause 7 of the MOU, at this stage, *prima facie,* it cannot be said that notice has not been issued in terms of said clause. Although it is being stated that termination of association is causing grave loss the appellant no specific loss has been spelt out in the application, save and except notice is bad in law. In such a case, it cannot be said that balance of convenience lies in favour of appellant.

12. In view of aforesaid observations, I do not deem it appropriate to meddle with impugned order. Appeal, as such, stands dismissed. These observations, in this order, however, are *prima faice* and shall not influence the outcome on merits in other proceedings.

13. In view of disposal of appeal nothing further survives for consideration in civil application and the same stands disposed of accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

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