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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

MISCELLANEOUS CIVIL APPLICATION NO.91 OF 2015

The Executive Engineer, Majalgaon Canal Division
No.7, Gangakhed

APPLICANT

VERSUS

M/s Tripathi and company

RESPONDENT

.....
Mr. Ruturaj C. Patil, Advocate for the applicant
Mr. J. N. Singh, Advocate for the respondent
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th DECEMBER, 2015

ORDER :

1. Heard learned advocates for the parties quite at length.
2. Present application has been moved by the applicant seeking transfer of proceedings bearing Miscellaneous Civil Application (RJE) No.28 of 2013 filed by present respondent before the Principal District Judge at Parbhani challenging arbitration award dated 31st October, 2012 to Principal District Judge, Beed and to decide the same along with Miscellaneous Civil Application (RJE) No.117 of 2013 filed by present applicant in said Court challenging the same award.

3. After hearing learned advocates for the parties, there does not appear to be any dispute that there has been arbitration award by the arbitrator dated 31st October, 2012 and that both the parties have subjected the same to proceedings pursuant to section 34 of the Arbitration and Conciliation Act, 1996 before two respective Principal District Judges. Since both the parties have challenged the same award by arbitrator in two different courts, present application has been moved by the applicant for transfer of proceedings filed by the respondent from Parbhani to Beed.

4. Learned advocate for the applicant, in the course of his submissions has pointed out section 42 of the Arbitration and Conciliation Act, reading thus -

“42.Jurisdiction.- Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

5. He further submits that Miscellaneous Civil Application (RJE) No.117 of 2013 pending at Beed had been lodged by the applicant on 29th January, 2013 and notice about the same had been issued on 30th January, 2013 to the respondent, whereas

the proceedings filed by the respondent bearing Miscellaneous Civil Application (RJE) No.28 of 2013 were lodged on 30th January, 2013 before Principal District Judge, Parbhani and its registration was completed in February, 2013.

6. Having regard to aforesaid position, it has been submitted that proceedings pending before Principal District Judge, Parbhani be transferred at Beed.

7. Learned advocate for the respondent makes various submissions with regard to cause of action, place of office referring to section 20 of the Civil Procedure Code and the decision by Delhi High Court in the case of "*Ariba India Private Limited V/s. Ispat Industries Ltd.,*" *LAW (DLH) 2011-7-301* dealing with section 40 of the Arbitration and Conciliation Act.

8. Having regard to that section 14 of the Arbitration and Conciliation Act, said judgment cannot be said to have any analogy in the present position, for, there is already an arbitration award that the same has been subjected by both the parties to challenge pursuant to section 34 of the Arbitration and Conciliation Act. Section 42 of the Arbitration and Conciliation Act is a statutory mandate and as such, direction cannot be said to be available for the court for considering the submissions on

behalf of the respondent to have transfer of the proceedings from Beed to Parbhani. Since proceedings at Beed appear to have been lodged before proceedings at Parbhani, the application deserves consideration as has been prayed for.

9. In the circumstances, the Miscellaneous Civil Application stands granted in terms of prayer clause "A" and stands disposed of.

10. Learned advocate for the respondent, at this stage makes a request that Principal District Judge Beed should decide the matters as early as possible. Having regard to that these are arbitration proceedings, it would be in the interest of justice that the proceedings are expeditiously taken up and disposed of preferably within a period of six months from the date of receipt of writ of this order.

[SUNIL P. DESHMUKH, J.]