

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ARBITRATION APPLICATION NO.14 OF 2014

Raj and Raj Constructions,
Engineers, and Government
Contractor, Through its
Proprietor, Rajkumar s/o.
Motilal Shah, Age 65 years,
occ. Contractorship
and business, r/o. Kothrud,
Pune, Tq. and Dist.Pune ..Applicant

Versus

The State of Maharashtra,
Through the District
Collector, Nanded and others ..Respondents

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Mr.P.R.Katneshwarkar, advocate for applicants

Mr.S.G.Sangle, AGP for respondents

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CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 24, 2015

PER COURT :

Heard both sides.

2] **Admit.** By consent of the parties, taken up
for final hearing forthwith.

3] Present application is filed under Section 11(1) of the Arbitration and Conciliation Act (hereinafter referred to as "the Act") for referring the dispute between the parties to an Arbitrator.

4] The admitted facts are that the present applicant filed Special Civil Suit No.60 of 2011 in the Court of learned Civil Judge Senior Division, Nanded. During pendency of the suit, present applicant asked for certain interim relief. The matter, ultimately, came to this Court by way of an appeal and in the said appeal, this Court directed the learned Civil Judge Senior Division to conclude the hearing in the suit within a period of six months.

5] During pendency of the suit proceedings, present applicant has filed an application under Section 89 of the Code of Civil Procedure and

prayed that the matter be referred to an Arbitrator. The respondent – State opposed the said application contending that there was no arbitration clause in the agreement, therefore, they would not consent for reference of the dispute to an Arbitrator. Learned Civil Judge Senior Division dismissed the said application on 29th July, 2011. The reasons given by learned Civil Judge Senior Division are that speedy disposal of the suit is possible; and that, there was no agreement between the parties for reference of the dispute to an Arbitrator. Thereafter, the present application under Section 11 is filed on 26th September, 2014.

6] Upon hearing both sides, in my view, the present application is not maintainable for the reasons to follow.

R E A S O N S

7] Mr.Sangle, learned AGP for respondent – State opposes the application. He relies upon the ratio laid down by the Hon'ble Supreme Court in the case of *Anil s/o. Jagannath Rana and ors. Vs. Rajendra s/o. Radhakishan Rana and ors. in Civil Appeal No.11604 of 2014 [arising out of S.L.P. (Civil) No.15314 of 2014] dated 18th December, 2014*. In that case, the party, who had, earlier, opposed the application under Section 8 of the Act, at later point of time, applied under Section 11(6) of the Act in the High Court for appointment of the Arbitrator. In those circumstances, it was declared by the Hon'ble Supreme Court that the application was hit by issue of *estoppel*. Further, the Hon'ble Supreme Court held that the principles of *res-judicata* would also be applicable and therefore, on these two counts, the order of the

designated Judge of the High Court for appointment of Arbitrator was set aside.

8] Mr.Katneshwarkar, learned counsel for the applicant, submits that in the present case, application was not filed under Section 8 of the Act but under Section 89 of the Code of Civil Procedure, which runs as under :-

89. Settlement of disputes outside the Court.- (1) *Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for -*

- (a) arbitration;*
- (b) conciliation;*
- (c) judicial settlement including settlement through Lok Adalat; or*
- (d) mediation*

In the circumstances, he submits that the trial Court was concerned as to whether, the alternative mode of redressal of the dispute should be adopted or not. However, when the trial Court found that earlier disposal of the suit is possible, the application was dismissed.

9] Mr.Katneshwarkar submits that the provisions of Section 8 of the Act and Section 89 of the Code of Civil Procedure govern different fields and since there is no decision under Section 8 of the Act from the trial Court and since, now, it has

been held by this Court that even institutional redressal grievance forum also amounts agreement regarding referring the dispute to the arbitral tribunal, the present application may be allowed.

10] It is already noted that while dealing with the application under Section 89 of the Code of Civil Procedure, the respondent – State has taken a specific plea that the arbitration clause does not exist, which was one of the reasons given by learned trial Court while rejecting the application. In these circumstance, merely because, lateron, this Court in some other case, has come to the conclusion that institutional redressal grievance forum would also amount to agreement of the arbitration, the issue cannot be re-agitated under provisions of Section 11(6) of the Arbitration Act. The issue is not about applicability of any specific Section to the issue.

It is as to whether, the Arbitrator is to be appointed or not.

11] It should be noted that learned Civil Judge Senior Division has dismissed the application of the present applicant under Section 89 of the Code of Civil Procure long back on 29th July, 2011. By that time, the direction from this Court was already there for disposal of the suit within six months in the appeal against interim order.

12] In view of these facts, though the provisions regarding the appointment of an Arbitrator may be separate, in those separate provisions i.e. Section 8 of the Act and Section 89 of the C.P.C., ultimately, the decision of the learned Civil Judge Senior Division was based on one of the material that there was no agreement for referring the dispute to the arbitral tribunal.

13] In the circumstances, considering the material on record, present application is dismissed without any order as to costs.

[M.T. JOSHI, J.]

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