

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 3 OF 2015

WESTERN VISION BUSINESS INDUSTRIES
LTD., REP. BY ITS DIRECTOR MR.
ANIL MEWADA.

... Appellant

Versus

BRK COMMODITY INDA LTD., REP. BY
ITS AUTHORIZED REPRESENTATIVE MR.
DOMINGOS FERNANDES.

... Respondent

Coram:- C. V. BHADANG, J.

Date:- 21st October, 2015

Mr. Gaurish N. Agni, Advocate for the Appellant.

Mr. Joaquim Godinho, Advocate for Respondent no. 1.

ORAL ORDER.:

Heard the learned counsel for the parties for some time.

2. The order challenged is dated 5/1/2013 passed by the learned Principal District Judge, North Goa in Arbitration and Conciliation Application no.33/2012. By the impugned order, passed under Section 9 of the Act, the learned District Judge has appointed a local Commissioner to visit the plot situated at Alcon Jetty at Village Navelim, Khotombi, District Bicholim,

North Goa and to verify whether 12500 MT ore is lying at the premises.

3. It was the case of the appellant (the respondent before the learned District Judge) that the appellant has no objection for appointment of the Commissioner, subject to M/s Menezes and Sons being made a party to the application. Thus the only ground of challenge is that in the absence of M/s. Menezes and Sons being a party, the application under section 9 could not have been allowed.

4. On behalf of the respondents reliance is placed on the decision of this Court in the case of **Girish Mulchand Mehta Vs. Mahesh S. Mehtre reported in 2010 (1) Bom. Cr.R.31**, in order to submit that in an appropriate case, the District Court can grant interim measures against a party who may not be a party to the Arbitration Agreement or to the proceedings under section 9 of the Act.

5. Be that as it may, the fact remains that in pursuance of the impugned order, the local Commissioner had visited the site and submitted his report dated 28/2/2013 to the Arbitrator. It is also undisputed that the appellants have filed their objections to the Commissioner's report before the Arbitrator.

6. Mr. Agni, the learned counsel for the appellants, on instructions

submits that in the event the respondents rely upon the report of the Commissioner, the appellants reserve their right to take objections/challenge the report of the Commissioner before the Arbitrator. Subject to this, the learned counsel seeks permission to withdraw the appeal.

7. In such circumstances, the appeal is disposed of as withdrawn. Needless to mention that the appellants would be entitled to object to the report of the Commissioner, if relied upon, in accordance with law. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

Ap/-