

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2379 OF 2011

1. Hariprasad Mohanlal Soni,	)	
Age:-54, Occu:-Business,	)	
2. Ramvilas Mohanlal Soni,	)	
Age:-55, Occu:-Business,	)	
Both R/o:-Panch Khandil, Malegaon,	)	
Proprietor Soni Medical Stores,	)	
Malegaon	)	.. Petitioners

Versus

Malegaon Municipal Corporation,	)	
Malegaon, Through Commissioner,	)	
Malegaon Municipal Corporation,	)	
Malegaon, District Nashik	)	.. Respondent

WITH

WRIT PETITION NO.2380 OF 2011

Ashish Agencies	)	
A Proprietary concern through it's	)	
Proprietor, Ramnivas Mohanlal Soni,	)	
Age:-55, Occu:-Business,	)	
R/o:-10, Shaniwar Road, Malegaon,	)	
District- Nashik	)	.. Petitioner

Versus

Malegaon Municipal Corporation,)
Malegaon, Through Commissioner,)
Malegaon Municipal Corporation,)
Malegaon, District Nashik) .. Respondent

WITH
WRIT PETITION NO.2381 OF 2011

Haridayal Mohanlal Soni,)
Age:-54, Occu:-Business,)
R/o:-Panch Khandil, Malegaon,)
Proprietor Soni Medical Stores,)
Malegaon) .. Petitioner

Versus

Malegaon Municipal Corporation,)
Malegaon, Through Commissioner,)
Malegaon Municipal Corporation,)
Malegaon, District Nashik) .. Respondent

Shri. R. D. Soni with Ms. S. V. Sonavane & Ms. Sadiya Bargir, for the
Petitioners.

Shri. R. B. Raghuvanshi i/by Ms. Rutuja Ambekar, for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 24th FEBRUARY, 2015

ORAL JUDGMENT

1. The above Petitions filed under Article 227 of the Constitution

of India take exception to three identical orders all dated 18th November, 2010 passed by the Learned Principal District Judge, Nashik, by which orders the preliminary objection raised by the Petitioners as regards the maintainability of the Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (For the sake of brevity referred to as the “1996 Act”) came to be overruled and the Learned Principal District Judge, Nashik rejected preliminary objections raised vide Exh.12, 13 and 14.

2. Having regard to the nature of the order to be passed and the directions to be issued, it is not necessary to burden this order with unnecessary details. Suffice it to state that an Awards came to be passed by the Learned Arbitrator to whom a reference was made in the suits filed by the parties for recovery of the amounts due from each other. The Petitioners filed the suit against the Respondent Municipal Corporation, who had at the relevant time was a Municipal Council, whereas the Respondent Municipal Corporation filed suit against the Petitioners. The Awards passed by the Learned Arbitrator was filed in the District Court for a decree to be passed in terms thereof which was a procedure applicable under the Arbitration and Conciliation Act, 1940. A decree accordingly came to be passed by the District Court. The said decree came to be passed by the District Court in respect of the three Awards passed by the Learned

Arbitrator. The said decree came to be challenged by the Respondent Municipal Corporation by filing three First Appeals in this Court being First Appeal Stamp No.9654 of 2009, First Appeal Stamp No.9669 of 2009 and First Appeal Stamp No.9666 of 2009. The delay in filing the First Appeals was condoned. The said First Appeals were thereafter heard by a Division Bench of this Court. The Division Bench held that having regard to the fact that the proceedings which were commenced before the Learned Arbitrator, from the appointment of the Arbitrator to the conclusion of the proceedings being under the 1996 Act. The course of action followed by the Corporation in filing the First Appeals was not permissible. The Division Bench observed that the Awards passed by the Arbitrator had to be challenged before the appropriate forum under the 1996 Act and that there was no requirement to pass a decree in terms of the Awards. The Division Bench accordingly by its judgment and order dated 10th June, 2009 allowed the Appeals setting aside the decrees and relegated the parties to the remedy which they were to adopt under the 1996 Act to raise a challenge to the Award or Awards. The Division Bench has specifically clarified in its order that all legal rights and contentions of the parties are left open.

3. It is pursuant to the order passed in the First Appeals that the Petitions under Section 34 of the 1996 Act came to be filed by the

Respondent Municipal Corporation challenging the three Awards passed by the Learned Arbitrator. It is in the said proceedings that the instant applications being Exhs.12, 13 and 14 were filed by the Petitioner invoking Section 9A of the Civil Procedure Code on the ground of limitation as well as on the ground of jurisdiction. Both the objections have been turned down by the Learned Principal District Judge by the impugned order. In so far as the issue of limitation is concerned, the Learned Principal District Judge having regard to the fact that the delay in filing the Appeals was condoned, held that the limitation would have to be counted from the day when the delay was condoned as also taking into consideration the fact that the First Appeals were dismissed on the ground that same were not maintainable, the delay in the instant case would therefore have to be computed having regard to Section 14 of the Arbitration and Conciliation Act, 1996. In so far as the jurisdiction of the Learned Principal District Judge, Nashik is concerned, having regard to Section 2E of the 1996 Act which defines "Court" the Learned Principal District Judge came to a conclusion that the Petitions filed under Section 34 in the District Court at Nashik are maintainable. As indicated above, it is the said three identical orders dated 18th November, 2010 which are taken exception to by way of the above Petitions.

4. The Learned Counsel for the Petitioners Shri. R. D. Soni

sought to make submissions to buttress the case of the Petitioners that the adjudication of the point of limitation has not been done in its proper perspective. The Learned Counsel would contend that since all the contentions of the parties were kept open the issue of limitation ought to have been considered by the Learned Principal District Judge de-hors the fact that delay in filing the First Appeals was condoned. In so far as the maintainability of the Petitions in the District Court is concerned, the Learned Counsel on instructions fairly concedes that the Petitioner would not press the said point.

5. Per contra the Learned Counsel Shri. R. B. Raghuvanshi appearing for the Respondent Municipal Corporation would support the impugned order and would contend that the order passed by the Learned Principal District Judge on the said two preliminary issues does not merit interdiction at the hands of this Court in its Writ Jurisdiction.

6. As indicated above, the two objections on the ground of limitation as also on the ground of maintainability of the suit before the Learned Principal District Judge, Nashik were raised by invoking Section 9A of the CPC. The question therefore arises is whether an application under Section 9A of the CPC is maintainable in a proceedings filed under Section 34 of the 1996 Act. It is trite that the 1996 Act is a self contained

Code which governs the procedure for arbitration and sets out the remedies which are available to the parties. There is no provision in the 1996 Act which indicates that Section 9A of the CPC is applicable. The Learned Counsel appearing for the Petitioners fairly conceded to the said position. However, the Learned Counsel sought to place reliance on the judgment of the Apex Court reported in **AIR 2002 SC 2308** in the matter of **M/s. I.T.I. Vs. M/s. Siemens Public Communications Network Ltd.**, wherein the Apex Court has held that an order passed by the District Court in an Appeal filed under Section 37 of the Arbitration and Conciliation Act is revisable under Section 115 of the CPC. The Learned Counsel also sought to place reliance on the judgment of a Division Bench of the Andhra Pradesh High Court reported in **2004(2) R.A.J. 659** in the matter of **B. Rama Swamy Vs. B. Ranga Swamy**, wherein the Division Bench of the Andhra Pradesh High Court held that the application for restoration of a proceeding under Section 34 can be filed. The Division Bench observed that the Civil Court has all the powers under the CPC to dispose of an Appeal or a Petition filed under Section 34 of the CPC. In my view, the said judgments do not further the case of the Petitioners in so far as the applicability of Section 9A is concerned. In so far as a proceeding or a Petition under Section 34 of the said Act is concerned, the same is as and by way of a remedy to a party aggrieved by the Award. There is nothing in

Section 34 or any other provision of the said Act to indicate that Section 9A of the CPC applies and that a plea of the maintainability of the application or proceeding under Section 34 can be raised. In so far as the judgment of the Apex Court in M/s. I.T.I. (*Supra*) is concerned, the Apex Court was concerned with a challenge to an order passed in an Appeal filed under Section 37 of the 1996 Act and it is in the said context that the Apex Court observed that remedy by way of a Civil Revision is not barred. In so far as the judgment of the Division Bench of the Andhra Pradesh High Court in B. Rama Swamy's case (*Supra*) is concerned, the facts in the said case were that the Petition under Section 34 of the Arbitration and Conciliation Act was dismissed for default and the issue before the Division Bench of the Andhra Pradesh High Court was whether an application for restoration is maintainable. It is in the said facts that the Division Bench of the Andhra Pradesh High Court held that the relevant provisions of the CPC are applicable. However in so far as Section 9A is concerned it gives an avenue to a party to question the maintainability of a proceeding on the point of jurisdiction it therefore cannot be invoked unless so provided. As indicated herein above there is nothing in the 1996 Act to indicate that the said provision applies to a Petition filed under Section 34. Hence the objection on the ground of limitation would have to be considered at the hearing of the Petition under Section 34. In my view

the applications Exhs.12, 13 and 14 filed under Section 9A were therefore not maintainable and since the applications are not maintainable, the adjudication pursuant thereto would be of no consequence. The impugned orders dated 18th November, 2010 are therefore required to be set aside on the ground that the applications Exh.12, 13 and 14 are not maintainable. In view of the setting aside of the impugned orders, it would be in the pending Petitions under Section 34 that the issue of limitation would be adjudicated by the Learned Principal District Judge or the Learned District Judge to whom the matters are assigned. The said exercise would have to be carried out de-novo uninfluenced by the earlier adjudication by the impugned order. Needless to state that the contentions of the parties on merits are kept open for being urged before the Learned Principal District Judge, who would consider the same. In so far as the maintainability of the Petitions before the District Court, Nashik is concerned, as indicated above the Learned Counsel for the Petitioners has fairly stated that the petitioners would not press the said issue as regards the jurisdiction of the District Court, Nashik to entertain the Petitions under Section 34. Hence, what remains is only the issue of limitation and the other issues that may arise at the hearing of the Petitions filed under Section 34. In view of the fact that the above Writ Petitions were pending in this Court since the year 2011 and since the Petitions filed under Section 34 were stayed by virtue

of the interim order in the above Writ Petitions. In my view, it would be just and proper to direct the Learned District Judge, Nashik or any other Learned District Judge to whom the Petitions are assigned to hear and decide the same latest by 30th June, 2015. Rule in the above Petitions to accordingly stand disposed of in the aforesaid terms.

[R.M. SAVANT, J]