

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.8678 OF 2015**

EOS Lifescapes (LLP)

.... Petitioner

Vs.

Shri. Subhash Baburao Sanas

.... Respondent

Mr. S.C. Wakankar, Advocate for the Petitioner.

Mr. Girish Godbole alongwith Bharati Gadhavi, Tejas Dande i/by  
Tejash Dande and Associates, Advocates for the respondent.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 3<sup>rd</sup> September, 2015

P.C. :

1            This petition is directed against the order dtd.22<sup>nd</sup> July, 2015, by which the Arbitrator, for the reasons stated in the order has taken a view that the document, which is a tripartite agreement produced from the custody of third party can be taken on record provided the original document is stamped with the statutorily fixed duty of Rs.100/- under Section 4 of Maharashtra Stamp Duty Act. The order is passed on the application filed by the respondent dtd. 26<sup>th</sup> June, 2014. The

respondent desires to cross-examine the petitioner on the document.

2           The petitioner had raised several objections to the document, in its reply to the application. According to the petitioner, earlier attempt on the part of the respondent to get the very document exhibited was not successful. The Arbitrator had refused to exhibit the agreement and marked the same for identification. That order has not been challenged by the respondent and hence it still holds good. Secondly, according to the petitioner, once the Arbitrator concluded that the document is not adequately stamped, the only remedy available was to impound the document and send it over for payment of deficit court fees in accordance with the provisions of Bombay Stamp Act. Mr. Wakankar, the learned advocate for the petitioner submits that it was beyond authority of the learned arbitrator to decide upon the stamp duty payable on the agreement and hold that on payment of such stamp duty, the document would be admissible in evidence.

3           Mr. Godbole, the learned advocate for the respondent, relying upon the decision of Constitution Bench of the Apex Court in SBP & Company vs. Patel Engineering Ltd. And another, reported in (2005) 8 Supreme Court Cases, Page 618 submits that the issue raised by the petitioner can always be considered in the application under Section 34 of the Arbitration

Act for challenging the arbitral award and if it can form part of such challenge, a petition under Article 226 of the Constitution of India against the order cannot be maintained. He refers to paragraphs 45, 46 and 47 of the decision in support of the contention. While coming to the conclusion at paragraph 47, the Apex Court has held that “once the matter reaches Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act”. In other words, the parties aggrieved by such order has to wait until the final award is passed by the Tribunal. The reason to substantiate the conclusion is stated at para 45 of the order which reads as follows:

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The

Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.”

4           The order challenged in the present petition is squarely covered by the decision. The impugned order is not appealable under Section 37 of the Arbitration Act. Therefore, the petitioner will have to wait until the Arbitrator passes the final award and take up the contention in the challenge to the award if the award is made against him. The petition is therefore dismissed.

(Smt. R.P. SondurBaldota, J.)

**CERTIFICATE**

Certified to be true and correct copy of the original  
signed Order.