

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.59 OF 2006

M/s. D. G. Patil & Co.] ... Petitioner

Versus

Birla Global Finance Ltd. and Ors.] ... Defendants

None for Petitioner.

None for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- MAY 07, 2015

P. C. :-

1. None for Petitioner.
2. This petition challenges order dated 17/01/2005 by which the learned 3rd Joint Civil Judge, Junior Division, Pune, has allowed the Respondents' application below Ex.170 in Regular Civil Suit No.2354 of 2000 and referred the parties for resolution of their dispute through arbitration.
3. The main ground urged in the petition was that the Respondents-Defendants filed their reply to the application seeking interim relief and based thereupon, orders were made on the

application seeking interim relief. Such orders were carried in appeal and revision and throughout, no objection was raised to the jurisdiction of the Civil Court to proceed in the matter. There is reference made to the decision of this Court in the case of ***Jashu Patel Vs. Shivdatta Joshi***¹ to contend that first statement of substance of the dispute which include a Written Statement in the suit or reply to an application under other proceedings before the judicial authority.

4. Section 8 of the Arbitration and Conciliation Act, 1996 reads thus :-

“(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

¹ 2003 (3) Mh.L.J. 487

5. In the case of *Rashtriya Ispat Nigam Ltd. & Anr. Vs. Verma Transport Company*², the Hon'ble Supreme Court has held that the expression '*first statement on the substance of the dispute*' contained in Section 8(1) of the said Act must be contra-distinguished with the expression '*written statement*'. Pointing out that there is difference between the main proceeding and the supplemental and incidental proceeding, the Hon'ble Apex Court ruled that reply in the supplemental or incidental proceeding can never be regarded as his statement on the substance of the dispute. Further, in para 40, the Hon'ble Supreme Court has held that waiver of a right on the part of the defendant to the lis must be gathered from the fact situation in each case.

6. In view of the aforesaid, it cannot be said that there is any jurisdictional error in the making of the impugned order. This petition is accordingly dismissed. The interim order therein stands vacated.

(M. S. SONAK, J.)

² AIR 2006 Supreme Court 2800