

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (St)) NO.14671 of 2016

Maharashtra State Road Transport

Corpn .. Appellant

vs

M/s Hiren Aluminium Ltd .. Respondent

Mr.G.S.Hegde with Ms P.M.Bhansali for Applicant

Mr.Shadab Khan I.b K.V.Ayar for Respondent

CORAM: G.S.KULKARNI, J

DATE : 9 DECEMBER 2016

P.C.

1. This appeal arises from an order dated 17.10.2016 passed by the learned Judge,City Civil Court, Bombay in Notice of Motion No.1106 of 2012 in S.C.Suit No.3142 of 2012 whereby the learned Judge has allowed the Notice of Motion and consequently dismissed Suit No.3142 of 2012 filed by the appellant/plaintiff. The claim in the suit had arisen in respect of a contract dated 22.1.2008 between the appellant and respondent. The contract provided for an arbitration clause. In respect of the disputes which had arisen between the parties the respondent had approached this Court under section 11 of the Arbitration and Conciliation Act 1996 and by an order dated 23.9.2011 the claim as raised on behalf of the respondent was referred

to arbitration by the Technical Advisory Committee as referred in the arbitration clause. Admittedly, the claim of the appellant-plaintiff in the suit in question (S.C.Suit No.948 of 2012) arose under the very same contract.

2. In view of this situation, part of the claim was already subject matter of arbitration, a Notice of Motion in question was moved by the respondent-defendant. At this stage, when the suit was pending, the appellant raised the subject claim as a counter claim before the Arbitral Tribunal, on which the respondent raised an objection on limitation that the claim of the appellant was time-barred. Contention as urged on behalf of the appellant was that the counter claim as made before the Arbitral Tribunal was in fact subject matter of the suit in question and the suit was filed within limitation and therefore, objection as to limitation which was urged on behalf of the respondent/defendant was not maintainable.

3. On this background, Notice of Motion in question came to be filed by the respondent/defendant seeking dismissal of the suit as the appellant had already raised the counter claim before the Arbitral Tribunal.

4. After this appeal was heard on the earlier occasion, the parties having considered their position in law and the facts as they stand, have decided to resolve the disputes as arising in this Appeal. Accordingly, they have tendered consent terms dated 9.12.2016.

Consent terms are signed by the respective parties and are also signed by the learned Advocate for the parties. There is no dispute on the signatures on the consent terms. Consent terms are accordingly taken on record and marked 'X' for identification.

5. Appeal is accordingly disposed of in terms of the Consent terms. No costs. Civil Application No.4755 of 2016 would not survive and is accordingly disposed of.

6. The trial Court shall accordingly return the plaint to the appellant within one week from today for presenting the same before the Arbitral Tribunal.

Parties to act on an authenticated copy of the order.

{G.S.KULKARNI, J}