

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****MISC.CIVIL APPLICATION NO. 251 OF 2016****R.J.Shah & Co.Limited****..... Applicant****VERSUS****State of Maharashtra,****Water Resource Department & Ors.****..... Respondents**

Mr.Nitin Thakkar, Senior Advocate, a/w. Mr.G.C.Mohanty, i/b. Kirit Damania & Co. for the Applicant.

Mr.S.S.Hulke, A.G.P. for the Respondent.

CORAM : R.D. DHANUKA, J.**DATE : 27th OCTOBER, 2016****P.C.**

By this miscellaneous civil application, the applicant seeks transfer of Arbitration Petition No.174 of 2016 filed by the respondents before the learned District Judge, Thane to this court. Commercial Arbitration Petition No.50 of 2016 is already filed by the applicant herein which is pending before this court challenging the same arbitral award which is the subject matter of the Arbitration Petition No.174 of 2016 filed by the respondent before the learned District Judge, Thane.

2. Mr.Thakkar, learned senior counsel for the applicant invited my attention to the judgment of Supreme Court in case of ***State of Maharashtra vs.Atlanta Limited, (2014) 11 SCC 619 and*** judgment of Supreme Court in case of ***State of West Bengal and others vs. Associated Contractors, (2015) 1 SCC 32*** and would submit that in view of the principles laid down by the two judgments, the proceedings filed by the respondent before the learned District Judge, Thane under

section 34 of the Arbitration and Conciliation Act, 1996 has to be transferred to this court and has to be clubbed alongwith Commercial Arbitration Petition No.50 of 2016 filed by the applicant challenging the same arbitral award in this court.

3. Learned A.G.P. under instructions from the Officer Mr.Jaywantrao P.Patil, Thane Irrigation Division, Kalwa, Thane states that the respondent has no objection if the Arbitration Petition No.174 of 2016 filed by the respondent is transferred to this court and is heard with Commercial Arbitration Petition No.50 of 2016. The statement is accepted.

4. In my view even otherwise the issue raised in this application filed under section 24 of the Code of Civil Procedure, 1908 is concluded by the principles laid down by the Supreme Court in case of ***State of Maharashtra*** (supra) and judgment of Supreme Court in case of ***State of West Bengal and others*** (supra). I am respectfully bound by the said judgments.

5. I, therefore, pass the following order :-

(a) Miscellaneous Civil Application No.251 of 2016 is made absolute in terms of prayer clause (a). The learned District Judge, Thane is directed to transmit the papers and proceedings of Arbitration Petition No.174 of 2016 to this court within four weeks.

(b) It is made clear that the applicant would be at liberty to apply for clubbing of the said Arbitration Petition No.174 of 2016 alongwith Commercial Arbitration Petition No.50 of 2016 before this court.

6. Miscellaneous civil application is disposed of in the aforesaid terms. No orders as to costs.

7. The parties as well as the learned District Judge, Thane to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)