

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO.27 OF 2016
WITH
CIVIL APPLICATION NO. 50 OF 2016

Ali Akbar Jafari Appellant

Vs.

M/s Nikkita Builders & Developers Respondent

Mr. Nawroz Seervai, Senior Advocate alongwith Mr. Ravindra Adsule, Ms. Shilpa Kapil, Mr. Chidanand Kapil, Mr. Nupur Mittal i/by Siddheswar N. Biradar, Advocate for the Appellant.

Mr. M.M. Vashi, Senior Advocate alongwith Mr. L.M. Acharrya i/by Anish Khandekar, for the Respondent.

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

Date : 14th October, 2016

P.C. :

1 This appeal filed under Section 37 of the Arbitration and Conciliation Act ("The Arbitration Act") challenges the order dtd. 9th June, 2016 passed by the District Court, Pune dismissing the appellant's application under Section 34 of the Arbitration Act. An objection has been raised on behalf of the respondent to the maintainability of the present appeal.

2 The petitioner is the respondent in the arbitral proceedings. He had raised a preliminary objection to the arbitral proceedings alleging that there is no arbitration agreement between the parties and therefore the proceedings before the Arbitrator were not maintainable. Accordingly, the preliminary issue in following terms was framed :

“Whether the respondent proves that in view of the alleged new Agreement, the Arbitral Clause as contained in the agreement dtd. 3rd February, 2006 does not subsist?

The parties were permitted to lead evidence on the preliminary issue and by the order 27th April, 2006, which is described by the learned Arbitrator as “award on preliminary issue”, the issue was decided in favour of the respondent. The appellant challenged the order by resorting to Section 34 of the Arbitration and Conciliation Act contending that when the order is titled by the Arbitrator himself as an award, the same is required to be treated as an interim award and therefore, the application under Section 34 of the Arbitration Act to challenge the same was maintainable. The District Court, negatived the contention and dismissed the application. It held that since by virtue of that order, the learned Arbitrator has not decided any of the rights and liabilities of the parties, the same cannot be treated as an award/interim award. The decision as to the jurisdiction cannot be treated as an award. He has supported his view with the decision of this court in

Harinarayan G. Bajaj vs. Sharedeal Financial Consultants Pvt. Ltd., Mumbai and Another, reported in 2002 SCC Online, Bom., 1186 = AIR 2003, Bom. 296.

3 Section 16 of the Arbitration Act empowers the arbitral tribunal to rule on it's jurisdiction. It's Sub-Section (5) provides that if the arbitral tribunal takes a decision rejecting the plea of want of jurisdiction, it shall continue with arbitral proceedings and make an arbitral award. This would mean that the challenge to such order must be part of the challenge to the final award. Hence, there is absolutely no infirmity whatsoever in the view taken by the District Court. Consequently, the appeal is dismissed.

4 Needless to say that this court has not gone into the merits and demerits of the order of the arbitral tribunal and it is open for the parties to agitate the issue of jurisdiction at the appropriate time.

5 In view of dismissal of the Appeal, the Civil Application does not survive. The same is accordingly disposed off.

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