

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

APPEAL NO.421 OF 2016

IN

ARBITRATION PETITION NO.410 OF 2014

Mr. Jagadeesa G. Chary

... Appellant

Versus

Nirmal Bang Securities Pvt. Ltd.

... Respondent

Ms. Prachi Pandya a/w Ms. V. Fernandes for the Appellant.

Mr. Naushad Engineer, Ajay Khandhar and Jayant Gaikwad i/by Ajay Khandhar & Co. for the Respondent.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 16th NOVEMBER, 2016

P.C.

1 Heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent. By the impugned Judgment and Order dated 2nd December, 2015, the learned Single Judge has dismissed the Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “the said Act”) which was filed for challenging an Award made by the Arbitral Tribunal of the National Stock Exchange by which the Award of the sole Arbitrator was confirmed. By the Award, the claim made by the Petitioner was rejected.

2 We have perused the Petition under Section 34 of the said Act and averments made therein. We have carefully perused the impugned judgment and order. In paragraphs 1 to 5 of the judgment and order, facts have been set out. Paragraph 6 suggests that one of the arguments canvassed by the Appellant was as regards the appointment of Arbitrator. Paragraph 7 indicates that apart from raising objection to the appointment of the Arbitrator, certain contentions were raised at the time of hearing before the learned Single Judge on merits of the Award. Paragraph 7 is the only paragraph which refers contentions raised on merits. Paragraph 7 reads thus :-

“7. As regards the contention on the merit, the same cannot be gone into in the petition under Section 34 of the Arbitration and Conciliation Act, unless the petitioner points out that the findings are perverse. The awards however are seen to be well-reasoned with the conclusions drawn therein supported by the material on record. Hence, the petition is dismissed.”

3 The learned counsel appearing for the Respondent invited our attention to paragraph 2 of the impugned order and submitted that the contentions raised by the Petitioners have been referred. Paragraph 2 of the order shows that the learned Judge has referred to the contentions raised in the Petition under Section 34. Paragraph 3 deals with the reply filed by the Respondent.

3 Going by the paragraph 7 of the impugned judgment and order, we find that contentions were canvassed by the Appellant on merits of the Award. As seen from paragraph 7, no reasons have been recorded by the learned Single Judge for rejecting the said contentions.

4 Therefore, in our view, there is no option but to remit the Arbitration Petition for fresh hearing to the learned Single Judge.

5 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 2nd December, 2015 is hereby quashed and set aside;
- (ii) Arbitration Petition No.410 of 2014 is restored to the file of the learned Single Judge. Registry is directed to place the restored Arbitration Petition before the learned Single Judge on 13th December, 2016 under the caption of "Directions" to enable the learned Single Judge to fix a date for hearing;
- (iii) All contentions on merits are kept open;
- (iv) Appeal is partly allowed on above terms with no order as to costs.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)