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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.2761 OF 2015
IN
ARBITRATION APPLICATION NO.5 OF 2013

The General Manager, South Central Railway

APPLICANT

VERSUS

Jagannath Govindrao Phulare

RESPONDENT

.....

Mr. Manish N. Navandar, Advocate for the applicant

Mr. G. K. Naik Thigle, Advocate for respondent

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 6th JANUARY, 2017

ORDER :

1. Heard learned advocates for the parties.
2. This civil application has been moved, purporting to have been aggrieved by order dated 14th February, 2015, whereunder the Arbitrator appears to have rejected the request on behalf of the applicant for fixing fees of the Arbitrator. The civil application has been filed praying for the reliefs as are contained in prayer clauses "B" and "C" and / or alternatively prayer clause "D"

reading thus -

“ B. That, directions be issued to the Ld. Arbitral Tribunal i.e. the Sole – Arbitrator Hon'ble Justice (Rtd) Shri. S. C. Malte, who has been appointed by this Hon'ble Court vide its order dated 26.09.2013 to work as Arbitrator to accept the Fees Structure and other charges as per Circular No. P-1615/2003 issued by the Hon'ble Chief Justice and other Hon'ble Judge of this Hon'ble Court.

C. It may kindly be held that, the Fees Structure as is reflected from the Order Dated 13.7.2014 demanded by the Ld. Tribunal i.e. the Sole Arbitrator Hon'ble Justice (Rtd) Shri. S. C. Malte who has been appointed by this Hon'ble Court vide its order Dated 26.09.2013 is bad in law and the applicant is not bound to pay the same as it has no binding effect in view of the Circular No. P-1615/2003 issued by the Hon'ble Chief Justice and Other Hon'ble Judge of this Hon'ble Court.

D. The appointment of Ld. Tribunal i.e. the Sole Arbitrator Hon'ble Justice (Rtd) Shri. S. C. Malte who has been appointed by this Hon'ble Court vide its Order Dated 26.09.2013 may kindly be terminated and fresh Arbitrator from the panel of Arbitrators be appointed with the directions of Fees Structure as has been reflected in the Circular No. P-1615/2003 issued by the Hon'ble Chief Justice and other Hon'ble Judges of this Hon'ble Court.”

3. Mr. Navandar, learned advocate, during the course of submissions, contended in view of the circular, which has been referred to by the Arbitrator in the impugned order, it would be imperative that the same would be followed having regard to section 89 of the Civil Procedure Code, particularly sub section

(2) thereof.

4. Mr. Thigale, learned advocate appearing for the claimant (respondent in civil application) has drawn attention to an order dated 21st March, 2016 passed by Hon'ble Single Judge in civil application No.6423 of 2015 in Arbitration Application No.6 of 2011 and submits that under more or less similar situation, a similar attempt to consider request of applicant to alter the fees agreed and reduce the same stands turned down.

5. Prayer clauses in civil application No.6423 of 2015 read thus -

“ B. The Arbitrator Shri. Malte, Ex. J. be substituted with another Arbitrator from the list of arbitrators appointed by Hon'ble Chief Justice.

C. The Arbitration fee levied by Shri. Malte, Ex. J. be quashed and set aside and further directions may be issued to levy arbitration fees as prescribed by the Chief Justice of Bombay High Court. ”

6. From perusal of order dated 21st March, 2016 in Civil Application No. 6423 of 2015 it emerges that the situation involved in that civil application and the request thereunder had been similar to the one as is made under present civil application. There also appears that the proceedings before the Arbitrator were being proceeded with further after the Arbitrator

had passed order fixing fees with the difference that there some witnesses were examined.

7. Order dated 21st March, 2016 in Civil Application No.6423 of 2015 takes a comprehensive stock of the situation. Hon'ble Single Judge, while deciding said civil application has observed that review application is not maintainable and has further observed that before the Arbitrator, during initial meeting for fixing fees, the parties had agreed to pay the fees prescribed by the Arbitrator.

8. The scope of Arbitration Application is circumscribed by section 11 of the Arbitration and Conciliation Act, 1996. Scheme of the enactment would show that on commencement of arbitration proceedings, its conduct and process would be governed by its provisions. Looking at the provisions of section 11 of the Arbitration and Conciliation Act, 1996, it does not appear that it would be for this court to monitor, control and administer the proceedings before the Arbitrator.

9. Having regard to the order passed by Hon'ble Single Judge in Civil Application No.6423 of 2015 in Arbitration Application No.5 of 2011 dated 21st March, 2016, as expressed therein, this application would be equal in effect to seeking review of the

order, after order has been passed pursuant to section 11 (6) of the Arbitration and Conciliation Act, 1996.

10. It would not be expedient to enter upon issue sought to be raised by the learned advocate Mr. Navandar for the applicant.

11. It appears, the rationale and reason which went into making of order dated 21st March, 2016 in Civil Application No.6423 of 2015 would hold sway over present application. As such, it would be appropriate, by following order dated 21st March, 2016 in Civil Application No.6423 of 2015 in Arbitration Application No.6 of 2011, this civil application would be rejected. As such, civil application is rejected.

12. In view of dismissal of present civil application, civil application No.6853 of 2015 does not survive and stands disposed of.

[SUNIL P. DESHMUKH, J.]