

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.6290 OF 2016

New India Assurance Company Limited
through its Authorised Signatory/
Branch Manager, Mahesh Auto Compound,
Adalat Road, Aurangabad ... PETITIONER

VERSUS

1. M/s Anand Oil Mill,
Plot No.40, M.I.D.C., Beed,
through its Proprietor,
Kantilal Mishrilal Dugad
Age 65 years, Occ. Business
2. M/s Ambika Industries
Survey No.27, Bahirwadi,
Beed, District Beed,
through its Proprietor,
Deepak Prakashchand Raka ... RESPONDENTS

.....
Shri S.G. Chapalgaonkar, Advocate for petitioner
Shri G.K. Naik Thigle, Advocate for respondents
.....

CORAM: S. B. SHUKRE, J.

DATED: 17th January, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned counsel for the parties.

2. Learned counsel for the petitioner submits that, the petitioner has a right to obtain a decision on the objection raised by the petitioner before the learned Arbitrator regarding jurisdiction, and in case it is held by the learned Arbitrator that he has jurisdiction in the matter, such decision would give rise to right of appeal under Section 37(2) of the Arbitration and Conciliation Act, 1996. He also submits that, this Court, while referring the dispute to Arbitrator, by its order passed on 26/11/2014 in Arbitration Application No.6/2014, has also kept the issue of involvement of Arbitral issue open, to be appropriately decided by the Arbitrator himself. He submits that, where an application under Section 60(2) of the Act, 1996 was filed by the petitioner, it was obligatory upon the learned Arbitrator to decide the application in the manner as would have resulted in framing of a preliminary issue regarding jurisdiction of the learned Arbitrator. According to him, this was all the more necessary in view of the provisions of appeals under Section 37(2) and the order of this Court dated 26/11/2014. He is also of the opinion that, when the issue can be decided as preliminary, the learned Arbitrator should not insist upon giving a decision on this issue on merits of the case after considering the entire evidence available on record as, it would result in causing of great prejudice to the petitioner. He further submits that, when a controversy can be put to rest by minimising the

litigation, the learned Arbitrator should have adopted that course only, which would be in the interest of the parties as well as in the interest of saving of cost, time and energy.

3. Learned counsel for the respondents submits that, as no decision on the objection taken by the petitioner has been given by the learned Arbitrator, the order impugned in this Writ Petition is not amenable to any appeal under Section 37(2) of the Act, 1996. He submits that, in the case of **S.B.P. & Company Vs. Patel Engineering Ltd. & anr.** reported in **(2005) 8 Supreme Court Cases 618**, the Hon'ble Apex Court has made it clear that, as per the Scheme of the Act, 1996, there is no scope for the High Court to interfere with every order that is passed by the Arbitral Tribunal, as after all the Arbitral Tribunal is creature of a contract between the parties and the Arbitrator is appointed by the consent of the parties. He submits that, the Hon'ble Apex Court has, therefore, issued several directions in this case and one of the directions is to the effect that, once the matter reaches the Arbitral Tribunal or the Sole Arbitrator, the High Court need not interfere with the orders passed by the Arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could very well approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

4. Perusal of the decision of the Hon'ble Apex Court in the case of S.B.P. & Company (supra) would make clear that, ordinarily High Court is not supposed to make any interference with the order passed by the Arbitrator during the course of the arbitration proceedings, and the scheme of the Act, 1996 requires that the arbitration proceedings are allowed to be culminated without any obstruction or hindrance from any judicial authority unless grave prejudice is caused to any of the parties to the arbitration proceedings. In the instant case, perusal of the impugned order would disclose that the issue of jurisdiction of the Arbitrator is still kept open and the learned Arbitrator has recorded a finding that this issue involving a mixed question of fact and law could be better determined after detailed evidence is available and accordingly has also framed the issue on the aspect of the case to be decided on merits of the case. Such being the nature of the impugned order, I do not think that any prejudice is going to be caused by non-treating of objection taken by the petitioner as preliminary. That apart, the directions given by the Hon'ble Apex Court would also not help the case of the petitioner.

5. In this view of the matter, I find that there is no substance in the Writ Petition and it deserves to be dismissed.

Learned counsel for the respondents submits that, the petition be dismissed with costs. However, considering the fact that the issue of the objection regarding jurisdiction has been still kept alive, I am of the view that, passing of any order imposing costs upon the petitioner at this juncture would unnecessarily have some bearing upon the decision that would be ultimately taken by the learned Arbitrator in this regard and, therefore, I further find that this is not a fit case for imposing any costs upon the petitioner.

6. In the result, writ petition stands dismissed. Parties to bear their own costs. Rule discharged.

7. The parties shall co-operate with the learned Arbitrator in expeditious disposal of the arbitral proceedings.

(S. B. SHUKRE)
JUDGE

fmp/