

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION NO. 1 OF 2007

M/S K.S. MAMADAPUR & BROS. ... APPELLANT

Versus

STATE OF GOA ... RESPONDENT

Mr. V. P. Thali, *Advocate for the Appellant.*

Mr. Pravin Faldessai, *Additional Government Advocate for the Respondent.*

CORAM: G. S. PATEL, J.

DATE: 9th AUGUST 2017

P.C:

1. There is some unfortunate error in this matter. Although there is a substantive appeal and it has been pending here since 2007, it needs to be disposed of with a simple order of remand.

2. The appeal was admitted on 6th July 2007. It is directed against an order dated 11th May 2006 passed by the Ad hoc Additional District Judge, South Goa, Margao in Arbitration Suit No. 04 of 2004. The arbitration was itself under the provisions of the Arbitration Act, 1940. It appears that there was an award dated 29th October 1988. By a judgment dated 31st December 1994, the Civil Judge Senior Division, Margao upheld the award. An appeal No. 7 of 1995 under Section 39 of the Arbitration Act, 1940 was filed before this Court. By an order

dated 6th August 2004 S.A. Bobde J (as he then was) remanded the matter.

3. This is where an inadvertent error crept in. Paragraph 6 of the order reads thus:

“6. For the reasons stated above, it is clear that the objections have not been considered at all with reference to specific portions of the Award. **The learned Civil Judge, Senior Division, Margao, was not entitled to reject the observations in such a cursory manner, without discussing them. I, therefore, allow the appeal and set aside the Judgment dated 31st December, 1994. The matter shall be remanded to the District Court, Margao, for a fresh decision on the objection in accordance with law.**”

(Emphasis added)

4. Even considering that by this time, the Arbitration and Conciliation Act, 1996 had come into in force, the Arbitration was and would continue to be under the Arbitration Act of 1940. About this there cannot be any dispute. The jurisdiction of the Court under that Act was that of the Civil Judge Senior Division. The last sentence of paragraph 6 of order dated 6th August 2004 was an inadvertent error remanding the matter to the District Court, Margao. This seems to have escaped the notice of all till now, when it is pointed out by Mr. Thali for the appellant. The District Judge proceeded to deliver its judgment on 11th May 2006. This appeal is against that judgment. Even at the stage of admission of the appeal the error was not noticed.

5. The jurisdictional issue is fundamental. The District Judge had no jurisdiction to take any cognizance of the matter and the remand could not have been made to any other Court other than the Court of Civil Judge Senior Division.

6. The consequence is unfortunate, but, inescapable. Without any consideration on the merits of the appeal or any examination of the impugned judgment, it will have to be set aside and the matter remanded for decision afresh to the Civil Judge, Senior Division, Margao. The Civil Judge Senior Division will decide the initial application and objection under Section 30 of the Arbitration Act, 1940 in respect of the award dated 29th October 1988, without being influenced by the subsequent judgment dated 11th May 2006 of the District Court. The Civil Judge Senior Division will decide the matter in accordance with order dated 6th August 2004 of Bobde J.

7. I will take this opportunity to speak to the minutes. The order of 6th August 2004 will be read as containing a remand to the Civil Judge Senior Division, Margao for a fresh decision in accordance with law.

8. In view of the amount of time lost, the Civil Judge Senior Division is requested to give this matter maximum possible priority and, if possible, to dispose of this matter by the end of December 2017.

G. S. PATEL, J.