

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION APPEAL NO.9 OF 2012

M/s. Harsha Wheel Movers Pvt. Ltd. ... Appellant

vs.

Kolhapur Municipal Council, Kolhapur ... Respondent

Mr. Nirman Sharma a/w Mr. Omprakash Jha i/b The Law Point for the Appellant.

Mr. Aniket U. Nikam for the Respondent/Council.

Coram	:	A.A. Sayed, J.
Reserved on	:	4 May 2017
Pronounced on	:	20 July 2017

JUDGMENT:

1 The Appeal impugns an order dated 3 November 2011 passed by the Civil Judge, Senior Division, Kolhapur. By the impugned order, the Miscellaneous Application No.98 of 1997 filed by the Appellant under section 17 of the Arbitration Act, 1940 (hereinafter referred to as the 'Act of 1940') seeking a decree in terms of the Award came to be dismissed as not maintainable.

2 Sections 14 and 17 of the Act of 1940 reads as follows:

“14. Award to be signed and filed.-

(1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been, taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

(3)”

“17. Judgment in terms of award. - Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.”.

3 Learned Counsel for the Appellant submitted that the Respondent itself had filed an Application being Miscellaneous Application No.103 of 1997 under section 30 of the Act of 1940 seeking to set aside the Award wherein it had annexed a copy of the very Award. He submitted that the certified copy of the Award made by the Arbitrator was filed on record by the Appellant as well as the Respondent and the same was marked as 'Exhibit 3' and there was no necessity of filing the Award in Court under section 14 of the Act of

1940. He further submitted that there was no notice issued by the Court to the Appellant under section 14(2) of the Act of 1940. The learned Counsel submitted that the Award is binding on the parties and it was incumbent upon the Trial Court to first decide the Miscellaneous Application No.103 of 1997 filed by the Respondent for setting aside the Award, and the Miscellaneous Application No.98 of 1997 ought to have been allowed as a matter of course if the Miscellaneous Application No.103 of 1997 of the Respondent were to be dismissed. He submitted that the Trial Court in any case could have suo moto summoned the Award notwithstanding the fact that the Appellant's Application for calling of the records was ultimately rejected after allowing it earlier, and incorrectly recalling that order. Therefore, the said Miscellaneous Application No.98 of 1997 ought not to have been dismissed by the impugned order passed by the Trial Court, as not maintainable. In support of his contention, he has relied upon the following judgments:

- i) Union of India vs. Sewak Ram & Co., MANU/WB/0375/1987;
- ii) Union of India and others vs. Radha Krishna Seth and another, 2005 SCC OnLine All 840 : (2006) 63 ALR 92 (All) : (2006) 2 Arb LR 441 (DB);
- iii) Continental Telepower Industries Ltd. vs. Union of India & ors. 2009 SCC OnLine Del 1859 : (2009) 3 Arb LR 486;
- iv) Hindustan Construction Company Ltd. vs. Union of India, (1967) 1 SCR 843 : AIR 1967 SC 526;

4 Learned Counsel for the Respondent on the other hand relied upon the case of **Patel Motibhai Naranbhai and another vs. Dinubhai Motibhai Patel and others, AIR 1996 SC 997**, in support of his contention that the Application under section 17 of the Act of 1940 for judgment according to the Award does not arise until and unless the 'signed' Award is filed in Court and the certified copy of the Award cannot form the basis of seeking a decree in terms of the Award.

5 I have heard the learned Counsel for the parties. It is noticed that the aforesaid contentions have not been raised and/or considered by the Trial Court. Then parties were ad-idem before the Trial Court that there was an Award passed by the Arbitrator. The Award was binding on the parties unless set aside. Both the parties were relying on the very Award and certified copy of the Award was before the Trial Court. Prima facie, I find substance in the submission of the learned Counsel for the Appellant that the Trial Court could have even suo moto summoned the Award. Having regard to the facts and circumstances of the case, and in the interest of justice, I am inclined to remit the matter back to the Trial Court to consider the matter afresh. Hence, the following order:

ORDER

- i) The impugned order dated 3 November 2011 is set aside.
- ii) The matter is remitted back to the Trial Court to decide the Miscellaneous Application No.98 of 1997 afresh.

- iii) The Trial Court shall however before deciding the Miscellaneous Application No.98 of 1997 permit the parties to make appropriate Applications including any Application to recall the order passed on the Miscellaneous Application No.103 of 1997 and pass appropriate orders in the interest of justice considering the peculiar facts of this case.
- iv) The Appeal is allowed in the aforesaid terms. There shall be no order as to costs. All contentions are kept open.

(A.A. Sayed, J.)