

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

**APPEAL [L] NO.262 OF 2017
IN
ARBITRATION PETITION NO.741 OF 2013**

M/s. Deep Dharshan Builders Pvt. Ltd.

.... Appellants/
(Ori. Petitioners)

Vs.

Saroj, widow of Satish Sunderrao
Trasikar & Others

.... Respondents

Mr. Gaurav Joshi, Senior Counsel with Ms Sonal Awasthi
& Mr. Deepak Shukla i/by M/s. Vinod Mistry & Co. for
the Appellants.

Mr. A.V. Anturkar, Senior Counsel with Mr. Sugandh
B. Deshmukh for Respondent Nos.1, 2 & 4.
Mr. B.R. Zaveri for Respondent No.3.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 15, 2017

P.C:

1. Heard both sides. Perused the order under challenge.
The appellants/original petitioners filed a petition under Section
9 of the Arbitration and Conciliation Act, 1996 ("the Act" for
short). During the course of the arguments on that petition, the

petitioners placed reliance on a Memorandum of Understanding dated 16-9-2013. Initially, the Learned Single Judge relying upon a Judgment of the Hon'ble Supreme Court in *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd.*, reported in (2011) 14 SCC 66, impounded this document and dealt with it in terms of now the Maharashtra Stamp Act, 1958 ("the Stamp Act" for short). An order was passed directing that the document be referred for adjudication of proper stamp duty. That was done and a demand for stamp duty and penalty was raised. That demand was not complied with and that is how the Learned Judge decided not to give any further opportunity to the appellants/petitioners. He proceeded to dismiss the petition itself. Consequently, the appellants/petitioners presumed that once such a petition is dismissed, an appeal in terms of Section 37 of the Act can be preferred. However, prior to that the petitioners sought a recall of this order and which was also refused. Left with no other remedy, the present appeal is filed.

2. We have heard Mr. Gaurav Joshi, learned Senior Counsel appearing on behalf of the appellants/petitioners,

Mr. Anturkar, learned Senior Counsel on behalf of respondent Nos.1, 2 and 4 and Mr. B.R. Zaveri for respondent No.3.

3. With their assistance, we have perused the concerned and relevant orders, including the one dated 18-1-2017.

4. After having heard the parties at some length, we are of the view that any expression by us on the merits of the rival contentions would cause grave and serious prejudice to the parties. The Arbitration Petition filed invoking Section 9 of the Act has been dismissed without any discussion and adjudication on merits thereof. It is only when one document was relied upon during the course of arguments and an objection was taken to its admissibility that the Learned Single Judge, on the earlier occasion, impounded it and referred it for adjudication to the authorities under the Stamp Act. Once those authorities performed their job in determining the proper stamp duty, all that was left was payment of the same by the appellants/petitioners. Once that was agreed to be paid,

although belatedly, the Learned Single Judge would have been well advised in allowing the appellants/petitioners to argue their petition and thereafter on hearing the respondents should have made the final order. Instead the petition came to be dismissed on the understanding that there is non-compliance with the direction to pay stamp duty and, secondly, both the petitioners and the Advocates were absent. Initially, the costs were quantified at Rs.25,000/- but with all this and on the same day when the appellants/petitioners' Advocates sought recall of the order and restoration of the petition to the file for adjudication on merits, the Learned Single Judge has dismissed it.

5. We think, and with great respect, that the Learned Single Judge was unduly harsh on the appellants/petitioners. In refusing to restore the matter the Learned Judge, once again, with greatest respect, over-stepped the limits and expressed some opinion on the contents of the Arbitration Petition and equally blamed the appellants/petitioners for having made no application under Section 11 of the Act. Further, the appellants/petitioners were blamed for their conduct in

somehow seeking protective order under Section 9 and then to delay the resolution of all disputes as long as they can. The Learned Judge also held that the appellants/petitioners have abused the process of this Court.

6. We think all this could have been avoided and after the petition was heard and if at all the appellants/petitioners were entitled to any protective measures, then, while granting them the Learned Judge could have imposed conditions by which the appellants/petitioners would have been obliged to make an application under Section 11 of the Act within the time frame. Thus he could have ensured that the object and purpose of the Act is not defeated by securing a protective measure and not going for arbitration thereafter. Thus, all rights and equities can be balanced and the Courts should not be unduly harsh on parties like the appellants/petitioners. The larger interest of justice demands that such petitions are not thrown out on hyper-technical grounds.

7. As a result of the above discussion, we proceed to

quash and set aside the order under challenge. We restore the Arbitration Petition filed by the appellants/petitioners on file of this Court but by imposing a condition that the appellants/petitioners shall pay costs quantified at Rs.50,000/- of this appeal. The costs shall be paid to the respondents within a period of four weeks from today, and in one set. The costs earlier directed by the Learned Single Judge as also this amount being paid and proof produced, the petition shall be restored to file, duly registered and thereafter placed for admission.

8. We clarify that we have expressed no opinion on the rival contentions, particularly on the entitlement of the appellants/petitioners to obtain any protective measure, as prayed by them. All contentions in that regard of both sides are kept open.

9. Since the appellants/petitioners are agreeable to pay the stamp duty, let the Demand Draft in the name of the Collector of Stamps, Mumbai City be deposited with the Collector/authority under the Stamp Act within a period of one

week from today. If it is so tendered, it shall be accepted. In the event the Adjudicating Authority insists on any further payment to be made, that amount be paid within the time stipulated by that authority. This Demand Draft be handed in addition to our direction to pay the costs.

10. The appeal stands disposed of accordingly.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)