

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

980 CIVIL APPLICATION NO. 3904 OF 2018
IN ARB/10/2016

JAIKUMAR FULCHAND AJMERA, REGISTERED PARTNERSHIP FIRM,
THROUGH ITS PARTNER RAJKUM JAIKUMAR AJMERA
VERSUS
THE STATE OF MAH. THR IT S PRINCIPLE SECRETARY, FOOD, CIVIL
SUPPLY AND CONSUMER PROTECTION DEPTT. MANTRALAY,
MUMBAI

...
Advocate for Applicants : Mr. Thigale Girish K. (Naik)
AGP for Respondent No.1: Mr. S.N. Morampalle
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CORAM : V. K. JADHAV, J.
DATED : 13th APRIL, 2018

PER COURT:-

1. Learned counsel for the applicant submits that the applicant is at liberty to take recourse to the statutory remedy in terms of provisions of Section 12 and 13 of the Arbitration and Conciliation Act 1996 in the pending Arbitration proceedings. However, the learned Arbitrator has rejected the said application filed under Sections 12 and 13 of the Act of 1996, merely by referring the order passed by this court on 12.9.2017.

2. I have also heard the learned A.G.P. for the respondent.

3. On careful perusal of provisions of Section 12 r.w. Section 13 of the Act of 1996, it is explicitly clear that in disqualifying the Arbitral

Tribunal if it has any of subsisting disqualifications as prescribed in the Statute, the applicant can file application before the Arbitral Tribunal under Sections 12 r.w. 13 of the Act of 1996. It is incumbent on the part of the Arbitral Tribunal to consider the same within the sphere of Sections 12 and 13 r.w. Schedule-V of the Act of 1996. The order dated 12.9.2017 passed by this court pertains to only change of the arbitrator. By filing arbitration application No. 10 of 2016 the applicant sought change of the arbitrator from the Divisional Commissioner, Aurangabad to some other authority. There is delay in deciding the arbitration proceeding. Since there is delay in deciding the arbitration proceeding, this court has observed that the change in the arbitrator merely on the aforesaid ground is not permissible, more particularly when the applicant has already agreed and submitted to the jurisdiction of the Divisional Commissioner, as an arbitrator. So far as Section 12 r.w. Section 13 of the Act of 1996 is concerned, this is an independent statutory remedy available to the applicant and this court in the order dated 12.9.2017 has not dealt with the said issue. Learned Arbitrator thus can consider the application on its own merits. Civil application is accordingly disposed of.

(V. K. JADHAV, J.)