

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4791 OF 2018
IN ARB. APPLICATION NO. 5 OF 2011

SANTOSH SHANTILAL MUTHIYAN
VERSUS
BHIMRAO BASWANTRAO PATIL AND OTHERS

...
Mr. G.K. (Naik) Thigale, Advocate for applicant
Ms. Pradnya Talekar, Advocate h/f. Mr. S.B. Talekar, Advocate
for respondents
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 06-07-2018

ORDER :

1. Present civil application has been moved by the applicant seeking directions to follow the provisions of section 11(8) of the Arbitration and Conciliation Act, 1996. He submits that had the information been solicited pursuant to said provision, which in turn requires designated person to make certain disclosures pursuant to section 12 of the Arbitration and Conciliation Act, 1996. Learned counsel for applicant submits that a position may emerge that the arbitrator appointed may not be able to go ahead with the arbitration.

2. He also refers to decision of Supreme Court in the case of *TRF Ltd. Vs. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377

and purports to rely on paragraphs no. 6 and 54 thereof. He submits that it may not be proper for the arbitrator, to go ahead with the arbitration.

3. He submits, order dated 14-07-2017 appears to be discrepant of compliance of requirements of section 11(8) of the Arbitration and Conciliation Act, 1996, and also having regard to the observations, as appearing in paragraphs no. 6 and 54 of the case law cited above and, particularly, having regard to section 12(5) of the Arbitration and Conciliation Act, 1996, the application may be considered.

4. Learned counsel for respondents Ms. Talekar points out present arbitration proceedings have commenced way back in 2011 and in the circumstances, section 26 of the amended act itself has taken care of the situation. In Section 26 of amended Act, it has been clearly provided that nothing in the amended act shall apply to arbitral proceedings in accordance with the provisions of section 21 of the principal act before the commencement of this act, unless the parties otherwise agree. Section 21 of the principal act declares that arbitral proceedings would commence in respect of dispute on the date on which request for dispute to be referred to arbitration, is received by the respondents. It is not the case of applicant that arbitration

proceedings had not commenced before amendment to the enactment.

5. Although, learned counsel for applicant purports to rely on the decision in the case of *TRF Ltd.* (supra), it was a case wherein arbitration proceedings had commenced after the provisions of Arbitration and Conciliation Act, 1996 were amended and, thus, the decision has been rendered.

6. Looking at the arbitration proceedings had commenced way back in 2011, I do not think that the request made under the application can be acceded to. The application is rejected.

7. The above order does not undermine resorts, as may be available to applicant.

[SUNIL P. DESHMUKH]
JUDGE

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