

THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 412 OF 2018.

M. N. Ninan

... Petitioner.

Versus

Bharat Sanchar Nigam Ltd., A Govt.

Company, Rep. By its Executive

Engineer (Civil), Bambolim.,

... Respondent.

Mr. Rui Gomes Pereira, Advocate for the Petitioner.

***Coram:- N. M. JAMDAR &
PRITHVIRAJ K. CHAVAN, JJ.***

Date:- 15 June 2018.

P.C:-

By this petition, the Petitioner has sought a simpliciter direction to the Respondent to make payment of Rs.32,26,000/- with interest thereupon at the rate of 7%.

2. Writ is sought for the recovery of an amount which is subject matter of an arbitration agreement, arising out of the tender. An Arbitrator was appointed who rendered an award. The Arbitrator allowed claim no.1 and claim no. 8 was partly allowed. Thereafter, the Petitioner filed Petition under Section 34 of the Arbitration and Conciliation Act in the District Court. The learned District Judge

allowed claim no.1 and claim no.8. An appeal under Section 37 of the Arbitration Act was filed by the Respondent making a grievance that the learned District Judge under Section 34 of the Act could not have granted claim by itself for the the first instance, In view of the decision of the Apex Court in the case of *MC Dermott International Inc. Vs. Burnt Standard Co. Ltd and others*¹ and taking note of the legal position, the learned Single Judge by judgment and order dated 24 November 2017 quashed and set aside the directions issued by the learned Principal District Judge granting an amount of Rs.14,00,000/- for claim no.1 and Rs.8,26,036/- for claim no.8.

2. Learned Counsel for the Petitioner submits that even though an order has been passed on 24 November, 2017 under Section 37 of the Act, since these amounts are undisputed, the Respondent be directed to pay the amount. It is not possible for us to accept this submission and relief cannot be granted under Article 226 of the Constitution of India. The parties have gone through the proceedings under the Arbitration Act. In exercise of jurisdiction under Section 37 of the Act, the direction issued under Section 34 of the Act, which were issued contrary to law, are set aside. We have not been informed that the order dated 24 November 2017 challenged was set aside. The

¹ 2006(11) SCC 181.

parties will then have to take necessary steps, including, if permissible, invoking arbitration clause again.

3. In these circumstances, directions sought for cannot be issued. If the Petitioner has any other recourse in law, it is open to the petitioner to do so.

4. Writ petition is accordingly disposed of.

PRITHVIRAJ K. CHAVAN, J.

N. M. JAMDAR, J.