

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1053 OF 2017**

1. The Chief Engineer,
Western Zone-II,
Central Public Works Department,
“A” Block, Second floor,
C.G.O Complex, Seminary Hills,
Nagpur, Maharashtra, 440 006.

2. The Executive Engineer,
Goa Central Division,
Central Public Works Department,
Bambolim Goa 403202.

.... Petitioners

V e r s u s

M/s. Devdatta P. Shirodkar,
A Proprietary concern of Shri Rajiv Shirodkar
Having its office at 177-1, Eden Rock,
Opposite St. Inez Church,
St. Inez, Panaji Goa.

.... Respondents

Shri M. Amonkar, Central Government Standing Counsel for the Petitioners.

Shri P. Kholkar, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.

DATE: 15th March, 2018.

ORAL ORDER :

The challenge in this petition under Article 227 of the Constitution of

India is to the order dated 15/9/2017 passed by the learned Principal District Judge, North Goa, Panaji, in Civil Misc. Application No.86/2017. By the impugned order, the learned District Judge has allowed the application under section 29-A of the Arbitration and Conciliation Act 1996 (Act, for short) filed by the respondent and has appointed Mr. P. P. Borkar, retired Chief Engineer, GCD, C.P.W.D, Goa as an arbitrator to adjudicate upon the disputes between the parties.

2. The brief facts are that; on 25/5/2012 the respondents have been awarded a contract for construction of two additional floors over the existing office building of the Registrar of Companies at Panaji. As certain disputes and differences arose between the parties, the petitioners on the request of the respondents appointed an arbitrator in terms of Clause 25 of the Agreement. The parties filed pleadings before the arbitrator and the arbitrator Mr. Rajiv Kumar also heard final arguments. However, the arbitrator retired on superannuation on 29/12/2015 before he could pass an award. In such circumstances, the respondents approached this Court under section 11(6) of the Act in application no.20/2016 seeking appointment of an arbitrator. That application was decided by this Court on 10/2/2017. This Court found that the application is essentially to appoint an arbitrator whose term according to the respondents had lapsed. This Court found that in the given circumstances,

there was no question to appoint an arbitrator under section 11(6) of the Act and the respondents, if so advised, can file appropriate application before the learned District Judge under section 29-A of the Act. The respondent, thereafter approached the learned District Judge on 18/2/2017 by filing Civil Misc. Application no.86/2017 under section 29-A of the Act. During the pendency of the said application, the petitioner in terms of Clause 25 of the Agreement appointed one Mr. Anuj Kanwal as the sole arbitrator. The petitioners filed a reply and brought this to the notice of the learned District Judge. The learned District Judge, however, by the impugned order has appointed Mr. P.P. Borkar, as the sole Arbitrator. Feeling aggrieved, the petitioners are before this Court.

3. I have heard Shri Amonkar, the learned Central Government Standing Counsel for the petitioners and Shri Kholkar, the learned counsel for the respondents. Perused record.

4. It is submitted by Shri Amonkar, the learned counsel for the petitioners that once the petitioners had appointed Mr. Kanwal as the arbitrator in accordance with Clause 25 of the Agreement, the learned District Judge could not have appointed the arbitrator acting under section 29-A of the Act. It is submitted that earlier the petitioners had appointed the Arbitrator, Mr. Rajiv

Kumar, who retired on superannuation without passing the award. It is thus submitted that there was no refusal on the part of the petitioners at any time in appointing an arbitrator.

5. On the contrary it is submitted by the learned counsel for the respondents that the respondents were required to approach this Court u/s 11 of the Act, as the petitioners failed to appoint/substitute an arbitrator in place of Mr. Rajiv Kumar. It is submitted that after the application under section 11 (6) of the Act was decided by this Court, the respondent approached the learned District Judge under section 29 -A of the Act and the arbitrator came to be appointed by the petitioners only during the pendency of the said application, which could not have been done.

6. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. It is apparent from the facts as set out that the earlier arbitrator retired without passing any award and thereafter the petitioners failed to appoint any arbitrator in his place and therefore, the respondent were required to approach this court. This Court found that the appropriate remedy for the respondent is to approach the learned District Judge, as the mandate of the arbitrator had expired. Section 29-A of the Act makes it clear that an arbitrator is required

to make the award within a period of 12 months from the date the arbitral tribunal enters upon the reference and which period can be extended by consent for a further period of six months. Under sub section 4 of section 29-A, if the award is not made within the period specified in sub section (1) or the extended period specified under sub-section 3, the mandate of the arbitrator(s) terminates unless the Court has, either prior to or after the expiry of the period so specified, extended the period. Sub-section 5 of section 29-A provides that such extension of period under sub-section (4) can be ordered on the basis of an application of any of the parties and the court can grant such extension for sufficient cause and on such terms as may be imposed. Sub-section 6 of section 29-A is material which provides that while extending the period referred to in sub-section 4, it shall be open to the Court to substitute one or all of the arbitrators. It was not disputed during the course of arguments at bar that the District Court would have jurisdiction to appoint/substitute an arbitrator in the place of the arbitrator whose mandate had lapsed. If that be so, the impugned order cannot be said to be without jurisdiction. Mr. Amonkar, the learned counsel for the petitioners submitted that the application under section 29-A of the Act was not maintainable, as the said section was introduced by the amendment in the year 2015. I am afraid that such an contention was never raised before the learned District Judge. In any event, the petitioners have not raised any ground about the

suitability of Mr. Borkar as being the arbitrator to decide on the dispute between the parties. The impugned order certainly does not result into any manifest injustice to the petitioners. In that view of the matter, I decline to entertain the petition, which is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/