

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.753 OF 2017
IN
SECOND APPEAL NO.116 OF 2009**

M/s.Golani Brothers ... Applicant

In the matter of:

The State of Maharashtra ... Appellant

Vs.

M/s.Golani Brothers ... Respondent

**with
SECOND APPEAL NO.116 OF 2009**

The State of Maharashtra ... Appellant

Vs.

M/s.Golani Brothers ... Respondent

Mr.Vijay Patil for the Appellant in SA/116/2009
Mr.Ganesh Lambade i/b P.S. Gidwani for Respondent and for
Applicant in CAS/753/2017

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: APRIL 9, 2018

P.C.:

1. The Second Appeal is filed against the judgment and order dated 6.11.2008 passed by the learned District Judge, Satara, in Regular Civil Appeal No.357 of 2002. In the said Civil Appeal No357 of 2002, the judgement and decree dated 30.4.1988 passed by the Civil Judge, Senior Division, Satara in Special Civil Suit No.18 of

1986, thereby confirming the award passed by the Arbitrator dated 31.12.1985.

2. It is pointed out by the learned Counsel for the applicant that u/s 39(2) of the Arbitration Act, 1940, no Second Appeal shall lie from the order passed in Appeal under the said section and appeal is maintainable only in Supreme Court. He further submitted that as per the order of this Court, the applicant who is the respondent in the appeal, furnished bank guarantee and the same be discharged.

3. Learned Counsel for the appellant submits that the appellant has already deposited the entire amount of arbitral award and the bank guarantee is obtained by way of security. He submits that the appellant wants to challenge the order of the first appellate Court by filing appeal before the Supreme Court and, therefore, the protection of the bank guarantee be continued for 8 weeks and the stay also to be continued for 8 weeks.

4. In view of the provisions of section 39 of the Arbitration Act, 1940, no second appeal is maintainable before this court. In view of the submissions of the learned Counsel for the appellant as the appellant wants to challenge the order of the first appellate Court

before the Supreme Court, the order of furnishing bank guarantee and the stay is continued till 18.6.2018. If no further orders are sought in respect of the bank guarantee or the stay, the bank guarantee will stand discharged as also the stay to stand vacated forthwith on 18.6.2018.

5. Second Appeal and the Civil Application are disposed of accordingly.

(MRIDULA BHATKAR, J.)