

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 11 OF 2018

Mr. Mahesh Hari Tipare and another ... Appellants

Versus

M/s. Gandhi Associates ... Respondent

Mr. Kunal Kanungo for the Appellants.

Mr. S.C. Wakankar for the Respondent.

CORAM : S.J. KATHAWALLA, J.
DATED : 29th JUNE, 2018

P.C.:

1. Arbitration M.A. No.602 of 2017 was filed before the District Judge-6, Pune, under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') whereby the Applicants have placed under challenge the arbitration Award passed in Claim Petition No.01/2017 dated 10th April, 2017.
2. The Respondents have filed application (Exhibit 10) under Section 34(5) of the Act and prayed that M.A. No. 602 of 2018 be rejected on the ground that the applicants have not complied with the mandatory provisions of Section 34(5) of the Act.
3. The Learned District Judge-6, Pune accepted the submissions / contentions of the Respondents and held that the Application filed under Section 34(5) of the Act is not maintainable for want of mandatory compliance of Section 34(5) of the Act.
4. The decision of this Court in the case of this Court (Coram : R.D. Dhanuka, J.)

dated 21st February, 2018 in *Ganesh Benzoplast Limited v. Bharat Petroleum Corporation Limited*, *Commercial Arbitration Petition No. 236 of 2017* alongwith several other Arbitration Petitions holding that, the provisions of Sections 34(5) and 34(6) of the Act are directory and not mandatory and that the Court has ample power to direct the Respondents after the Petitioner files the Arbitration Application under Section 34(1) and before such Petition is heard by the Court at the stage of admission was not pointed out the learned Judge.

5. I am in agreement with a view taken by R.D. Dhanuka, J. In view thereof, the order passed by the District Judge-6, Pune dated 13th December, 2017 dismissing the Arbitration M.A. No.602 of 2017 is set aside. The parties shall appear before the Learned District Judge-6, Pune on 2nd July, 2018 at 11.00 a.m. and the Learned District Judge-6, Pune shall dispose off the Arbitration M.A. No.602 of 2017 within a period of four weeks from the date of this order. In view of this order, the above Arbitration Appeal stands disposed off.

(S.J.KATHAWALLA, J.)