

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 199 OF 2017
with
CIVIL APPLICATION (st) NO. 460 OF 2017
in
APPEAL FROM ORDER NO. 199 OF 2017

Shatataraka Nagari Niwara Sahakari
Grihanirman Sanstha Ltd. & Ors.

..Appellants

v/s.

Mahanagar Gas Limited.

..Respondents

Mr. Amit Karande for the Appellant.

Mr. Varun Satiya a/w. Arun Unnikrishnan i/b. Crawford Bayley & Co.
for the Respondent No.1.

Mr. Dilip Bagwe for the Respondent No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 19TH MARCH, 2018.**

P.C.

1. Not on board. On production, taken on board.
2. The appellant herein was the plaintiff in S.C.Suit No. 548 of 2017. The Appellant had filed a Notice of Motion seeking to direct the respondent Mahanagar Gas Ltd., to install a Pipeline Natural Gas facilities at Building Nos. 14 and 18 situated at plot No. 5-1, and

Building Nos.9, 10, 15, 16 and 21 situated at Plot No.6, City Survey No. 827/C being part of the Original Survey No.239/1 of Village Malad at Nagari Niwari Vasahat, Goregaon (East), Mumbai.

3. The respondent had not installed the said pipeline in view of the objections from Nagari Niwara Parishad, which has been impleaded in this appeal as respondent no.2, pursuant to the Order dated 5th April, 2017.

4. The trial Court after considering the material on record and hearing the respective parties, refused to grant ad-interim relief which has resulted in filing of this appeal from order.

5. Mr. Satiya, the learned Counsel for the respondent no.1 Mahanagar Gas Ltd., has stated that the respondent no.1 has no objection to install the pipeline and that they had not installed the said pipeline in view of the dispute between the appellant and the respondent no.2 herein.

6. During pendency of this proceeding, the appellant and the respondent nos.2 have settled their dispute and have entered into consent terms which are placed on record. The said consent terms read as under:-

1. *It is agreed between the Appellants and Respondent No 2 that Respondent No 2 Nagari Nivara Parishad shall not object and give its No Objection Certificate (N. O. C.) for the installation of Pipe Natural Gas facility at – Bldg. No. 14 and 18 situate at Plot no 5-1, and Bldg. No. 9, 10, 15, 16 and 21 situated at Plot no 6, City Survey No. 827/C being part of the Original Survey No. 239/1 of Village Malad, at Nagari Nivara Vasahat, G. Arun Kumar Vaidya Marg, Dindoshi, Goregaon (East), Mumbai – 400 065 i.e. Appellant/Applicant societies. Respondent No 1 Mahangar Gas Limited shall forthwith install the said Pipe Natural Gas facility upon the issuance of such N. O. C. by Respondent No. 2.*

2. *The Respondent No 2 Nagari Nivari Parishad invokes Clause 56 of the Agreement dated 20.10.2000 which is annexed as Exhibit – G to its Affidavit-in-reply dated 3.06.2017 for appointment of Arbitrator to decide the term of reference/dispute as mentioned in clause 4 of these Consent Terms. The abovementioned Agreement dated 20-10-2000 is representative of similar Agreements entered into between the individual members of the Appellant Societies and the Respondent No.2 herein.*

3. *The Appellants and the Respondent No 2 have agreed that this Hon'ble Court may appoint the Hon'ble Shri*

Justice S. S. Parkar as the Sole Arbitrator. After said order is uploaded the Respondent No 2 shall immediately communicate the authentic copy of the order of appointment to Shri Justice S. S. Parkar along with the copy of consent terms and upon acceptance of such appointment by the Arbitrator, the Respondent No. 2 shall forthwith issue its NOC to Respondent no 1 as mentioned in Clause 1 hereinabove. The Appellant Societies shall represent on behalf of its respective members before the Arbitrator. Both, the Appellants and the Respondent no 2, shall pay the charges of Arbitrator equally.

4. The Respondent no 1 shall not be a party to the above mentioned arbitration proceedings between the Appellants and Respondent no 2.

5. The term of reference/dispute to be referred to the Arbitrator for Arbitration is Whether Respondent No 2 Nagari Nivara Parishad, in view of the said Agreement dated 20.10.2000, is entitled to recover the dues for managing internal water supply, R.G. & internal roads from the members of Appellant Societies and if yes what is the actual due and payable amount the members of Appellants are liable to pay to the Respondent No. 2.?

6. The Appellants will be at liberty to withdraw & shall withdraw the S. C. Suit No. 548 of 2017 pending before

the court of the Bombay City Civil Court At Bombay Borivali Division, Dindoshi (Branch) as soon as the NOC as mentioned in clause 1 & 3 is issued by Respondent no 2 in view of these consent terms & order.

7. The Appellants shall not obstruct the work of other societies of Respondent No.1.”

7. The consent terms are signed by the Secretary of the Appellant Nos.1, 2, 3 and 5 to 7 and the President of Appellant No.4. The consent terms are also signed by Shri Vinayak Joshi, one of the Trustees of the respondent no.2. The Consent terms are also signed by the Counsel for the respective parties.

8. The learned Counsel for the respondent no.2 submits that the said Vinayak Joshi, who is one of the trustees is authorized by the other trustees to enter into the settlement and draw and sign the consent terms. Similarly, the learned Counsel for the appellant submits that the Secretaries of the Applicant Nos.1, 2, 3, 5, to 7 and the President of Appellant no.4 have been authorized to enter into the consent terms and that the same will bind all concerned. The Consent Terms are taken on record and marked “X” for identification.

The statements made and the undertaking given by the parties are accepted.

9. The learned Counsel for the respondent no.1 submits that since dispute between the respondent no.1 and the appellants has been resolved, it will install the Pipeline Natural Gas Facility for the 19 societies as well as the appellant societies as expeditiously as possible, and in any event within a period of nine months. Statement accepted.

10. The appeal stands disposed of in the light of the above statement made by the Counsel for the Respondent No.2 as well as the Consent Terms filed by the Applicant and the Respondent No.1.

11. In terms of clause no.3 of the Consent terms Hon'ble Shri Justice S.S.Parkar (Retd.) is appointed as Sole Arbitrator to decide the dispute referred to in clause 5 of the consent terms which reads thus :-

“Whether Respondent No 2 Nagari Nivara Parishad, in view of the said Agreement dated 20.10.2000, is entitled to recover the dues for managing internal water supply, R.G. & internal roads from the members

of Appellant Societies and if yes what is the actual due and payable amount the members of Appellants are liable to pay to the Respondent No. 2.”

12. In view of disposal of the Appeal from Order, Civil Application No. 460 of 2017 also stands disposed of.

(ANUJA PRABHUDESSAI, J.)