

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 8700 OF 2017**

Tejpal Navamal Jain (HUF) ... Petitioner

Versus

Mrs. R. Sugandhi Nadar & Ors. ... Respondents

Mr. G. S. Godbole for Petitioner.  
Mr. Sumit S. Kothari for Respondents.

**CORAM : NITIN W. SAMBRE, J.**  
**DATE : 16<sup>th</sup> OCTOBER 2018.**

**P.C.**

. Heard Mr. Godbole, the learned Counsel for Petitioner and Mr. Kothari, the learned Counsel for Respondents.

2. The impugned order in the Petition is below Application (Exhibit – 57) in Civil Misc. Application No. 1115 of 2016 passed by the District Judge – 1, Pune whereby the Application under Section 10 of the Code of Civil Procedure (for short, 'the Code') claimed to be rejected.

3. The facts necessary for deciding the present Writ Petition are as under :

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Partnership Firm namely, 'M/s. A. B. Construction' was having partner by name Subhash Narhar Sangle who died on 9<sup>th</sup> August 2016. His wife Smt. Madhuri and two sons namely, Sangram and Gaurang filed a suit for rendition of accounts, dissolution of partnership firm, declaration and permanent injunction. The Application under Section 8(1) of the Arbitration and Conciliation Act, 1996 was filed by the Defendants on 27<sup>th</sup> September 2016 seeking reference to the Arbitrator. The learned Civil Judge Senior Division, Pune vide order dated 8<sup>th</sup> November 2016 disposed of the said Application referring the dispute for arbitration.

4. An application under Section 9 of the Arbitration and Conciliation Act was moved by the Plaintiffs i.e. legal heirs of deceased Subhash Sangle on which notice was ordered on 2<sup>nd</sup> December 2016. Parties were directed to maintain status-quo.

5. Another application under Section 9 of the Act came to be moved by Mrs. R. Sugandhi Nadar in which according to Petitioner almost a similar relief was sought. The said Application was objected by the present Petitioner.

6. In the said proceedings, the Petitioner filed an application for stay to the hearing of Application under Section 9 of the Act moved by the

Respondent No.1. By impugned order the same came to be rejected. As such, this Petition.

7. Heard Mr. Godbole, the learned Counsel for Petitioner. Mr. Godbole would urge that even if the provisions of Section 10 of the Code are not applicable to the proceedings under Section 9 of the Act, still it is always open for the present Petitioner to invoke the provisions of Section 151 of the Code of Civil Procedure seeking stay to the hearing of the Application under Section 9 of the Act.

8. Next limb of the submission of Mr. Godbole is while deciding Application under Section 9 of the Act proviso to Order 39 Rule 1 and 2 of the Code are required to be appreciated. He would try to draw support from the Judgment of this Court in the matter of *Perin Hoshang Davierwalla and Anr. V/s Kobad Dorabji Davierwalla and ors.*<sup>1</sup>. According to him, in view thereof, hearing of the Application under Section 9 of the Act moved by the Respondent No.1 needs to be deferred.

9. *Per contra*, the learned Counsel for the Respondents would urge that Section 10 of the Code has no application to the proceedings in question. According to him, the order impugned passed by the learned

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<sup>1</sup> 2014(3) Bom.C.R.551

District Judge is just and proper and does not warrant any interference. As such, according to him, the Petition is liable to be rejected.

10. Considered rival submissions.

11. The nature of relief sought by the original Plaintiffs i.e. legal heirs of the partner late Mr. Sangle invoking the jurisdiction of the learned District Judge under Section 9 of the Act is in the facts and circumstances as narrated in the Application and the cause of action accrued to the said parties, whereas the Application moved by the Respondent No.1 under Section 9 of the Act is independent of the said proceedings. The party i.e. Respondent No.1 or original Plaintiffs to the suit has every independent right to approach the Court and invoke the provisions of Section 9. There is no statutory embargo on the right of parties particularly under the provisions of the Arbitration and Conciliation Act.

12. Apart from above, once this Court in the matter of **Perin Hoshang Davierwalla** (*cited supra*) and **M/s Sovereign Developers and Infrastructure Ltd. V/s Paramount Vijetha Holding, a Partnership Firm, reported in AIR 2010 Karnataka 80** as referred to in the impugned order has reached to a conclusion that all the provisions of the Code are not applicable to the proceedings under Section 9 of the Act. It is really difficult

to infer that there is any statutory embargo on the right of the Respondent No.1 to move such Application under Section 9 of the Act. Pendency of earlier application at the behest of the other Respondents in the Petition namely, Respondent Nos. 5, 6 and 7 cannot be read to the detriment of the Respondent No.1 to infer the non-maintainability of the Application under Section 9 of the Act.

13. That being so, in my opinion, there is no substance in the petition which warrants interference. As such, the Petition is devoid of merits. Hence, the same is dismissed.

14. It shall be opened for the learned court to club both the Applications under Section 9 of the Act.

**(NITIN W. SAMBRE, J.)**