

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 641 OF 2014

M/s.Jai Hanuman Co-op.Hsg.Soc.Ltd.	...Petitioner
vs	
M/s.Paresh Constructions	...Respondent

Mr.Ruchir Tolat I/b. L.C. Tolat & Co. for Petitioner.
Mr.Nikhil Wadikar I/b. Charvy Hatkanagalekar for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 19 DECEMBER 2018

P.C. :

The petition is not on board but mentioned at 11 a.m. The petition was heard yesterday and an order was passed allowing the petition. Before passing the order, a suggestion was made by the court to both parties that the impugned award challenged in the present petition may be set aside by consent and the arbitration reference may be remanded to a new arbitrator on an express understanding that the pleadings and evidence filed before the original arbitral tribunal shall be treated as pleadings and evidence before the new arbitrator and only oral submissions be advanced on the disputes. It was also suggested that the new arbitrator may dispose of the remanded reference expeditiously and in a time bound matter after taking into account commissioner's report (such commissioner to be jointly appointed by the parties from the panel of architects and valuers maintained by the Court Receiver) on the measurements of the constructed area. It was also suggested that pending hearing of the reference before the new arbitrator, a sum of Rs.4,50,000/- may be paid by the Petitioner to the Respondent without prejudice to the

rights and contentions of both parties in the reference on remand so that such payment would be subject to the final award of the new arbitrator. Learned Counsel for the Petitioner fairly agreed to the suggestion of the court. Learned Counsel for the Respondent had the matter kept back for his client's instructions on the suggestion. Finally, learned Counsel indicated his inability to accept the suggestion. The matter was thereafter heard and the order was dictated in the court.

2 Today when the matter is mentioned before the court, learned Counsel for the Respondent submits that whilst he was in court arguing the matter, his client was trying to contact him to convey its acceptance of the suggestion made by the court; there was some miscommunication due to which such acceptance could not be reported by learned Counsel. Learned Counsel submits that the court may, in the premises, recall its order dictated yesterday and allow the parties to go ahead with the suggestion made by the court.

3 Learned Counsel for the Petitioner, in response to this application, submits that having already conveyed the result of the petition to his client, he finds it difficult to accede to the request now made by learned Counsel for the Respondent. Learned Counsel, however, leaves it to the court to pass an appropriate order in the matter.

4 Considering that, in all fairness, the suggestion was fully accepted by learned Counsel for the Petitioner but the order could not be passed due to a miscommunication between learned Counsel for the Respondent and his client, this court is of the view that based on the

original suggestion made by the court and accepted by the Petitioner, the order passed yesterday may be recalled and the petition may be disposed of in terms of the order proposed yesterday by consent.

5 Accordingly, the order is recalled and the petition is disposed of by setting aside the impugned award by consent of parties and remanding the arbitration reference to the sole arbitration of Ms.Asha Bhambwani, Advocate, subject to her disclosure and consent. The reference shall proceed before the new arbitrator on the basis of the same pleadings and evidence which form part of the reference culminating in the impugned award. Both parties shall jointly appoint an architects from the panel of architects and valuers maintained by the Court Receiver's office to have the constructed area under the subject contract measured. The arbitrator shall take into account the measurement reported by the commissioner. The arbitrator shall dispose of the reference as expeditiously as possible and in any event within a period of three months from today. In the meantime, the Petitioner shall make an on account and without prejudice payment of Rs.4,50,000/- to the Respondent. Such payment shall be subject to, and abide by, the final award that may be passed by the new arbitrator.

(S.C. GUPTE, J.)