

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 1016 OF 2018

Sohansingh Jagatsingh Dhami

... Petitioner

vs.

Mohansingh Jagatsingh Dhami

... Respondent

Mr. Girish Godbole a/w. Mr. Naresh Ratnani i/b. Ashwin Ankhad & Associates for the Petitioner.

Ms. Bhavna A. Anklesaria for the Respondent.

CORAM : A.K. MENON, J.

DATE : 17th SEPTEMBER, 2018

P. C.

1. This petition seeks to challenge an order dated 24th May, 2018 by which the Arbitral Tribunal declined to permit the petitioner to withdraw his counter claim and certain undertaking given by him and in order to prosecute a suit filed by him in this Court. The applications clarifies that no opinion was expressed on the merits of the issue and contentions of both parties were kept open. The order is not one passed under section 17 and which could be made subject matter of appeal under section 37 and section 17 of the Act. Section 17 of the Act reads as follows :

17. **Interim measures ordered by arbitral tribunal .**

(1)A party may during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal –

(i)for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely : –

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purposes of obtaining full information or evidence.

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to any proceedings before it.

(2) Subject to any order passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were an order of the Court.

2. It is therefore evident that section 17 provides for interim measures passed by the Tribunal during the arbitral proceeding or at any time before it is enforced in accordance with section 36. Section 17(1) lists out the various interim measures on protection of one kind or the other. By virtue of sub section 2 of Section 17 orders passed by the Tribunal are deemed to be orders passed by the Court for above purposes and enforceable under the code of civil procedure. The order at hand is not one which can in any manner fit the description of an interim measure of protection. The respondent appellant has sought to withdraw the counter claim filed by him with the tribunal and sought to be relieved of undertakings contained therein. The arbitrator proceedings are still underway. In any event the order partakes of a procedural character and in my view no appeal is maintainable against such order under section 37. I therefore following order :

- (i) Petition is dismissed.
- (ii) It is clarified that the Court has not examined the merits of the dispute or the counter claim and the dismissal of this petition shall not in any manner influence the outcome of the arbitration.
- (iii) No costs.

(A.K. MENON, J.)

Rajeshwari
Ramesh
Pillai

Digitally signed by
Rajeshwari Ramesh
Pillai
Date: 2018.10.09
14:55:01 +0530