

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**913 ARBITRATION APPEAL NO. 8 OF 2017
WITH
CIVIL APPLICATION NO. 10980 OF 2017 IN ARBA/8/2017**

**PRAJESH ANIL RANA AND OTHERS
VERSUS
SUMANBAI RADHAKISHAN RANA AND ANOTHER**

**WITH
CIVIL APPLICATION NO. 6906 OF 2018 IN ARBA/8/2017**

**SUMANBAI RADHAKISHAN RANA AND ANOTHER
VERSUS
PRAJESH ANIL RANA AND OTHERS**

Advocate for the Appellants : Shri S. S. Deshmukh
Advocate for Respondent No. 1 : Shri L. D. Vakil
Advocate for Respondent No. 2 : Shri A. P. Bhandari

**WITH
ARBITRATION APPEAL NO. 9 OF 2017**

**INDIAN OIL CORPORATION LIMITED
VERSUS
SUMANBAI RADHAKISHAN RANA AND OTHERS**

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Advocate for the Appellant : Shri A. P. Bhandari
Advocate for Respondent No. 1 : Shri L. D. Vakil
Advocate for Respondent No. 2 to 4 : Shri S. S. Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 13th FEBRUARY, 2019.

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PER COURT :

1. This Court had passed an order on 03/12/2018 which

reads as under :-

"1. The learned Advocate appearing on behalf of respondent No.1 Sumanbai, who is also respondent No.1 in the Second Appeal, submits that the proceedings before the District Court were with regard to Section 34 of the Arbitration and Conciliation Act, 1996. The matter was specifically transferred from the learned Principal District Judge to the learned District Judge-1, who was designated as a commercial Court in view of Section 10 of the Commercial Courts Act 2015. He, therefore, submits that the Appeals to be preferred under Section 13(1A) would lie before the Commercial Appellate Division of this Court. He then points out that Section 3(I) (iv) defines the Commercial Appellate Division and submits that the present Appeals would, therefore, lie before the Commercial Division Bench of this Court.

2. The learned Advocate for the Appellants in both these petitions make a grievance that when these petitions are pending for the last more than a year, the learned Advocate appearing on behalf of respondent No.1, who had also appeared before the Commercial Court at the District level, should have raised all these objections earlier. With great difficulty these respondents have been served.

3. *In view of the above, I find that the issue as to whether these Appeals could be entertained by this Court under its supervisory jurisdiction or whether these matters will have to be placed before the Commercial Appellate Division in view of the provisions referred to above.*

4. *Stand over to 04/01/2019 in the urgent admissions category. The parties may take note that the above stated issue would be adjudicated upon and if the Court concludes that the matters are maintainable, there is likelihood that these Appeals would be decided finally at admission stage, considering the earlier order passed by this Court on 28/06/2018 and R & P having reached this Court."*

2. Pursuant to the above, the learned Principal District Judge, Aurangabad has submitted his report in a sealed envelop. So also, he has forwarded the opinion of the learned District Judge-1, Aurangabad, who dealt with these proceedings, in a sealed envelop.

3. The report of the learned Principal District Judge, Aurangabad dated 08/01/2019 indicates that the MARJI No. 346/2016 was transferred to the Court of the learned District

Judge-1, Aurangabad since it did not appear to be a dispute susceptible to monetary valuation. The matter was transferred simplicitor as an allotment of a case. The report of the learned District Judge-1, Aurangabad dated 08/01/2019 indicates that the learned Advocates for the respective sides had never contended that the dispute involves a commercial dispute. None raised any objection as regards his jurisdiction. He has decided the said proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 and not as a commercial dispute.

4. The report of the learned Principal District Judge, Aurangabad is taken on record and marked as Exhibit 'X-1' and the report of the learned District Judge-1, Aurangabad dated 08/01/2019 is taken on record and marked as Exhibit 'X-2' for identification.

5. The learned Advocates for the respective sides do not hesitate in submitting that the dispute which was entertained by the learned District Judge-1, Aurangabad, should have been dealt with only by the learned Principal District Judge,

Aurangabad. They, therefore, submit that these proceedings can be referred to the learned Principal District Judge, Aurangabad for an adjudication afresh since the law mandates that the said issue should be dealt with by the learned Principal District Judge, Aurangabad.

6. They also place reliance upon a judgment of this Court dated 11/06/2015 delivered at this Bench by the learned Single Judge in *Writ Petition No. 2218/2015 (Sanjay Suryakant Mhaske and others Vs. Zilla Parishad, Jalna)*.

7. In view of the above, both these Arbitration Appeals are disposed off and the litigating sides would appear before the learned Principal District Judge, Aurangabad on 25/03/2019. The impugned order dated 18/07/2017 in MARJI No. 346/2016 is quashed and set aside and MARJI No. 346/2016 is remitted to the Court of the learned Principal District Judge, Aurangabad.

8. Pending Civil Application Nos. 10980/2017 and 6906/2018 do not survive and stand disposed off.

9. The learned Principal District Judge, Aurangabad would endeavour to decide the said proceedings as expeditiously as possible on or before 31/07/2019. Needless to state, all the contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

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