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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3952 OF 2019

D. R. Services, through its
Proprietor Shri Rajkumar
Bhujangrao Dhakane

..Petitioner

Vs.

The Executive Engineer, PWD
and ors.

..Respondents

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Priyanka Chavan, Ms.
Neelam Kaintura I/by Dinesh Adsule for petitioner.

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Rohan Mirpury and
Ms. Nisha Mehra, AGP for respondents-State.

Mr. Sandeep Kumar Singh for respondent no.7.

CORAM: PRADEEP NANDRAJOG, CJ. &
N. M. JAMDAR, J.

APRIL 10, 2019.

P.C.

1. The Writ Petition lays challenge to the decision taken by the respondents to terminate the contract awarded to the petitioner to collected toll at the Kamothe and Kopra Toll Stations

on Sion – Panvel Highway BOT project from Kalamboli Junction to B.A.R.C.

2. The contract between the parties has an arbitration clause.

3. Since questions of fact arise for consideration to determine the legality of the order terminating the contract, we have put it to the parties whether they are agreeable to have the disputes adjudicated before an Arbitrator. Learned counsel for the parties state that the have no objection if the disputes would be referred to arbitration as per the arbitration clause and an Arbitrator is appointed.

4. With consent of the parties, we appointed Justice R. M. Savant (Retd.) as a sole Arbitrator to adjudicate the disputes between the parties concerning the contract.

5. As agreed between the parties, the petitioner shall file a claim and if respondents have a counter claim, they would be entitled to file the counter claim. The mandate of the learned Arbitrator is to adjudicate the claim as well as the counter claim, if any laid.

6. It is further agreed between the parties that the bank guarantee executed in the sum of Rs.7.95 Crores by Bank of Maharashtra at the asking of the petitioner would not be enforce for a period of four weeks from today and a letter, if delivered to the Branch Manager of the said Bank invoking the bank guarantee would be withdrawn. The petitioner would be entitled to seek interim measure under Section 9 of the Arbitration and Conciliation Act, 1996.

7. All facts and law on which claim and counter claim, if any, would be available to the parties before the Arbitrator.

8. The usual mantra. At the asking of the parties. Neither learned Arbitrator nor the learned Single Judge, if the application under Section 9 of the Arbitration and Conciliation Act, 1996 is filed, would be influenced by the consent order passed concerning the invocation of the bank guarantee being deferred by consent.

9. Writ Petition is disposed of by consent, as above.

N. M. JAMDAR, J.

CHIEF JUSTICE