

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**ARBITRATION APPEAL NO. 20 OF 2018
WITH
CIVIL APPLICATION NO. 16 OF 2018
IN
ARBITRATION APPEAL NO. 20 OF 2018**

M/s. Madshuprayag Sales & Services
through its Proprietor Nandkishore Kalbhor ... **Appellant**

V/s.
M/s. Indian Oil Corporation Ltd. ... **Respondent**

Mr. Nikhil Wadikar i/b. Nandu Pawar for the appellant.

Mr. Sunil Gangan a/w. Jayesh Mestry i/b. RMG Law Associates for the respondent.

**CORAM : G.S.KULKARNI, J.
DATE : 4th September, 2019**

P.C.:

Heard the learned counsel for the appellant and learned counsel for the respondent.

2. This is an Appeal filed under section 37 of the Arbitration and Conciliation Act, 1996 of the appellant being aggrieved by an order dated 11th April, 2018 passed by the learned District Judge, Pune, in Arbitration Petition no. 1177 of 2012, filed by the appellant under section 9 of the Arbitration and Conciliation Act, 1996 (for short “the Act”). The appellant had filed Section 9 Application prior to the arbitral tribunal

entering reference. The impugned order reads as under:

“Already Arbitration proceeding is decided by Arbitrator. The Petitioner has also filed application under section 34 of the Act. Hence, this application does not survive. Hence, application stands dismissed.”

3. This Court (Coram: S.J. Kathawalla, J.) by order dated 19th April, 2018 has passed the following order:

- “1. Respondent shall file its Affidavit in reply on or before 27th April, 2018.
2. Stand over to 27th April, 2018.
3. In the meantime, the Respondent shall maintain status quo as of today in respect of the dealership of the appellant.”

The above order has continued to operate till date.

4. Learned counsel for the appellant has drawn my attention to a prior order passed by the learned District Judge on 14th October, 2016 on the very same application, which reads as under:

“Perused the application and the reply (Exhibit 42). Heard the respective counsel at length.

In view of Section 9 of the Arbitration and Conciliation Act, 1996 coupled with ratio laid down by the Hon’ble Andhra Pradesh High Court in case of **Sudershan Rao and Ors. vs. Evershine Builders Private Limited, Mumbai and another – 2012 (6) ALT 343 : 2012 DGLS (Andhra Pradesh) 375** – (para 27) effect and operation of the order passed earlier below Exhibit 5 and 28 shall stand extended till decision of interim relief prayed for by the petitioner in Arbitration Proceeding bearing No. 881/2016 by the District Judge-2, Pune.”

5. I have heard learned Counsel for the parties. Reading of the impugned order and as urged on behalf of the appellant, it is seen that there is no

clarity in the impugned order in regard to the relief granted by the learned District Judge by order dated 14th October, 2016.

6. In my opinion, it would be appropriate that the learned District Judge clarifies the exact position qua the interim order dated 14th October, 2016 and pass further appropriate orders. It is, thus, in the interest of justice that the parties are relegated to the learned District Judge to be heard on Civil Miscellaneous Application No. 1177 of 2012 to be heard by the learned District Judge on Civil Miscellaneous Application (Arbitration) No. 1177 of 2012, with regard to the status of the order dated 14th October, 2016 which according to the appellant in the facts and circumstances of the case has not be expressly vacated by the learned District Judge in passing the impugned order dated 11th April, 2018. All contentions in that regard are expressly kept open.

7. Admittedly now the arbitral award is published. The parties are before the learned District Judge in proceedings under Section 34 of the Act (Arbitration Proceeding bearing no. 881 of 2016) as filed by the appellant which is pending before the same Court. Also, an interim application has been filed by the appellant in the Section 34 proceedings.

8. This order would also not preclude the learned District Judge from considering the interim application as filed by the appellant in Section 34 proceedings (Arbitration Proceeding No. 881 of 2016). All contentions of the parties in this regard are expressly kept open.

9. As the order dated 19th April, 2018 passed by this Court (Coram: S.J. Kathawalla, J.) on this Appeal has continued to operate till date, it would be in the interest of justice that the said order passed by this Court, operates till learned District Judge passes an appropriate order on the clarification application as may be moved by the appellant. Such application be filed by the appellant within one week from today. If so filed, learned District Judge shall pass appropriate orders on the said application within a period of four weeks from today. In case the clarification application is not filed within one week, the protection granted by this Court shall forthwith cease to operate.

10. Appeal is disposed of on above terms.

11. Civil Application also does not survive and it is accordingly disposed of.

12. Parties to act on the authenticated copy of this order.

(G.S.KULKARNI, J.)