

psv

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

ARBITRATION APPEAL NO.3 OF 2019

Hindustan Antibiotics Ltd. ..Appellant
Vs.
DSM Sinochem Pharmaceuticals India Pvt.Ltd. ..Respondent

**WITH
CIVIL APPLICATION NO.46 OF 2017**

Hindustan Antibiotics Ltd. ..Applicant
Vs.
DSM Sinochem Pharmaceuticals India Pvt.Ltd. ..Respondent

**WITH
CIVIL APPLICATION NO.47 OF 2017**

Hindustan Antibiotics Ltd. ..Applicant
Vs.
DSM Sinochem Pharmaceuticals India Pvt.Ltd. ..Respondent

Mr.D. Ray Choudhuri, Senior Advocate, i/b. Mr.D.G. Dhanure for Appellant.
Mr.Karl Tamboly with Mr.Dinesh Pednekar and Mr.Alok Jain i/b. M/s.Economic Laws Practice for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 19th JUNE, 2019

P.C.:

Heard Mr.Choudhuri, learned Senior Counsel for the appellant and Mr.Tamboly, learned Counsel for the respondent.

2. This is an appeal filed under Section 37 of the Arbitration and

Conciliation Act, 1996 (for short, “the Act”) whereby the appellant assails an order dated 29 September 2017 passed by the learned District Judge-1, Pune, whereby the application of the appellant filed under Section 9 of the Act (below Exhibit 14), praying for interim measures post publication of the award, was rejected by the learned District Judge.

3. The primary ground on which the application came to be rejected by the learned District Judge was that the appellant had already taken recourse to execute the award by filing an execution application. The learned District Judge was of the opinion that once the appellant had taken steps to execute the award by instituting execution proceedings, an application under Section 9 of the Act would not be maintainable.

4. Learned Senior Counsel for the appellant has tendered an order dated 21 February 2019 passed by the executing court, on an application as moved on behalf of the appellant for withdrawal of the execution proceedings. By the said order considering the respondent's reply to the said withdrawal application, the executing Court has permitted the appellant to unconditionally withdraw the execution proceedings.

5. Learned Senior Counsel for the appellant would submit that as

now the execution proceedings stand withdrawn, it would be permissible for the appellant to pursue an application under section 9 of the Act before the learned District Judge. It is submitted that the basis of the impugned order has vanished in view of the appellant withdrawing the execution proceedings. Learned Senior Counsel for the appellant would submit that there is a grave urgency and urgent orders would be prayed by the appellant before the learned District Judge, as the workers are awaiting payment of their salaries. It is submitted that one worker has in fact committed suicide. It is submitted that in view of these changed circumstances, the section 9 application of the appellant is now required to be held as maintainable except for the impugned order. He prays that the impugned order dated 29 September 2017 passed by the learned District Judge be accordingly set aside with a direction that section 9 application be heard by the learned District Judge.

6. Mr. Tamboly, learned Counsel for the respondent, would submit that the petition filed by the respondent under Section 34 of the Act is pending hearing which in fact was taken up for hearing on the earlier occasion as per the directions passed by this Court in the present appeal, however, the hearing could not be concluded. It is submitted that now there is change of the Judicial Officer. He would submit that it would be appropriate that the section 34 petition itself is decided at an early

date. Mr. Tamboly however would not dispute that now the execution proceedings stand withdrawn by the appellant. He would however submit that if the respondent intends that section 9 application be heard by the learned District Judge, all contentions of the respondent in that regard be kept open.

7. I have heard learned Counsel for the parties as also I have perused the record and the impugned order dated 29 September 2017 passed by the learned District Judge-1, Pune.

8. A perusal of the impugned order would clearly demonstrate that the learned District Judge while passing the said order was of the opinion that once the appellant has taken recourse to execution proceedings, it was appropriate that the appellant pursues the execution proceedings. This for the reason that the proceedings under the Section 9 application would be in the nature of parallel proceedings, seeking reliefs which would be available and could also be granted to the appellant in the execution proceedings. However, in view of the withdrawal of the execution proceedings, circumstances have now certainly changed.

9. On the above conspectus, the interest of justice would require that as now the execution proceedings as filed by the appellant stand withdrawn, the appellant is permitted to pursue the Section 9 application before the learned District Judge, Pune. The appeal would,

thus, be required to be allowed by setting aside the impugned order.

Hence, the following order:-

ORDER

- i. The impugned order dated 29 September 2017 is set aside.
- ii. The application of the appellant filed under Section 9 of the Act below Exhibit 14 stands restored to the file of the learned District Judge-1, Pune to be decided on its own merits;
- iii. All contentions of the parties on the said application and on merits of the disputes are expressly kept open.
- iv. The parties are directed to appear before the learned District Judge-1, Pune, on 25 June 2019 at 11.00 a.m.
- v. The learned District Judge-1, Pune, shall endeavour to take up Section 9 application of the appellant and decide the same on or before 3 July 2019.
- vi. The appeal is disposed of in the above terms. No costs.
- vii. Civil application No.46 of 2017 and civil application No.47 of 2017 would also not survive and are disposed of keeping all contentions of the parties open.

10. At this stage, Mr.Tamboly would draw my attention to the orders which are passed by this Court, by which this Court had directed the

learned District Judge should take up the petition under Section 34 of the Act and decide the same expeditiously. The District Judge shall take up Section 34 petition and endeavour to dispose of the same as expeditiously as possible and in any event, within a period of three months from today.

[G.S. KULKARNI, J.]