

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION (Lodg.) NO. 413 OF 2019

M/s. Gourmet Renaissance Pvt. Ltd. & Anr. ...Petitioner.

V/s.

The Nashik Merchants Co-op Bank Ltd. & Ors. ... Respondents.

Mr. Mayank Bagla I/b. Rashmi Arabekar for the Petitioner.

Ms. Nirja Patani I/b. Indrayani Patani for Respondent 1.

Mr. Amit Shastri, AGP for the State.

***CORAM : NARESH H. PATIL,C.J. &
N.M. JAMDAR, J.***

DATE : 18 FEBRUARY 2019.

P.C. :-

The Petitioner has filed the Writ Petition seeking a writ to set aside the order dated 5 December 2018 filed by the Arbitrator in the arbitration pending between the parties. The grievance of the Petitioner is that the Arbitrator has not granted permission to cross-examine the witness of the Respondents.

2. The Arbitrator has observed that it was mutually decided that the evidence would be led by affidavits and documents. It was

also agreed that if any party wishes to conduct a cross-examination, such parties should make out a case for the same. The Arbitrator has held that considering the case on documents, the cross-examination of the Affiant who has filed the affidavit, is not warranted. The Arbitrator has also observed that if later on oral evidence is found to be necessary, such a direction can be granted even suo-motu.

3. The Petitioner has approached this Court challenging this order in a writ jurisdiction. The arbitration proceedings are on going. Section 5 of the Arbitration and Conciliation Act, 1996 lays down the extent of judicial intervention and states that except to the extent provided in the Arbitration and Conciliation Act, 1996, no judicial authority shall intervene. The intervention in the stated circumstances is by the Court specified under the Act. Section 19 of the Act determines the rules of procedure before the arbitral tribunal. Section 24 deals with hearing and written proceedings. The recourse against arbitral award is provided against Section 34. Therefore, the challenge to the orders such as the impugned one will have to be taken as per the provisions of the Arbitration and Conciliation Act, 1996. A Writ Petition therefore cannot be entertained.

4. The Petitioner relied upon the decisions in the cases of *Vinayak Vishnu Sahasrabhudhe v/s. B.G. Gadre and Ors.*¹,

¹ AIR 1959 Bom 39

*Ayaaubhan Noorkhan Pathan v/s. State of Maharashtra and Ors.*², *Surya Dev Rai v/s. Ram Chander Rai and Ors.*³ and *Harbanslal Sahnia and Anr. vs., Indian Oil Corporation Ltd. And Ors.*⁴. In the case of *Vinayak*, the Court was entertaining the Appeal from the judgment made pursuant to the award. Decision of *Surya Dev* deals with scope of Article 227 of the Constitution of India in the matters arising from orders of Civil Court's, the decision of *Ayaaubkhan* is in respect of the Scrutiny Committee is established for verification of caste certificates. In the case of *Harbanslal*, the Petitioner had challenged the action of Indian Oil Corporation terminating its dealership wherein the Supreme Court observed that the facts of that case warranted that the Petition can be considered inspite of alternate remedy of arbitration available under the agreement. Therefore, none of these decisions would assist the Petitioner.

5. The Writ Petition is rejected.

N.M. JAMDAR, J.

CHIEF JUSTICE

² 2013(4) SCC 465

³ 2003(6) SCC 675

⁴ 2003(2) SCC 107