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

**ARBITRATION APPLICATION NO.234 OF 2015
WITH
ARBITRATION PETITION NO.863 OF 2015**

M/s Indu Enterprise ... Applicant/petitioner.
V/s.
Madhukar Krishna Mhatre ... Respondent

Mr. Bharti Mahant a/w Ms. Nayana Rane i/by Divya Shah
Associates, for the Applicant/Petitioner.
Mr. Mayuresh D. Modgi, for respondent

CORAM : G. S. KULKARNI, J.

DATE : 10th April, 2019.

P.C. :

- 1] Heard learned counsel for the applicant and learned counsel for the respondent.
- 2] Arbitration Application No.234 of 2015 is filed by the applicant under section 11 of the Arbitration and Conciliation Act, 1996 (for short, "ACA"), for appointment of arbitrator.
- 3] It is the case of the applicant that disputes and differences have arisen between the parties under the Memorandum of Understanding (for short, "MOU"), dated 21st September, 2012. Learned counsel for the respondent would submit that MOU is an illegal document as obtained by fraud. It is

submitted that respondent has already filed S.C.Suit (L) No.12033 of 2015, before the City Civil Court for a declaration that the said MOU being obtained by fraud is illegal, null and void. It is submitted that the said suit is pending adjudication. It is the contention of the respondent that there are serious allegations of fraud which are levelled against the applicant herein and therefore, the disputes cannot be subject matter of arbitration. In support of submission he has placed reliance on the judgment of learned Single Judge of this Court in **Ivory Properties & Hotels Pvt. Ltd -vs- Nusli Neville Wadia, [2011 (2) Bom C.R. 559]**.

4] Learned counsel for the applicant submits that in the suit as filed by the respondent, a Notice of Motion is filed by the applicant under Section 8 of the ACA, challenging the maintainability of the suit in view of the arbitration agreement between the parties.

5] It is stated that the City Civil Court is seized with the issue and would consider whether serious triable issues are involved to be adjudicated in the suit. It would also be decided in the said Notice of Motion whether there is any substance in the case of the respondent of a fraud being played by applicant in execution of the MOU in question. As agreed by the learned counsel for the parties the said Notice of Motion is pending consideration of the City Civil Court.

6] In the above circumstances, in my opinion, it would be a proper

course of action that this application filed under Section 11 the ACA is disposed of with liberty to the petitioner to file an application under Section 11 of the ACA, if need so arises, after the adjudication of the Notice of Motion, pending before the City Civil Court.

7] All contentions of the parties including on merits of the dispute, are expressly kept open.

8] Considering the facts and circumstances, in relation to Arbitration Petition No.863 of 2015 filed under Section 9 of ACA, this petition also need not be kept pending and can be disposed of with liberty to the applicant to approach this Court after decision in the Notice of Motion filed in the said suit.

9] Learned counsel for the respondent submits that his client shall co-operate in the disposal of the Notice of Motion before the City Civil Court.

[G. S. KULKARNI, J]