

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1 OF 2019
IN
COMM ARBITRATION APPLICATION NO. 266 OF 2018

Laxmi Organic Industries Ltd	...Petitioner
<i>Versus</i>	
Jarandeshwar Sahakari Sakhar Karkhana Ltd	...Respondent

Mr VS Kapse, i/b SD Chavan, for the Applicant.
Mr Yakshay Chheda, with Ms Devanshi Sethi, i/b Parinam Law
Asso, for the Respondent.

CORAM: G.S. PATEL, J.
DATED: 14th November 2019

PC:-

1. The interim application is by the respondent to the arbitration application for recall of the order dated 3rd September 2019. The stated reasons for a recall are two. First, that the respondent was not heard. Second, and perhaps more important, that the applicant failed to point out at the hearing on 3rd September 2019 that the contract containing the arbitration clause and said to be dated 23rd March 2010 has itself been cancelled by one SP Ghorpade, Regional Joint Director (Sugar), Pune Division by an order dated 13th July 2018. These facts were known to the applicant. The applicant has in fact challenged the Regional Joint Director's order in a separate writ

petition in this Court. That writ petition is pending. The applicant has obtained an ad-interim relief in terms of prayer clause (d), not to take any further steps.

2. The arbitration application on which the order of 3rd September 2019 was made does not mention the Regional Joint Director's order. No copy is annexed. There is no mention of it in the list of dates. It is entirely possible that this is because the arbitration application was filed on 11th January 2018 and the Regional Joint Director's order came only after, on 23rd July 2018. Yet, at the time when the matter came up before GS Kulkarni J on 3rd September 2019, this ought to have been pointed out. Clearly it was not. Neither was the order of RD Dhanuka J in the applicant's writ petition. Indeed, paragraphs 7 to 13 of the 3rd September 2019 order indicate that the Court's notice was not even drawn in the oral submissions to the existence of the Regional Joint Director's order.

3. In my view, the appropriate course would be to recall the order dated 3rd September 2019 and to restore the Section 11 arbitration application to file but to keep it pending awaiting the final outcome or an appropriate clarification in the applicant's writ petition. This stands to reason. If the applicant fails in that writ petition, then the arbitration application will not survive; there will then be no arbitration agreement at all. Should the writ petition succeed, on the other hand, then the same order of 3rd September 2019 or one similar to it can be made on the arbitration application. Recalling the order dated 3rd September 2019 and restoring Commercial Arbitration Application No. 266 of 2018 to file will not

prejudice either party. On the other hand, if relief is refused in this interim application, the respondent would be prejudiced.

4. Hence, the interim application is disposed of in the above terms. The order dated 3rd September 2019 is recalled. The Arbitration Application is restored to file. It is adjourned to the next CMIS date.

5. Liberty to the parties to mention the arbitration application after the disposal of the writ petition.

6. No costs.

(G. S. PATEL, J)