

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (M) NO. 22/2019 iN
ARBITRATION APPEAL NO.14/2018

Government of India, Ministry of Road Transport and Highways, New Delhi.
Vs.

M/s.Jaiswal Ashoka Infrastructure Pvt. Ltd. and anr.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.G.Loney, Advocate for appellant/applicant.
Shri C.S.Dhore, Advocate for respondent no. 1.

CORAM : A.S.CHANDURKAR, J.
DATED : August 21, 2019

The appellant seeks to amend the memorandum of appeal that has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the said Act'). The amendment sought is twofold. Firstly, a ground of challenge is sought to be raised based on the provisions of Section 15(2) of the Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 on the premise that on 21.03.2018, the learned Principal District Judge had no jurisdiction to decide the proceedings under Section 34 of the said Act. The other amendment sought is with regard to raising a challenge to the order passed in the application that was filed under Section 9 of the said Act on 12.11.2018. It is submitted that the amendment application be allowed in its entirety.

Reply has been filed by the learned counsel for the respondent no.1 opposing the application. It is stated that before the learned Principal District Judge the objection with regard to absence of jurisdiction was not raised. Further the cause of action for challenging the order dated 12.11.2018 being distinct from the proceedings as filed under Section 34 of the said Act, that amendment does not deserve to be allowed.

On hearing the learned counsel for the parties, I am of the view that first part of the amendment application seeking to add ground (aa) to the memorandum of appeal deserves to be permitted. In other words as it is an additional challenge to the order passed under Section 34 of the said Act, the same is permitted to be raised.

Insofar as the challenge as sought to be raised to the order passed under Section 9 of the said Act on 12.11.2018, the appellant is free to raise an independent challenge to that order in accordance with law. The appellant cannot be permitted to raise that challenge by amending the appeal that has been filed for challenging the orders passed under Section 34 of the said Act as it would amount to enlarging the scope of the appeal.

Accordingly, the amendment is allowed insofar as ground (aa) is sought to be raised. The amendment be carried out within one week. The appellant is at liberty to take such steps as are permissible in law for challenging the order dated 12.11.2018.

Civil Application is disposed of.

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Stand over to 28.08.2019.

JUDGE

Andurkar.