

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

CIVIL APPLICATION NO.90/2019 IN SECOND APPEAL ST. NO.28694/2018

[Bharat Sanchar Nigam Limited and one .vs. M/s. Om Enterprises, Nagpur]

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Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

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Dr. R.S. Sundaram, Advocate for appellants,
Shri Abdul Subhan, Advocate for respondent.

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CORAM : MRS. SWAPNA JOSHI, J.

DATED : JANUARY 24, 2019.

This is an application filed by the appellants for condonation of delay in filing the present second appeal.

Heard. Perused the application. For the reasons mentioned in the application, the application is hereby allowed although it is opposed by the other side. Civil Application is allowed and disposed of.

SECOND APPEAL ST. NO.28694/2018

Heard Dr. R.S. Sundaram, learned advocate for the appellants and Shri Abdul Subhan, learned counsel for the respondent.

Learned advocate for the appellants-original defendants contended that the vigilance report is not at all challenged by the original plaintiff and as per the said report inflated bills were submitted by the plaintiff with the defendants. It is submitted that the said amount was paid by some officers of the appellants fraudulently. Learned counsel further contended that it is a public money and the appellants can recover the said excess paid amount if at all it is paid fraudulently. It is further pointed out that no demand of arbitration was made by either of the parties. However,

the first appellate court had *suo motu* drawn the inference that arbitrator should resolve the dispute. In the light of these facts, the second appeal is **admitted** on the following substantial questions of law :

- (1) Whether the first appellate court was justified to discard the vigilance report of the appellants-department which was not challenged by the respondent-plaintiff.?
- (2) Whether the first appellate court was justified in observing that the appellant-department has to resolve to the process of arbitration to recover the excess amount.?

Call record and proceedings.

Shri Abdul Subhan, learned advocate waives service of notice for the respondent-sole.

Civil Application (CAS) No.91/2019

This is an application filed by the appellants for grant of stay.

Learned advocate for the appellants submits that already the amount of Rs.4,70,572/- has been deposited by the appellants in this Court on 5.12.2011 which is transferred to the first appellate Court and the said amount has already been withdrawn by the respondent-plaintiff.

In view thereof, there shall be interim stay in terms of prayer clause (1) until further orders.

JUDGE