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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.769 OF 2019

M/S Jordan Dental Care Products
Pvt Ltd now known as
M/S SCHIFFERAND MENEZES INDIA
PRIVATE LIMITED, a company
incorporated under the
Indian Companies Act, 1956
And having its registered office at
C.M.M Building, Rue De Orem,
Panaji Goa
Through its Authorised Signatory
Shri Ganpat Kapdi
son of Ratnakar Kapdi,
Aged 42 years,
Indian National, Resident of
179/1, Behind St. Ann's Blooming Buds Schools,
Sirsaim, Bardez Goa.

... Petitioner.

Versus

M. R. CHENDILNATHAN
SOLE PROPRIETOR OF M/S RAJA AGENCY
Plot No.253, Main Road,
Nehru Nagar Industrial Complex,
Old Mahabalipuram Road,
Kottivakkam, Chennai
Now having office at Vijay Raja Apex,
Plot No. 22, 2nd Street,
Kamaraj Nagar, Chemencherray,
Chennai 600 119.

... Respondent.

Mr. S. M. Singbal, Advocate *for the Petitioner.*

Ms. Mehendi Desai, Advocate holding for Mr. Hrudaynath Shirodkar,
Advocate *for the Respondent.*

Coram: M.S. SONAK, J.

Date: 12th August 2021.

ORAL JUDGMENT:

1. Heard Mr. Singbal for the Petitioner and Ms. Mehendi Desai holding for Mr. Hrudaynath Shirodkar for the Respondent.

2. Rule. The rule is made returnable forthwith at the request and with the consent of learned Counsel for the parties.

3. The challenge in this petition is to the order dated 28.06.2019 made by the Principal District Judge granting a stay to the execution of award dated 26.10.2008 pending the disposal of Arbitration Petition No.6/2018.

4. Mr. Singbal, the learned Counsel for the Petitioner submits that though, in terms of section 36(3), the Principal District Judge had the powers to stay the execution of the award, such powers have to be exercised for reasons to be recorded in writing. He submits that the proviso to section 36(3) also provides that while considering an application for grant of stay of an arbitration award for payment of money, the Court must have due regard to the provisions for grant of stay of a money decree under the provisions of Civil Procedure Code. Mr. Singbal submits that there are no reasons in the impugned order dated 28.06.2019 and the stay has been granted subject only to a deposit of 25 percent of the awarded amount. He, therefore, submits that the impugned order warrants interference.

5. Ms. Mehendi Dessai defends the impugned order based on the reasons contended therein. She submits that the impugned order was made on 28.06.2019 and therefore, may not be interfered with at this stage, particularly because by now the arbitration application under section 34 can itself be disposed of finally.

6. On perusal of the impugned order, there is some justification in the grievance made by Mr. Singbal. The Principal District Judge has merely quoted the provisions of sections 34 and 36 and thereafter disposed of the application for stay by observing the following:-

“10. The applicant herein is called upon to deposit 25% of the amount awarded by the arbitrator within a period of 30 days failing which the applicant shall not be permitted to contest the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996.

I therefore pass the following order:

Application for Stay is allowed.

Execution of Award dated 26.10.2008 in Arbitration Case No.11.2008 is hereby stayed.

7. There are no reasons recorded. Therefore, a case has been made out to set aside the impugned order dated 28.06.2019 and remand the matter as proposed by Mr. Singbal. However, as submitted by Ms. Dessai, at this stage the interest of justice will be better met if directions are issued to the Principal District Judge to dispose of Arbitration Petition No.6/2018 expeditiously. In the peculiar facts of the present case, this is a better

option to follow as otherwise, the matter will have to be remanded to the District Court to reconsider the application for stay and much time will be spent in deciding this application for stay itself. There is bound to be overlapping of arguments. The time spent on deciding the application for stay can as well be spent on disposing of the Arbitration Petition No.6/2018 finally.

8. Therefore, in the peculiar facts of the present case, and even though, there is merit in the submission of Mr. Singbal, the impugned order is not interfered with. Instead, the learned Principal District Judge is directed to dispose of Arbitration and Conciliation Petition No.6/2018 on its own merits and in accord with law as expeditiously as possible and in any case within four months from today. The learned Counsel for the parties assure this Court that they will cooperate with the learned Principal District Judge in disposing of the Arbitration and Conciliation Petition No.6/2018. In particular, Ms. Dessai submits that the Respondent herein will not seek any unnecessary adjournment and will cooperate in the disposal of the application under section 34(2) of the Arbitration and Conciliation Act, 1996.

9. In case the learned Principal District Judge dismisses the Respondent's application under section 34 of the said Act, then, the Principal District Judge to consider requiring the Respondent herein to deposit the balance of the awarded amount within a specified period.

10. It is made clear that this Court has not examined the rival contentions of the parties on merits and therefore, all contentions of all parties on merits are left open to be decided by the learned Principal District Judge.

11. The parties are to now appear before the learned Principal District Judge taking up Arbitration and Conciliation Petition No.6/2018 on 23.08.2021 and file an authenticated copy of this order.

12. The rule in this petition is disposed of in the aforesaid terms. All concerned to act on an authenticated copy of this order.

M.S. SONAK, J.