

\$~28, 29 & 30 [2021]

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 23.11.2021

+ **FAO(OS) (COMM) 146/2021 & Cav.66/2021, CM Nos.41571-72/2021**

**KISHANGARH GULABPURA TOLLWAY
LIMITED**

..... Appellant

Through: Mr. Vikram Nankani, Sr. Adv. with
Mr. Ashish Batra, Mr. Sarthak
Sachdev, Mr. H.P. Chaturvedi, Mr.
Apoorv Agrawal and Ms. Teresa R.
Daulat, Advs.

versus

**NATIONAL HIGHWAYS AUTHORITY OF
INDIA & ANR.**

..... Respondents

Through: Mr. Sudhir Gupta, Sr. Adv. with Mr.
Amarjit Singh Bedi, Mr. Umang
Gupta, Mr. Varun Chandiok, Ms. Riya
Seth and Ms. Shweta Chauhan, Advs.

FAO(OS) (COMM) 147/2021 & Cav.67/2021, CM Nos.41573-74/2021

UDAIPUR TOLLWAY LIMITED

..... Appellant

Through: Mr. Saurabh Kirpal, Sr. Adv. with Mr.
Ashish Batra, Mr. Sarthak Sachdev,
Mr. H.P. Chaturvedi, Mr. Apoorv
Agrawal and Ms. Teresa R. Daulat,
Advs.

versus

**NATIONAL HIGHWAYS AUTHORITY
OF INDIA**

..... Respondent

Through: Mr. Sudhir Gupta, Sr. Adv. with Mr. Amarjit Singh Bedi, Mr. Umang Gupta, Mr. Varun Chandiok, Ms. Riya Seth and Ms. Shweta Chauhan, Advs.

FAO(OS) (COMM) 148/2021 & Cav.68/2021, CM Nos.41575-76/2021

CG TOLLWAY LIMITED

..... Appellant

Through: Mr. Saurabh Kirpal, Sr. Adv. with Mr. Ashish Batra, Mr. Sarthak Sachdev, Mr. H.P. Chaturvedi, Mr. Apoorv Agrawal and Ms. Terresa R. Daulat, Advs.

versus

**NATIONAL HIGHWAYS AUTHORITY
OF INDIA**

..... Respondent

Through: Mr. Sudhir Gupta, Sr. Adv. with Mr. Amarjit Singh Bedi, Mr. Umang Gupta, Mr. Varun Chandiok, Ms. Riya Seth and Ms. Shweta Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

Cav. No.66/2021 in FAO(OS) (COMM) 146/2021

Cav. No.67/2021 in FAO(OS) (COMM) 147/2021

Cav. No.68/2021 in FAO(OS) (COMM) 148/2021

1. Since counsel for the respondent/NHAI has entered appearance in the above-captioned appeals, the caveat stands discharged.

CM No.41572/2021 in FAO(OS) (COMM) 146/2021

CM No.41574/2021 in FAO(OS) (COMM) 147/2021

CM No.41576/2021 in FAO(OS) (COMM) 148/2021

2. Allowed, subject to just exceptions.

FAO(OS) (COMM) 146/2021 & CM No.41571/2021
FAO(OS) (COMM) 147/2021 & CM No.41573/2021
FAO(OS) (COMM) 148/2021 & CM No.41575/2021

3. The above-captioned appeals are preferred against a common judgment dated 9.11.2021, passed by the learned single judge.

3.1. *Via* the impugned judgment, the appellants' applications preferred under Section 9 of the Arbitration and Conciliation Act, 1996 [in short, "the Act"] were dismissed, with liberty given to the appellants to approach the Rajasthan High Court for appropriate relief.

3.2. Mr. Vikram Nankani and Mr. Saurabh Kipral, leaned senior counsels, who appear on behalf of the appellants in the above-captioned appeals, say that this Court has jurisdiction. For this purpose, they have drawn our attention to Clause 44.3.1(iv) of the Concession Agreement.

3.3. Based on the aforesaid clause, Mr. Nankani and Mr. Kirpal submit that since the seat of arbitration is located at Delhi, this Court would have jurisdiction.

3.4. Mr. Nankani and Mr. Kirpal say that the other facet which attracts the jurisdiction of this Court is the fact that the respondent resides in Delhi.

4. Mr. Sudhir Gupta, learned senior counsel, who appears on behalf of the respondents, on instruction of Mr. Amarjit Singh Bedi, contends that this court has no jurisdiction.

4.1 According to Mr. Gupta, since the appellants had approached the Rajasthan High Court, in an earlier round of litigation, the appropriate court would be that court and not this Court.

5. However, counsel for both the sides agree that the impugned judgment sets out no reason as to why the learned single judge held that the applications

filed under Section 9 of the Act could not be entertained by him.

5.1. Mr. Nankani and Mr. Kirpal have also brought to our notice the judgement dated 25.8.2021, passed by the Division Bench of the Rajasthan High Court in Civil Writ Petition No.11042/2020, whereby, *inter alia*, an interim direction has been issued (which obtains up-until-now), in favour of the appellants. In this context, our attention has been drawn to paragraph 38(v) of the said judgement [as modified by the order dated 26.8.2021].

6. Given the aforesaid position, the impugned judgment is set aside.

6.1. The appellants' Section 9 petitions filed under the Act will be placed before the learned single judge, on 26.11.2021.

6.2. Up-until-then, the directions contained in paragraph 38(v) of the judgement of the Rajasthan High Court, dated 25.8.2021 [as modified by the order dated 26.8.2021], will continue to operate.

6.3. The learned single judge will be at liberty to pass appropriate directions qua the directions issued in the aforesaid judgment of the Rajasthan High Court, after hearing both the sides.

7. Needless to add that, nothing stated hereinabove will impact the merits of the matter(s).

8. The appeals are disposed of in the aforesaid terms. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

NOVEMBER 23, 2021/pmc

Click here to check corrigendum, if any