

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

Civil Application (CAO) No. 444/2021

IN

Misc. Civil Application (MCAST) No. 5222/2020

In

Misc. Civil Application (MCA) No. 578/2019 (D)

Rajendra s/o Goverdhanlal Agrawal

..VS..

M/s. Raj Industries and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Dhengale, Advocate for the applicant/original non-applicant no. 2
Shri N.A. Lalwani, Advocate for non-applicant no. 3/original applicant

CORAM : A. S. CHANDURKAR J.

DATED : 08/04/2022

The original non-applicant no. 2 in Misc. Civil Application (ARBN) No. 578/2019 seeks review of the order dated 06.11.2019 by which the application preferred by the present non-applicant no. 3 (original applicant) under Section 11 of the Arbitration and Conciliation Act, 1996 (for short the "Act of 1996") came to be allowed.

It is submitted by the learned Counsel for the applicant that on 18.11.1991 Partnership Deed was executed between three sons of one Goverdhanlal Agrawal. In that partnership deed Clause 14 had provided for settlement of disputes by having the course to arbitration. The partnership firm came to be dissolved on 11.11.2013. The original applicant in Misc. Civil Application (ARBN) No. 578/2019 by claiming right under a Will executed by one of the partners had filed the application under Section 11 of the Act of 1996. Since the partnership firm was dissolved on

11.11.2013 the partners had lost their status and therefore it was not open for the original applicant to seek relief under Section 11 of the Act of 1996. On the basis of Will dated 17.03.2016 it is thus submitted that in these facts the dispute could not have been referred to the Arbitrator. The reliance is placed on the decisions in *National Insurance Company Limited Vs. Boghara Polyfab Private Limited* [(2009) 1 SCC 267] and *Jharna Sao Vs. Sheo Shankar Prasad* [2016 SCC Online Jhar 171].

In reply, it is submitted that the present applicant had not urged these contentions when Misc. Civil Application (ARBN) No. 578/2019 was decided. Similar objection was raised by the present applicant before the Arbitrator who subsequently decided those proceedings on 07.08.2020 and turn down the same. Hence under the garb of review there could not be any re-hearing of the proceedings. Reliance is placed on the decisions in *Mohammad Talib Habib Shaikh Vs. Mohammad Siddaqui Haji Mohammad Momin and anr.* [2019 (5) ABR 213] and *Common Citizen of India (Common Man), Jalna and anr. Vs. The Hon'ble High Court Judicature of Bombay and ors.* [2017(6) ABR 49].

After hearing the learned Counsel for the parties and after perusing the record of Misc. Civil Application (ARBN) No. 578/2019 it becomes clear that the present applicant had not opposed the said proceedings by raising the present contentions. In fact, no reply was filed to the proceedings under Section 11 of the Act of 1996. On the contrary, consent was given to the appointment of Shri A.D. Babrekar as Arbitrator on 30.09.2019. In view of the fact that these grounds were not raised while opposing the proceedings under Section 11 of the Act of 1996 and similar

objections raised before the Arbitrator came to be turned down on 07.08.2020, I do not find any ground to entertain the civil application. There is no case to invoke review jurisdiction as the same would result re-hearing of the present proceedings which is not permissible.

The civil application is therefore rejected. No costs.

JUDGE

SANDIP
MAHADEV
GATE

Digitally signed
by SANDIP
MAHADEV
GATE
Date:
2022.04.12
16:07:00 +0530