

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

WRIT PETITION NO. 4389 OF 2021

Atul s/o Ashok Gaigole, Director of Jaihind Education Foundation,
Amravati

vs.

MDN Edify Company

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

Court's or Judge's Orders.

Mr. R. D. Dharmadhikari, Advocate for petitioner.
Ms. Ritu Jog, Advocate for sole respondent.

CORAM : MANISH PITALE J.

DATE : 23/06/2022

By this petition, the petitioner has challenged order dated 14/09/2021, passed by the District Court at Amravati, whereby an application at Exh.41, filed by the petitioner was rejected.

2. The said application at Exh.41, was filed in a proceeding initiated by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996. The said application has been filed by the petitioner being aggrieved by an Award dated 22/02/2016 passed by the sole Arbitrator. According to the petitioner, the Award was ex-parte and grave prejudice has been caused to the petitioner.

3. In the said application under Section 34 of the said Act, the sole respondent has taken an objection as regards jurisdiction of the Court at Amravati to entertain the application under Section 34 of the said Act. It appears that the proceedings have been languishing since 2016 only on the said issue of jurisdiction of the Court.

4. During the process of considering the said objection, the District Court granted permission to the petitioner to lead secondary evidence. At this stage, the petitioner filed the aforesaid application at Exh.41 for a direction to the respondent to produce documents i.e. statement of claim and affidavit in chief filed before the Arbitrator. As noted above, the said application has been rejected and the present writ petition has been filed challenging the said order.

5. The learned counsel appearing for the petitioner submits that the application ought to have been allowed to assist the Court to determine the question of jurisdiction. No prejudice would be caused to the respondent, if such a direction was to be issued. It is further submitted that since the Award was ex-parte, the petitioner is gravely prejudiced and production of such documents in the

custody of the respondent would only assist the Court in deciding the aforesaid issue.

6. On the other hand, the learned counsel appearing for the respondent submitted that perusal of the statement of claim and affidavit in chief filed before the Arbitrator would not be of any relevance for deciding the issue of jurisdiction, because copy of the Award is already before the District Court and according to the respondent, the petitioner has already received documents pertaining to the arbitration proceedings from the Arbitrator, including a copy of the Award, thereby indicating that the application filed at Exh.41 is nothing but another attempt on the part of the petitioner to delay the proceeding.

7. This Court has heard the learned counsel for the rival parties in the backdrop of the material placed on record. It is surprising that an application filed under Section 34 of the aforesaid Act by the petitioner in the year 2016, is still pending on the preliminary issue of jurisdiction. Almost six years have gone by and the Court is yet to decide the question of jurisdiction. The aforesaid issue can be decided on the basis of the agreement, the Award and other such documents that the District Court may feel

necessary for deciding the point of jurisdiction. In such a situation the appropriate step would be to call for the entire record from the Arbitrator, instead of applications being filed by the parties in support of their respective stands. There appears to be substance in the contention raised on behalf of the respondent that mere production of statement of claim and affidavit in chief may not be the deciding factor on the question of jurisdiction and that the petitioner appears to be filing such an application with a view to further delay the proceedings before the District Court.

8. In order to avoid any further controversy on this short issue, this Court is of the opinion that while refraining from interfering with the order passed by the District Court, it would be appropriate to direct that the record of the arbitration proceedings be called for by the District Court from the Arbitrator, so that the entire material is available for arriving at a finding on the question of jurisdiction.

9. In view of the above, the writ petition is dismissed.

10. The District Court is directed to immediately issue a direction to the Arbitrator to produce the entire record of the proceedings, so that the issue of jurisdiction can be decided at the earliest.

JUDGE