

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**9 REVIEW APPLICATION (CIVIL) NO.39 OF 2023
IN CA/14912/2022**

**SATISH BUDHAJI SHINDE ANOTHER
VERSUS
BAJIRAO BUDHAJI SHINDE AND ORS**

...

Advocate for Applicants : Mr.Naik Thigle Girish K.
Advocate for applicant in CA/14912/2022 : Mr.A. K. Gawali
Advocate for Respondent No. 5 : Mr.Dnyaneshwar A. Bide

...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 22.02.2023.

PER COURT :

1. Review application has been preferred by the applicants seeking review of the order dated 23.12.2022 passed by this Court in Civil Application No. 14912 of 2022.

2. The proceeding in the earlier round of litigation between the parties in the application under Section 11 of the Arbitration and Conciliation Act for appointment of the arbitrator had reached till the Apex Court.

3. By order dated 31.01.2020 passed in the Arbitration Application No. 5 of 2016, this Court had appointed Justice Shri P.B. Gaikwad as sole Arbitrator keeping open all the contentions of both

the parties.

4. Subsequently, Review Application No. 64 of 2020 was instituted by the present applicants. In the Review Application, by order dated 05.03.2020 it was noted that the sole arbitrator had already submitted the disclosure statement. By the said order, the parties were directed not to act upon the order dated 31.01.2020 passed in the Arbitration Application No. 5 of 2016, whereby the Arbitrator was appointed, until further orders. Ultimately, Review Application came to be rejected by order dated 20.01.2022, which was carried by the Review Applicant to the Apex Court and by order dated 26.09.2022, Special Leave Petitions were dismissed by observing that there is no error of jurisdiction, more so, when all the questions including as to whether the claim raised is time barred can effectively be dealt with by the learned arbitrator.

5. In the interregnum, Civil Application No. 14912 of 2022 was instituted by respondent No. 1 under Section 15 of the Arbitration and Conciliation Act seeking appointment of substitute arbitrator on the ground that the earlier arbitrator has recused himself.

6. At this juncture, there has been considerable arguments by both the counsels for respective parties, in as much as the learned

counsel for the applicant submits that no letter of recusal was forwarded to the applicant and he was unaware of the recusal. He would further point out that as noted in the order dated 23.12.2022 passed in the present Petition, the inability to act has been conveyed by the letter dated 22.12.2022, whereas, Civil Application under Section 15 of the Arbitration and Conciliation Act has been filed on 11.10.2022. The learned counsel for respondent No. 1 has vehemently opposed the submission and submits that as he was informed by the erstwhile Arbitrator about his inability to continue, he promptly instituted Civil Application under Section 15 of the Arbitration Act. Be that as it may, by order dated 23.12.2022 Justice Shri V.K. Jadhav, the former judge of this Court was appointed as substitute arbitrator. This order of the substitute arbitrator is sought to be reviewed in the present review application No. 39 of 2023.

7. The learned counsel appearing for the petitioner submits that by the first order dated 31.01.2020 all contentions of the parties were kept open and the said position was also observed by the Hon'ble Apex Court. He would further submit that there is no such liberty in the order under review. He would further submits that the effect of the provisions as regards Section 29-A of the Arbitration and Conciliation Act will also have to be considered in as much as since the appointment of the sole arbitrator on 31.01.2020, no steps have

been taken to file the statement of claim. He would further submit that the effect of Section 29-A of the Arbitration and Conciliation Act will have to be considered from 02.01.2022, when the Review Application No. 64 of 2020 came to be disposed of and thereafter there was no further stay to the proceedings.

8. Per Contra, learned counsel appearing for the respondents submits that every effort has been made to delay the arbitration and in fact it was on the application of the applicants that the appointment of the first arbitrator was stayed by this Court in review application, which ultimately came to an end by order of the Apex Court on 26.09.2022. He would further submit that the proceedings were delayed on account of the recusal of the first arbitrator which led to filing of the Civil Application.

9. The dispute between the parties as regards the claim being time barred, or as regards the effect of Section 29 of the Arbitration and Conciliation Act need not be gone into by this Court in this review application for the reason that after arguing for considerable length of time, both the parties arrived at a consensus that appointment of Justice Shri V.K. Jadhav, the former judge of this Court as substituted arbitrator is acceptable to both the parties and the rights and contentions of both the parties can be expressly

be kept open.

10. In view of the consensus arrived at between the parties, there is no need to examine any issues in the Review Application. This Court is informed that Justice Shri V.K. Jadhav, the former judge of this Court has entered upon the reference and first hearing is fixed on 11.03.2023. All the rights and contentions of both parties including contentions as regards the limitation and effect of Section 29-A of the Arbitration and Conciliation Act is expressly kept open.

11. Review Application is disposed of. No costs.

**(SHARMILA U. DESHMUKH)
JUDGE**

mahajansb/