

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

**REVIEW APPLICATION NO. 211 OF 2022
IN
ARBITRATION APPLICATION NO. 12 OF 2019**

New Jyoti Roadways
through its Proprietor
Inderjit Bishambardas Nayyar .. Applicant

Versus

The State of Maharashtra and others .. Respondents

Shri G. K. Naik Thigle, Advocate for the Applicant.
Shri S. S. Dande, A.G.P. for the Respondent Nos. 1 to 4.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH FEBRUARY, 2023.**

FINAL ORDER :

. The review application is preferred by the applicant seeking review of the order dated 23rd July, 2021 passed in Arbitration Application No. 12 of 2019. By the order under review, this Court while considering the application U/Sec. 11 of the Arbitration and Conciliation Act (for short 'said Act') for appointment of Commissioner had observed that the copy of the award passed by the Additional Collector Beed was not placed on record, however, the communication dated 22nd July, 2009 indicates that the claim of the applicant was rejected.

2. Considering the facts of the case, this Court by order under review held that the arbitration clause already stood worked out

by appointment of Additional Collector , Beed as an arbitrator on 30th June, 2009 and the rejection of the claim of the applicant by him, has reflected in the communication dated 22nd July, 2009.

3. During the hearing of the review application, a statement has been made by the learned Assistant Government Pleader that the communication dated 22nd July, 2009 issued by the Additional Collector Beed will not constitute an award as the proceeding before the Additional Collector, Beed was in the nature of settlement proceedings U/Sec. 30 of the said Act. This statement of the learned A. G. P. is pursuant to the order of this Court dated 16th December, 2022, whereby the learned A. G. P. was directed to take instructions whether letter dated 22nd July, 2009 can be treated as an award. Subsequently, learned A. G. P. has filed an affidavit in reply opposing the review application.

4. During the hearing it was brought to the notice of this Court that Commissioner under the terms of arbitration agreement had entered upon the reference and the statement of claim was filed before the Commissioner and the same is pending. As such, there is no requirement of appointment of an arbitrator by invoking the provisions of Section 11 of the said Act. In view of the consensus which has been arrived at between the parties, the review application can be disposed of by observing that the Commissioner will continue with the arbitration proceedings, pursuant to the statement of claim which has been filed on 13.01.2009 in accordance with the provisions of the said Act.

5. The review application has been filed by emphasizing that there is an error apparent on the face of the record in as much as the communication dated 22nd July, 2009 by the Additional Collector, Beed was construed as an award, which position has now been clarified by the learned A. G. P. Considering the submissions of the learned A. G. P., Arbitration Application No. 12 of 2019 is capable of being reviewed under the provisions of the Order 47 of the Code of Civil Procedure, 1908, as there is an error apparent on face of record. In view of the consensus, which has been arrived at between the parties, the Arbitration Application No. 12 of 2019 filed U/Sec. 11 of the said Act no longer survives for consideration.

6. In the light of the facts mentioned above, review application stands disposed of. The Commissioner has already entered upon the reference and statement of claim has already been filed in the year 2009. It is clarified that arbitration has to be conducted uninfluenced by the observations made in order dated 23.07.2021 in Arbitration Application No. 12 of 2019.

7. Review application stands disposed of in above terms. All rights and contentions of the parties are kept open including objection U/Sec. 12 of the said Act.

[SHARMILA U. DESHMUKH, J.]