

K.S. Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO.13785 OF 2023

IN

ARBITRATION PETITION NO.127 OF 2023

**Kolhapur Zilla Sahakari Dudh Utpadak
Sangh Ltd.**

**...Applicant /
Original Respondent**

In the matter between :

**M/s Gayatri Cold Storage
Through its Authorized Partner
Vijay Prakash Dere**

...Petitioner

Versus

**Kolhapur Zilla Sahakari Dudh Utpadak
Sangh Ltd.**

...Respondent

S.S.Patwardhan a/w Bhooshan Mandlik, Advocates for
Applicant/Original Respondent.

Mr. Yuvraj P. Narwankar a/w Mr. Sandesh Sanjay Darade, Advocates
for Original Petitioner.

CORAM : R.I. CHAGLA, J.

DATE : 26TH JULY, 2023.

ORDER :

1. By this Interim Application, the Applicant/Original
Respondent has sought for recall / modification of the order dated
14th July, 2023 passed by this Court in the present Arbitration

Petition No. 127 of 2023 to the extent of the name of the Arbitrator, thereby confirming the rest of the order.

2. The Applicant has stated that the present Arbitrator appointed by this Court vide order dated 14th July, 2023 was directed to comply with the said order of appointment i.e. by filing requisite Disclosure Affidavit under Section 11(8)(i) of the Arbitration and Conciliation Act, 1996 within a period of three weeks from the date of receipt of the notice issued by the Registrar Judicial (I) and provide copies to the parties. The Arbitrator issued Notice dated 19th July, 2023 the subject of which read as “Intimation of First Meeting”, which was served upon the Applicant on 20th July, 2023. The Applicant’s grievance is that the Notice was very short. The Applicant has further stated that till 22nd July, 2023, the Applicant was not even served with the copy of the Disclosure Statement. The prior letter dated 17th July, 2023 had been addressed by the Applicant to the present Arbitrator, wherein request was made to send Disclosure statement for giving opportunity to represent themselves.

3. The Applicant has further stated that though Notice was issued on 19th July, 2023, the Disclosure Statement was not annexed

to the Notice. The inspection of the digital dispatch record of this Court on 21st July, 2023 revealed that the Registry had not yet received the Disclosure Statement of the proposed Arbitrator. However, inspite of which the proposed Arbitration is attempting to enter into a non-existing reference.

4. The Applicant has stated that the name of the another retired Judge of this Court to be appointed as Arbitrator had been suggested when the Petition under Section 11 of the Arbitration Act was being heard. However, the Petitioner had made a representation to this Court that the said retired Judge of this Court is not able to take up the present Arbitration Petition as he was solicited by one of the parties to the dispute. The Applicant had thereafter made enquiries from the said retired Judge of this Court who affirmed that he had not represented any of the parties to the proceeding.

5. The Applicant has accordingly submitted that the Applicant has lost faith in the proposed Arbitrator and the said order dated 14th July, 2023 be modified by substituting the name of the Arbitrator.

6. The learned Counsel appearing for the Respondent/Original

Petitioner has vehemently opposed the relief sought for in the Interim Application. He has submitted that the proposed Arbitrator had issued the Disclosure Statement in compliance with the said order dated 14th July, 2023 passed by this Court on 18th July, 2023. He has submitted that the Disclosure Statement has been delivered to the Registrar Judicial (I) of this Court on 21st July, 2023 and there is an item delivery confirmation on the Official Website of the India Post. He has tendered the relevant Disclosure Statement alongwith the Confirmation of Delivery which are taken on record and marked 'X' Colly. for identification.

7. The learned Counsel for the Respondent has further submitted that the Disclosure Statement has been received by the Petitioner as borne out by the endorsement on the Notice dated 19th July, 2023 signed by the proposed Arbitrator and which mentions the date of 19th July, 2023.

8. The learned Counsel for the Respondent has referred to the decision of the Calcutta High Court in **Sarada Construction Vs. Bhupendra Pramanik and Ors.**,¹ which has relied upon the decision of the Delhi High Court in **M/s Diamond Entertainment Technologies**

¹ Judgment dtd.16th February, 2023

*Private Limited & Ors. Vs. Religare Finvest Limited through its Authorized Officer*², wherein the Delhi High Court has held that “Order made under Section 11 of the Act is in exercise of the statutory powers as defined under the Arbitration & Conciliation Act, any review of the same can be only within the parameters of the Statute. Since, there is no provision of review in the Arbitration & Conciliation Act, this Court finds itself without any jurisdiction to review the present Order.”

9. The learned Counsel for the Respondent has accordingly submitted that this Court has no power to review the order under Section 11 of the Arbitration & Conciliation Act.

10. Having considered the submissions in my view, the order dated 14th July, 2023 under Section 11 of the Arbitration and Conciliation Act had been passed keeping all rights and contentions of the parties open including on the issue of jurisdiction of the proposed Arbitrator who had been appointed pursuant to the parties agreeing on the name of the Arbitration selected from the panel of Arbitrators notified by this Court.

11. Although there is the contention of the Applicant that the

² 2023/DHC/000156

proposed Arbitrator acted before filing Disclosure Statement as directed by this Court, I do not find any merit in this contention. The Arbitrator had submitted the Disclosure Statement on 18th July, 2023, received by this Court on 21st July, 2023 as borne out from the said documents tendered by the Respondent and marked 'X' Colly. Further, the Notice / Intimation had been addressed by the proposed Arbitrator on 19th July, 2023 after making the Disclosure and which only fixed the preliminary hearing on 21st July, 2023. Thus, it cannot be stated that the proposed Arbitrator had not complied with the directions of this Court.

12. It is clear from the decision of the Delhi High Court in ***M/s Diamond Entertainment Technologies Private Limited (supra)*** which was relied upon in ***Sarada Construction (supra)***, wherein the order made under Section 11 of the Arbitration & Conciliation Act was held to be within the statutory powers i.e. under the Arbitration & Conciliation Act and that any review of the same can be only within the parameters of the Statute. Since there is no provision of review in the Arbitration & Conciliation Act, the Court found itself without any jurisdiction to review the order.

13. Considering the said decision, the Application for review of

the order passed under Section 11 of the Act is not maintainable. By the said order dated 14th July, 2023, this Court has kept all rights and contentions of the parties open including the issue of jurisdiction of the Arbitrator and contention of the Applicant that the Co-operative Court has exclusive jurisdiction.

14. Accordingly, the Interim Application is without any merit and the relief sought for cannot be granted.

15. The Interim Application is accordingly disposed of.

[R.I. CHAGLA, J.]