

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

COMMERCIAL APPEAL NO.7 OF 2022

Subhadra Radheshyam Gupta, Juhu, Vile Parle, Mumbai and ors.

-VS-

Sole Arbitrator Z. D. Shende, Nandanvan Nagpur and anr.

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

Court's or Judge's Orders.

Shri K. N. Shukul, Advocate for appellants.

Shri Ashish Chaware, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI JJ.

DATE : March 29, 2023

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Considering the short issue involved, the appeal is taken up for final hearing with consent of counsel for the parties.

Challenge raised is to the judgment in Misc. Civil Application No.421/2015 in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996) to the extent the proceedings have been remanded to the Arbitrator for conducting the same in accordance with the provisions of Multi-State Co-operative Societies Act, 2002.

2. Shri K. N. Shukul, the learned counsel for the appellants submits that the initial award passed by the Arbitrator on 09/03/2015 was an ex-parte award. Same was challenged by filing proceedings under Section 34(1) of the Act of 1996. While setting aside the said ex-parte award after noting that the Arbitral Tribunal was not justified in so proceeding ex-parte, it was not permissible for the Court under Section 34(4) of the Act of 1996 to remand the said proceedings for fresh

consideration. In that regard the learned counsel has placed reliance on the decision in *Kinnari Mullick and anr. vs. Ghanshyam Das Damani (2018) 11 SCC 328*. It is submitted that there was no request made by either party to adjourn the proceedings so as to enable the Arbitral Tribunal to take such steps so as to eliminate the grounds for setting aside the arbitral award. It is thus urged that the direction for remand is without jurisdiction.

3. Shri Aashish Chaware, the learned counsel for the respondent No.2 supported the impugned judgment. According to him, the Court having noticed that the award was an ex-parte award, it was justified in remanding the proceedings so as to grant an opportunity to the appellants to participate in the same. The learned counsel however does not dispute the proposition laid down by the Honourable Supreme Court in *Kinnari Mullick* (supra). He submits that the discretion available under Section 34(4) of the Act of 1996 was exercised by the Court but without there being any application in that regard. Without prejudice to the aforesaid, it is submitted that all remedies of the respondent No.2 ought to be kept open for being availed of in case the direction of remand is set aside.

4. On hearing the learned counsel for the parties and after perusing the documents on record, we are of the view that the remand of the proceedings as directed by the Court in exercise of power under Section 34(4) of the Act of 1996 is without jurisdiction since there was no application made by either party to follow such course. This position has been explained by the Honourable Supreme Court in *Kinnari Mullick* (supra). It has

been held in clear terms that no power has been invested by Parliament in the Court to remand the matter to the Arbitral Tribunal except to adjourn the proceedings for the limited purpose mentioned in Section 34(4) of the Act of 1996. For aforesaid reasons the direction of remand as per Clause-2 of the judgment dated 13/04/2022 is liable to be set aside.

5. Accordingly, the following order is passed :

- (i) Direction No.2 in Judgment in Misc. Civil Application No.421/2015 dated 13/04/2022 is set aside.
- (ii) It is open for the respondent No.2 to pursue the remedies available to it in accordance with law.
- (iii) It is clarified that this Court has not examined the merits of rival submissions of the parties.

The Commercial Appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita