

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

MISC. CIVIL APPLICATION (ARBN) NO. 409/2022

Mahabeer Construction Company
Vs.
Western Coalfields Ltd.

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. M.P. Khajanchi, Advocate for applicant
Mr. P.V. Ghare, Advocate for Respondent

CORAM: AVINASH G. GHAROTE, J.

DATED : 10th MARCH, 2023

The application seeks appointment of an Arbitrator on the ground that the judgment dated 20/12/2014 passed in proceedings under Section 34 of the Arbitration and Conciliation Act had set aside the Award dated 27/01/2004, passed by the learned Arbitrator and remitted the matter before the Arbitrator to decide afresh on merits according to law. In para 6 of the application it is stated that the original Arbitrator Shri D. Janardhan Rao, had shown his incapacity to act as an arbitrator due to his ill-health and being bed ridden, as a result of which by a communication 12/01/2015, the applicant had requested the non-applicant to appoint another Arbitrator in place of Shri D. Janardhan Rao. Though subsequent request was made, no appointment was forthcoming. In such circumstances, it was necessary for the applicant to have come to this Court for appointment of Arbitrator within

the time limit as contemplated by Article 137 of the Limitation Act from 12/01/2015. That has not been done and the present application has been filed on the strength of the communication dated 21/03/2021 (page 59), by which the non-applicant has expressed its inability to appoint an Arbitrator as per the Arbitration and Conciliation Act, asking the applicant to approach the appropriate forum. Since the original Arbitrator has already expressed his inability to act as such, the communication dated 21/3/2021, could not be construed to be a cause for the applicant to approach this Court more than 9 years later. Faced with this position, Mr. Khajanchi, learned counsel for the applicant, upon instructions, seeks to withdraw the application with liberty to take appropriate steps as available in law. The statement is accepted. The application is dismissed as withdrawn with liberty as prayed for.

JUDGE

MP Deshpande