

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15995 OF 2023
WITH
WRIT PETITION NO. 15999 OF 2023
WITH
WRIT PETITION NO. 15996 OF 2023
WITH
WRIT PETITION NO. 15998 OF 2023
WITH
WRIT PETITION NO. 16001 OF 2023

Nanded City Development and Construction
Company Ltd

.. Petitioner

Versus

Sunil Champalal Somani & Ors.

.. Respondents

.....

- Mr. N.V. Walawalkar, Senior Advocate a/w Mr. Jaydeep Deo and Mr. Onkar Gawade for Petitioner
- Mr. Suresh Phirodiya a/w Mr. Harshad Sathe, Mr. Shubham Gangan, Mr. Ketan Gada and Mr. Sankalp Shah for Respondent Nos. 1 and 2

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 15, 2024

P. C.:

1. Heard Mr. Walawalkar, learned Senior Advocate for Petitioner and Mr. Phirodiya, learned Advocate for Respondent Nos. 1 and 2.

2. I had the occasion of hearing Mr. Walawalkar, learned Senior Advocate on the previous date, rather he completed his entire submissions. Thereafter Mr. Phirodiya addressed the Court and the matter was part-heard and kept today for disposal. Incidentally after the previous hearing, order dated 22.01.2024 passed by this Court

(Coram : Bharati Dangre, J.) in the case of **K.I.P.L. Vistacore Infra Projects J.V. Vs. Municipal Corporation of the City of Ichalkaranji**¹ is brought to my notice. The subject matter of the present bunch of five Writ Petitions stands fully covered by the said decision.

3. Briefly stated mandate of the arbitrator came to an end on 31.08.2023 pursuant to which Applications seeking extension of time under Section 29-A of the Arbitration and Conciliation Act, 1996 (for short, “**the Act**”) were filed before the District Court and the learned District Court by the impugned orders allowed these Applications and extended the time to complete arbitration proceedings by the Arbitral Tribunal i.e. sole Arbitrator within 12 months from the date of the impugned order. All five orders which are impugned here are dated 07.12.2023.

4. Challenge in the present bunch of Writ Petitions is maintained by the original Respondents before the Arbitral Tribunal on the premise that the Authority / Court / Forum entitled to grant extension of time to the Arbitral Tribunal would be this Court and not the District Court. As noted above, decision in the case of K.I.P.L. Vistacore Infra Projects J.V. (*supra*) was with respect to identical facts emanating from the District Court at Ichalkaraanji Kolhapur. This Court after analyzing the provisions of the Act and the decisions of the Supreme

1 Judgment dated 22.01.2024 passed in Commercial Arbitration Petition No. 181 of 2023

Court and this Court concluded that the power to exercise extension of mandate under Section 29-A of the Act would be that of this Court i.e. the Court which had initially appointed the Arbitrator / Arbitral Tribunal.

5. Mr. Walawalkar, learned Senior Advocate has taken me through the decision. He would submit that there is one more additional submission which the Court needs to take note of that in the present case if the occasion arises to terminate the mandate of the Arbitrator appointed by this Court, then in that case Application for seeking substitution / appointment of Arbitrator / Arbitral Tribunal in place of the previous Arbitrator / Arbitral Tribunal can only be made to this Court and in such a case, parties cannot approach the District Court. What Mr. Walawalkar would submit is correct.

6. I note that Mr. Phirodiya, after going through the aforesaid decision in the case of K.I.PL. Vistacore Infra Projects J.V. (*supra*) would concede, however he would make one additional submission. He would submit that in the event if the impugned orders dated 07.12.2023 are quashed and set aside, parties will have to make a fresh Application under Section 29-A in this Court in order to seek extension. This submission of Mr. Phirodiya can be well addressed in the present Writ Petition itself. The amplitude of extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India

though being supervisory in character encompasses the amplitude of the jurisdiction of this Court under Article 226 also. Ultimately it needs to be seen that justice is delivered to the parties rather than the parties are made to file Applications which would ultimately be allowed. In support of this proposition, Mr. Phirodiya has drawn my attention to the decision in the case of **Mora Tollways Ltd Vs. Bihar State Road Development Corporation Ltd & Anr.**² and more specifically paragraph No. 13 thereof. Paragraph No. 13 reads thus:-

“13. We have been told that the parties have already advanced their arguments before the learned Arbitral Tribunal and at this stage they are exchanging their written notes of arguments. Therefore, the extension by six months from the date of passing of the order by this Court would be suffice and shall meet the ends of justice. We are persuaded to accept the request of the learned counsel for both the parties, instead of remanding the matter once again to the court of the learned District Judge, we think it just and proper to allow this petition. Since we are exercising our power under Article 227 of the Constitution of India being power of supervisory jurisdiction, and have found that the learned District Judge while rejecting the miscellaneous arbitration case has committed a serious error of jurisdiction, we are persuaded to consider the request of the learned counsel for the parties.”

7. In the present case, in view of the serious error of jurisdiction committed by the District Court, I have considered the request of Mr. Phirodiya. In this case considering the termination of previous mandate on 31.08.2023, parties approached the District Court and the learned District Court extended the mandate of the Arbitrator / Arbitral Tribunal. However in view of the decision in the case of K.I.P.L. Vistacore Infra Projects J.V. (*supra*) the said decision being

2 2018 SCC OnLine 2333

applicable to this case, it is held that the power to extend the mandate is of this Court. Considering that this Court has heard the parties and parties are also *ad idem*, the mandate of the Arbitrator / Arbitral Tribunal stands extended by a further period of one year from today. Mr. Walawalkar, Mr. Phirodiya and Mr. Sathe, learned Senior Advocate / Advocates appearing for the parties consent to the same. Mr. Walawalkar would fairly submit that the non-representing Respondents have all been served. He requests leave to file appropriate affidavit of service within a period of two weeks from today. That leave is granted. Let the affidavit of service be filed in the Registry.

8. In view of the above, resultantly all impugned orders dated 07.11.2023 in the five Writ Petitions are quashed and set aside. All Civil Misc. Applications filed by Respondent Nos. 1 and 2 before the District Court are taken up for hearing as if made before this Court and stand allowed by this Court and the time for completion of arbitral proceedings before the Sole Arbitrator / Arbitral Tribunal is hereby extended by this Court by a further period of 12 months from today.

9. Copy of this order shall be placed before the learned Sole Arbitrator / Arbitral Tribunal for further necessary action.

10. With the above directions, the above Writ Petitions are allowed and disposed.

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[MILIND N. JADHAV, J.]

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signed by
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