

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2836 OF 2025

Kulgaon Badlapur Municipal Council

...Petitioner

Versus

Skyway Infraprojects Ltd.

...Respondent

- Mr. N. R. Bubna, for Petitioner.
- Mr. Vishwajit P. Sawant, Senior Counsel a/w Mr. Prabhakar M. Jadhav, for Respondent.

CORAM : MANISH PITALE, J.

DATE : 23rd JUNE 2025.

P. C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has challenged order dated 22nd January 2025, passed by the District Judge -2, Kalyan, District Thane, whereby an application filed by the respondent (Exhibit 5) questioning the very jurisdiction of the Court below has been allowed. In the said application, the respondent had prayed for dismissal of the application filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act) for want of jurisdiction of the Court below and in the alternative, it was prayed that the said application may be returned to the petitioner for being filed before the appropriate Court.
3. The operative portion of the impugned order simply records that

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the application at Exhibit 5 is allowed. In the absence of any further clarification by the Court below, it has to be taken that the application stood allowed as per the principal prayer made on behalf of respondent No.1 i.e. for dismissal of the application filed under Section 34 of the Arbitration Act, for want of jurisdiction.

4. The learned counsel appearing for the petitioner submits that the impugned order is passed on a wrong interpretation of Section 42 of the Arbitration Act. It cannot be countenanced that merely because the parties went to arbitration on the basis of an order passed by this Court under Section 11 of the Arbitration Act, the challenge to the arbitral award under Section 34 thereof, would lie only before this Court. It was submitted that therefore, there is a clear jurisdictional error committed by the Court below and the present writ petition ought to be entertained and allowed.

5. The learned senior counsel appearing for respondent submitted that in the first place the writ petition is not maintainable, for the reason that remedy of filing appeal under Section 37 of the Arbitration Act is available with the petitioner. It was submitted that in any case, even if this Court is of the opinion that the Court below committed an error in interpreting Section 42 of the Arbitration Act, in the light of the fact that the Court below also took note of the agreed seat of arbitration being Mumbai, no interference is

warranted in the facts and circumstances of the present case. It was further submitted that even if this Court were to entertain the writ petition, no interference is warranted in the impugned order and this Court may consider directing the petitioner to approach the Court having jurisdiction in order to institute a proceeding under Section 34 of the Arbitration Act to challenge the impugned award. Reliance was placed on the judgment of the Orissa High Court in the case of **Union of India and others Vs. Yashpal Choptra & Co.**, (order dated 04th May 2022 passed in ARBA No.31 of 2012) and judgment and order of this Court in the case of **Omprakash s/o Ramnivas Varma and others Vs. Vijay Dwarkadas Varma**¹.

6. At the outset, the question of the very maintainability of this writ petition arises, for the reason that the position of law has been clarified and settled in a series of judgments starting from **SBP & Co., Vs. Patel Engineering Ltd.**² onwards that the writ Court would be loathe to entertain challenges in such matters. As a narrow window is available for the writ Court to exercise jurisdiction in exceptionally rare circumstances and therefore, the burden is heavy on the petitioners to convince this Court that the present writ petition is maintainable.

7. Reliance placed on behalf of the respondent on order of the

1 2020(5) Mh.L.J. `184

2 (2005) 8 SCC 618

Orissa High Court in the case of **Union of India and others Vs. Yashpal Choptra & Co., (supra)** is justified, which indicates that the effect of the impugned order being dismissal of an application under Section 34 of the Arbitration Act, the remedy to challenge the award would be to file an appeal under Section 37 of the Arbitration Act.

8. This Court is of the opinion that, on the face of it, the reasoning of the Court below in the impugned order is based on a misinterpretation of Section 42 of the Arbitration Act and to that extent there appears to be a glaring error in the impugned order. If this were to be the only ground on which the impugned order was passed, this Court may have considered entertaining the present writ petition, but for the fact that paragraph No.7 of the impugned order also records an admitted position that the parties themselves had agreed that the seat as well as venue of arbitration would be Mumbai. In fact, in the order passed by this Court under Section 11 of the Arbitration Act, it was expressly agreed between the parties that the venue and seat of arbitration would be Mumbai. It was also an admitted position that the arbitration proceeding, in fact, took place at Mumbai. In such a situation, it is evident that the said ground having been noticed by the Court below, refusal to exercise jurisdiction could be justified.

9. There is substance in the stand taken on behalf of the respondent

that if this writ petition were not to be entertained, the petitioner may file an appeal under Section 37 of the Arbitration Act, which may lead to further time being consumed and therefore, this Court may consider that the impugned order be treated as an order returning the application filed by the petitioner under Section 34 of the Arbitration Act, to be filed before the appropriate Court and at the same time keeping all questions open.

10. The learned counsel for the petitioner is agreeable to the same and therefore, in the interest of justice, this writ petition is disposed of by directing that, notwithstanding the impugned order, the petitioner would be at liberty to file an application under Section 34 of the Arbitration Act before the appropriate Court. This Court has not expressed any opinion on the merits of the matter and all contentions available to the rival parties are expressly kept open.

11. In that light, the Court below is directed to return the application filed by the petitioner under Section 34 of the Arbitration Act, within two weeks from today.

(MANISH PITALE, J.)