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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2730 OF 2025
IN
ARBITRATION APPEAL (St.) NO. 395 OF 2025

Dedicated Freight Corridor Corporation
of India Ltd.

...Applicant/Appellant

Versus

Salim Alikhan Khoja and Ors.

...Respondents

Ms. Pradnya Bansode *for the Applicant/Appellant.*

Mr. Nitin Gangal *a/w Ms. Prapti Karkera for the Respondent Nos.1, 2, 4, 5, 21, 47 to 51, 53 to 57, 59 to 61, 63 to 69, 83, 85 to 88, 90.*

Mr. Nitin Gangal *a/w Ms. Namita Mestry and Ms. Prapti Karkera for Respondent Nos. 6, 7, 10 to 25, 27 to 29, 31 to 46, 71 to 82.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 9, 2025

PC :

1. Learned Counsel for the Respondents has tendered a note, which according to him, addresses the specific contention that an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("***the Act***") challenging an order passed under Section 34 of the Act would lie before the Learned Single Judge and not before the Division Bench.

2. To support his contentions he would rely on the judgment of a Division Bench of this Court (Goa Bench) dealing with Section 39 of the Arbitration Act, 1940, which contains language identical to the language described in Section 37 of the Act. Under Section 37 of the Act, an appeal would lie before the Court which is authorised by law to hear the applications from original decree of the Court passing the order.

3. The practice followed by the Registry of this Court is to treat the appeals filed under Section 37 of the Act as if they are appeals from the original decree, which appeal would lie before this Court on the strength of the contents of Section 37 of the Act. Learned Counsel for the Respondents submits that use of the language in Section 37 of the Act ought not to matter, since the Section only identifies the Court before which the Appeal would lie, after which, the rules of that Court would take over. According to him, in terms of the rules of the High Court, an appeal filed under Section 37 of the Act will be covered by Rule 2(I)(A)(ii) or (v).

4. Mr. Gangal would submit that under Sub-Clause (ii) of the said Rule, an appeal from any appellate decree in suits and appeals from adjudication in other proceedings from which appeals lie to the High Court as if from appellate decree, whether under the CPC or under any Special Act, would fall within the meaning of appeal filed under Section 37 of the Act. He would also submit that under Sub-Clause (v) it would be appropriate to treat the impugned order as an order passed under Section 34 of the Act. He places reliance on the judgement of this Court in ***Oriental Insurance Company***¹, in particular Paragraph No.10 and 24, to submit that the forum identified is the High Court and in compliance with the rules of the High Court, the view that the matter would fall in the domain of the Division Bench in view of Sub-Clause (ii) has been negated by the Division Bench of this Court.

¹ Oriental Insurance Company vs. Meena Variyal & Ors. 2000 SCC OnLine Bombay 290

5. Since there is judicial pronouncement on the issue in Oriental Insurance, I propose to consider the same in chamber and pass a detailed order, since necessarily I will have to pass it on the judicial side.

6. It is noteworthy, that currently in reliance upon Sub-Clause (i) appeals filed under Section 37 of the Act are variously placed before the Division Bench and the Single Bench of this Court, on the basis of value of the impugned order/award. As of today, a total of 59 appeals under Section 37 of the Act are pending before the Division Bench of this Court and a total of 227 appeals are lying before the Single Judge.

7. ***Judgment reserved.***

8. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]