

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 19045/2017

(Arising out of impugned final judgment and order dated 20-07-2017 in NOM No. 1455/2017 passed by the High Court Of Bombay)

MUNICIPAL CORPORATION OF GREATER MUMBAI

Petitioner(s)

VERSUS

DO-IT COMPUTER JV A JOINT VENTURE COMPANY

Respondent(s)

(With IA No.62786/2017-APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED/ORDINARY COPY OF IMPUGNED ORDER, IA No.62166/2017-PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF IMPUGNED ORDER and IA No.62509/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 28-07-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Dr. Abhishek M. Singhvi, Sr. Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. Dhruv Mehta, Sr. Adv.
Mr. J. J. Xavier, Adv.
Ms. Jayashree Wad, Adv.
Mr. Ashish Wad, Adv.
Mr. Sandeep Patil, Adv.
Ms. Paromita Majumdar, Adv.
Ms. Sukriti Jaggi, Adv.
J S Wad and Co., AOR

For Respondent(s) Mr. K. V. Viswanathan, Sr. Adv.
Mr. Senthil Jagadeesan, AOR
Mr. Suraj Iyer, Adv.
Mr. Farhan Khan, Adv.
Ms. Vrinda Bhandari, Adv.
Ms. Shruti Iyer, Adv.

UPON hearing the counsel the Court made the following
O R D E R

There is an Arbitration Award against the petitioner herein. The petitioner had challenged the same by filing

petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act'), in the High Court of Bombay. The learned Single Judge dismissed the petition. Challenging that order, the petitioner herein filed an appeal under Section 37 of the Act which was registered as Appeal No. 175 of 2017. The appeal was withdrawn in view of the submission of the petitioner that some of the issues were considered by the learned Single Judge in the order passed in petition under Section 34 of the Act. After withdrawal of the petition, the petitioner moved application by way of Notice of Motion which has been rejected by the learned Single Judge. Challenging that order, Appeal is now filed which is registered as Appeal No. 253 of 2017. The petitioner favours the maintainability of the said Appeal No. 253 of 2017. According to the petitioner, the petitioner is entitled to challenge the order of the learned Single Judge passed in original proceedings as well as the order passed in the Notice of Motion. The respondent, on the other hand, is arguing before the High Court that Appeal against the original order is not maintainable. In order to seek clarification, the petitioner moved Notice of Motion (L) No. 1455 of 2017 in which the impugned order dated 20.07.2017 is passed. The High Court has, in the said order, made it clear that insofar as the issue of maintainability of fresh appeal is concerned, the same is not adjudicated.

Since, the High Court has not taken any view on the respective submissions of the parties, noted above, at this stage, no orders are required to be passed by this Court. We make it clear that it would be open to the petitioner to argue that the original order passed under Section 34 of the Act is also amenable to challenge and it is for the High Court to decide as to whether that is permissible or not. Once, the order is passed on the appeal, i.e., Appeal No. 253 of 2017 and the petitioner is aggrieved thereagainst, it will always be open to the petitioner to challenge that order by filing appropriate proceedings.

Dr. Singhvi, learned senior counsel appearing for the petitioner, submits that the respondent should not be allowed to encash the Bank Guarantee in the meantime. We are informed that Appeal No. 253 of 2017 is coming up for hearing on 02.08.2017 and the High Court has also stayed the encashment of the Bank Guarantee which order is valid till 02.08.2017. In these circumstances, when the matter comes up before the High Court, it would be open to the petitioner to press for the continuation of the said stay order.

Needless to mention that if the High Court takes the view that the petitioner is entitled to challenge the order passed in the petition under Section 34 of the Act by the learned Single Judge, the High Court shall proceed to hear the matter on merits as well.

With these observations, the special leave petition is

SLP (C) No. 19045/2017

disposed of.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER