



ARBITRATION AND CONCILIATION

Fresh Arbitration Permissible Despite Pending Section 37 Appeal: Bombay High Court Reiterates Limited Judicial Role

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Introduction

In a recent order, the Bombay High Court addressed whether the pendency of an appeal under Section 37 (Arbitration Appeal Provision) of the Arbitration and Conciliation Act, 1996 (“the Act”) prevents initiation of fresh arbitration after an earlier award has been set aside under Section 34 Application for Setting Aside Arbitral Award). The Court clarified that no such bar exists and reaffirmed that the court’s role under Section 11 (Appointment of Arbitrators) is confined to verifying the existence of an arbitration agreement. The order reinforces the pro-arbitration framework and limited judicial intervention in arbitral matters.

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Background

The dispute arose from an Agreement for Purchase of Salvage Material dated 29 November 2011 between Rajuram Sawaji Purohit, proprietor of M/s. Mactec Realtors & Developers, and The Shandar Interior Private Limited. The applicant had paid a security deposit of ₹51,38,000, which later became contentious. A Commercial Summary Suit filed in 2018 was referred to arbitration by mutual consent. The arbitral tribunal, in its award dated 6 June 2022, upheld the agreement but dismissed the applicant’s claim as barred by limitation. The applicant challenged the award under Section 34 and on 7 February 2024, the Bombay High Court set aside the award entirely, directing that arbitration be conducted afresh. During the pendency of appeals under Section 37, the applicant applied under Section 11 for appointment of a new arbitrator.

Contentions

The respondent opposed the Section 11 application, arguing that initiation of fresh arbitration while appeals were pending could lead to conflicting outcomes and procedural confusion. It contended that the applicant had not issued a fresh notice under Section 21. The applicant submitted that once the award was set aside, the arbitration clause revived, permitting new proceedings. It was argued that the pendency of a Section 37 appeal does not automatically suspend arbitral rights unless expressly stayed by the court. Reliance was placed on precedents confirming the permissibility of de novo arbitration where an award has been annulled.

Court’s Observations

The Court noted that under Section 11, its jurisdiction is limited to confirming the existence of a valid arbitration agreement. Substantive issues, including limitation and maintainability, fall within the tribunal’s competence under Section 16. The order emphasized that judicial intervention at the pre-arbitral stage must remain minimal.

Citing relevant precedents, the Court clarified that the pendency of appellate proceedings under Section 37 does not bar the appointment of an arbitrator unless a higher court expressly stays the process. Once an award is annulled, it ceases to exist, and the arbitration agreement continues to operate. Concerns regarding repeated costs or fees were noted as matters to be addressed by the arbitral tribunal, which retains discretion under the Fourth Schedule and the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018.

Order

The Court allowed the Section 11 application and a Sole Arbitrator to adjudicate all disputes arising from the 2011 agreement. The arbitration is to be conducted in Mumbai. All substantive objections, including limitation, maintainability, and any other defences, are left open for determination by the tribunal. The Court directed that the arbitration proceed expeditiously, and no

stay of the process is implied by the pendency of the Section 37 appeals.

Conclusion

This order confirms that the pendency of a Section 37 appeal does not impede the commencement of fresh arbitration once an award is set aside. It highlights the limited role of courts under Section 11 and reinforces India's pro-arbitration framework. By maintaining minimal judicial interference at the pre-arbitral stage, the Bombay High Court ensures that arbitral proceedings can continue efficiently, without procedural delays caused by appellate pendency.

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