

(2017) 03 BOM CK 0241
In the Bombay High Court
Case No : 46 of 2006

M/s. Heera Construction Co.

APPELLANT

Vs

State of Goa, Represented by Executive Engineer, Wroks
Division II, Water Resources Department

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 96 - Appeal from original decree
Arbitration and Conciliation Act, 1996, Section 37 - Appealable orders

Citation : (2017) 03 BOM CK 0241

Hon'ble Judges : F. M. Reis

Bench : SINGLE BENCH

Advocate : J. J. Mulgaonkar, Priyanka Kamat

Judgement

1. Heard Mr. J. J. Mulgaonkar, learned Counsel appearing for the Appellant and Ms. Kamat, learned Addl. Government Advocate appearing for the Respondent.

2. During the course of the hearing of the above Appeal, the learned Addl. Government Advocate has raised a preliminary objection to the maintainability of the above Appeal on the ground that the First Appeal is not maintainable as neither a Decree has been drawn nor any Award passed in the Arbitration Proceedings, under challenge in the above Appeal. It is further pointed out that under the Arbitration and Conciliation Act, 1996, Orders which are appealable are provided in Section 37 of the said Act. It is further submitted that no Order which comes within the purview of Section 37 of the said Act is under challenge in the above Appeal.

3. Mr. J. J. Mulgaonkar, learned Counsel, however pointed out that there is an averment in the Appeal Memo to the effect that the Award passed by the Arbitrator is deemed to be a Decree and, as such, an Appeal is maintainable. It is further pointed out that in case the Court finds that no Appeal is maintainable,

liberty to reserve to file appropriate proceedings to challenge the impugned order.

4. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. There is no challenge in the Appeal to the Award passed by the Arbitrator. In fact, the objections raised by the Respondents are stated to have been rejected. The Order impugned in the above Appeal is an Order passed in Execution Proceedings. Such an Order is not a Decree which is appealable under Section 96 of the Civil Procedure Code.

5. Mr. J. J. Mulgaonkar, learned Counsel appearing for the Appellant, fairly accepts the position that there is no challenge to the Award passed by the Arbitrator in the present Appeal and that the only Order under challenge is an Order passed in Execution Proceedings. On this ground alone, the Appeal is liable to be dismissed.

6. As far as the contention of Mr. J. J. Mulgaonkar, learned Counsel, is concerned, the question of granting any liberty in the present Appeal would not be justified. The Appellant, if so advised, would have to take their own remedies in accordance with law and all contentions of both the parties on such proceedings are left open.

7. The Appeal stands disposed of accordingly.