
(2013) 09 MP CK 0232
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 344 of 2012

M/s. Shivhare Roadlines

APPELLANT

Vs

M/s. Gammon India Ltd. and Another

RESPONDENT

Date of Decision : 06-09-2013

Acts Referred:

Citation : (2014) 1 ARBLR 408 : (2013) 5 MPHT 123 : (2013) 4 MPLJ 704

Hon'ble Judges : Krishn Kumar Lahoti, Acting C.J.;S.K. Gangele, J

Bench : Division Bench

Advocate : Arvind Dudawat, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Gangele, J.—None appears on behalf of respondent No. 1 even after service of notice. Service on respondent No. 2 was dispensed with vide order dated 27-6-2012. The appellant has filed this appeal against the order dated 17-5-2012 passed in W.P. No. 3321/2012 [reported in 2012 (3) M.P.H.T. 330]. By the aforesaid order, the learned Writ Court has dismissed the writ petition filed by the appellant.

2. The appellant was granted a sub-contract by respondent No. 1. As per the appellant, it had completed the work in accordance with the contract agreement in the year 2008 and submitted bills for payment. In spite of verification of bills, the amount was not paid to the appellant.

3. Respondent No. 1 denied the fact that the appellant had completed the work in accordance with the terms and conditions of contract and agreement. Respondent No. 1 has further pleaded that due to inaction on behalf of the appellant a huge financial loss was caused to the respondent No. 1.

4. The appellant had filed an application for appointment of Arbitrator in accordance with the terms and conditions of the contract. This Court had dismissed the aforesaid application vide order dated 4-11-2009 passed in

Arbitration Case No. 11/2008. Against the aforesaid order, the appellant had filed a SLP before the Hon''ble Supreme Court, which was registered as SLP No. 928/2010. Hon''ble Supreme Court, appointed Shri S.G. Pingle as Sole Arbitrator.

5. The Sole Arbitrator had commenced arbitration proceedings and first sitting was held on 7th March, 2011. On the aforesaid date, the Arbitrator had fixed the Schedule of arbitration proceedings with the consent of appellant and respondent No. 1. Following Schedule was framed by the Arbitrator:--

1. The Schedule for arbitration proceedings has been finalised with the consent of both the parties as under:--

(a) The claimants to file the Statement of Claims (SOC) alongwith all exhibits and documents by 15th of April, 2011.

(b) The respondents to submit Statement of Defence (SOD) with the relevant exhibits and documents alongwith counter-claims, if any, by 30th of May, 2011.

(c) The rejoinder of SOD and their say as about counter-claims of respondents to be submitted by the claimants by 30th of June, 2011.

(d) The respondents to submit certified true copy of contract documents by 11th of April, 2011.

(e) Admittance or denial of exhibits and documents to be submitted by both the parties by 15th of July, 2011.

(f) Production of witnesses, if desired, and framing of issues to be discussed and finalised in the next meeting of Arbitral Tribunal.

6. In accordance with the aforesaid agreed Schedule, the claimants had to file Statement of Claim (SOC) alongwith all exhibits and documents by 15th April, 2011. On the aforesaid date, the appellant had submitted its State of Claim alongwith all documents. Thereafter, date 30th May, 2011 was fixed for filing Statement of Defence by respondent. Respondent No. 1 did not file the statement. Thereafter, the date was fixed on 30th June, 2011. The Arbitrator in the proceeding dated 2nd June, 2011 had observed that time for submission of Statement of Defence is extended upto 30th June, 2011 and rejoinder to SOD and counter-claim be submitted upto 31st July, 2011 and admission or denial of exhibits and documents be submitted by both the parties by 15th August, 2011. The Arbitrator had further observed that the parties shall ensure adherence to time Schedule. The observations of the Arbitrator are as under:--

(1) The dates for submission of statements were fixed with mutual consent. Therefore, I would request both the parties to stick up to the calendar finalised by the AT with mutual consent.

(2) However, keeping in view the respondents above cited letter, the time for submission of "Statement of Defence" SOD is extended upto 30th June, 2011.

(3) As a result, the rejoinder to SOD and say as about counter-claims, of

respondents to be submitted by claimants by 31st July, 2001.

(4) Admittance or denial of exhibits and documents to be submitted by both the parties by 15th August, 2011.

The parties are once again requested to ensure timely submission of documents in the interest of justice.

7. Respondent No. 1 had submitted preliminary reply to SOC and had not submitted the Statement of Defence. Thereafter, the Arbitrator in its sitting held on 18th July, 2011 observed that respondent No. 1 has to file SOC upto 31st July, 2011 and no further time shall be granted. Following are the notings of the order-sheet by the Arbitrator in the sitting held on 18-7-2011:--

3. The respondents are to note that this open ended proposal is not at all acceptable to me. I give a specific time upto 31st July, 2011 for submission of detailed reply in the form of "Addendum to SOD". No further time can be granted on this account which please note.

8. The next sitting of the Arbitral Tribunal was held on 19th August, 2011. In the aforesaid sitting, Arbitrator had again fixed the time schedule, which was as under:--

(a) Submission of Addendum of "SOD" by the respondents. To be submitted by 15th of September, 2011.

(b) In light of the above submission, the claimants may decide to revise/alter their rejoinder to SOD. This be done by 30th September, 2011.

(c) The claimants have the opportunity to revise their admission and denial statement. This be done by 30th September, 2011.

(d) Admission and denial statement of respondents to be filed by 10th October, 2011.

9. Thereafter, the Arbitrator had further noted that this would be the last chance given to the respondents for submission of documents. The notings of the Arbitrator are as under:--

4. I have noted the anxiety and resentment of claimants as regards the delayed actions on the part of respondents.

The respondents to note that this is the last chance being given to them for submission of documents mentioned herein above. In case respondents fail to submit the papers as per the deadlines given in this letter, I will proceed with the case based on the papers made available to me by both the parties.

10. The next sitting of the Arbitral Tribunal was held on 18th October, 2011. The notings of the Arbitrator are as under:--

(1) No representative of the respondents came for this meeting even though

proper intimation was sent in time requesting the respondents to participate in the proceedings ultimately at about 12.15 p.m. contact could be established with Z.Z. Dharmodiwala, Deputy Manager (Legal) of the respondents-M/s. Gammon India Ltd. She expressed her apologies for the lapse on their part and then on she rushed and joined the meeting at 12.45 p.m. Thus, in the first two hours, all others including the undersigned and the representatives of the claimants had nothing else to do but to keep on waiting for the representative of the claimants. The meeting could thus start only at 1.00 p.m. I have directed the respondents representative to be more careful and attentive in such matters and avoid such unpleasant happenings in future.

(2) Vide respondent's letter No. WSS/G/293, dated 8-4-2011, the respondents have submitted a complete set of contract documents. However, in spite of specific instructions to that effect, respondents have not given a copy of this submission to the claimants. This needs to be done by the respondents immediately.

(3) The claimants have submitted a letter identifying the issues which they feel are the issues to be discussed while framing of issues of this case. This is taken on record.

(4) The inspection and verification of documents need to be completed immediately. It is decided that this exercise will be completed on 24th October, 2011. The claimants will attend the office of M/s. GIL at 11.00 a.m. and complete this verification. Both the parties to submit a report to the undersigned in this respect.

(5) Admittance and denial statement in respect of exhibits and documents to be submitted by the respondents by 3rd of November, 2011.

(6) Examination of witnesses and other issues to be discussed and decided in the next meeting.

(7) It is mutually agreed that next meeting will be held on 14th November, 2011 at 11.00 a.m. The venue for this meeting to be arranged by the claimants and confirmed to all concerned well in advance.

11. The Arbitrator had ordered that verification of the documents shall be completed on 24th October, 2011 and admission and denial of exhibits of documents should be submitted upto 3rd November, 2011. Next date was fixed on 14th November, 2011. Then the next sitting was held on 5th December, 2011. On the aforesaid date, the Arbitrator had granted time to produce witness and lead evidence to the appellant and the appellant was directed to submit affidavit of witnesses in the form of "examination-in-chief" upto 26th December, 2011 and the next sitting was fixed on 16th January, 2012 for the purpose of cross-examination of appellant witnesses. Following are the notings in the order sheet:--

(4) Admittance and denial statement in respect of various letters and exhibits

was to be submitted by the respondents by 3rd of November, 2011 (vide point No. 5 minutes of 2nd meeting). Since this has not been submitted in details by the respondents further arbitration proceedings have to be deferred till this is done.

(5) In order to streamline this verification and confirmation, I, along with representatives of both the parties went through all the 74 Exhibits submitted by the claimants along with "SOC". It seems that the claimants need to prove and establish quite a few documents before proceeding further with oral arguments etc.

(6) In order to prove these documents, the claimants want to produce a witness and lead evidence. It is mutually agreed that the claimants would submit an affidavit of witness in the form of "examination-in-chief". Claimants have to submit this affidavit by 26th of December, 2011.

(7) The respondents have agreed to get the feedback from their appropriate Engineer or Officer as about the admission or denial of some of the documents and exhibits submitted alongwith "SOC". This feedback statement would be submitted to AT by 5th January, 2012 by the respondents with a copy to the claimants.

(8) The next meeting has been fixed by mutual consent on 16th January, 2012 at 11.00 a.m. I request both the parties to remain present in time for this meeting for which venue would be arranged by the claimants. The meeting will start with cross-examination of claimants witness.

12. On 16th January, 2012 because respondent No. 1 had not complied with the instructions, hence, again time was granted to respondent No. 1 to comply with the earlier instructions ordered by the learned Arbitrator. The Arbitrator had made following observations in the order sheet dated 16th January, 2012:--

(1) The legal department of M/s. Gammon India Ltd. (the respondents) who have dealt with this case upto now are not devoting required time to this case and as result whatever instructions are given to them, go unheeded which amounts to travesty of entire arbitration proceedings. This has to be taken with all seriousness.

(2) The respondents are specifically instructed to comply with all the instructions given upto now and ensure that the matter proceeds smoothly as per the dates fixed by the AT.

(3) Most reluctantly as requested I grant extra time to respondents to ensure proper compliance of all the instructions given in this case. The next meeting is fixed on 6th of February, 2012 at 11.00 a.m. Claimants to make all arrangements for this meeting well in time.

13. On the date of next sitting, i.e., 6-2-2012, the witness of claimant-appellant, Mr. Suresh C. Shivhare was cross-examined and he was discharged and

thereafter, on oral prayer, respondent No. 1 was further permitted to file written statement as an Addendum to the Statement of Defence and time was granted for this purpose upto 22nd February, 2012 and for submission of rejoinder time was granted upto 17th March, 2012. The Arbitrator had recorded the following proceedings on 6-2-2012:--

(3) As decided earlier, the cross-examination of claimants witness Mr. Suresh C. Shivhare was taken by learned Counsel for the respondents, Mr. Ramalingiah. This examination was in respect of the affidavit filed by the claimants dated 2nd January, 2012. The examination has been concluded and Mr. Suresh Shivhare has been discharged. Copies of this cross-examination have been given to both the parties.

(4) The respondents have been permitted to file their written statement as an Addendum to the Statement of Defence already filed by them dated 30th June, 2011. They have agreed to submit this statement by 22nd February, 2012.

(5) In view of point No. 4 above, the claimants have been permitted to revise their rejoinder. This document to be submitted by the claimants by 17th March, 2012.

(6) In view of these decisions, next hearing of this case has been fixed on 27th and 28th of March, 2012 at 11.00 a.m. The claimants have been directed to make proper arrangements for this meeting.

14. The appellant filed an application before the Arbitrator on 7-2-2012 to the effect that the permission to file SOD to respondent No. 1 and counter-claim be rejected. Thereafter, the appellant had filed an application before the Arbitrator u/s 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to "the Act of 1996") mentioning the fact that various dates were granted to respondent No. 1 to file its Statement of Defence and then the learned Arbitrator has again granted time to the respondent No. 1 to file Statement of Defence, which is against the law and against the judicial propriety, hence, the Arbitrator has shown his bias towards respondent No. 1, hence, the learned Arbitrator be restrained himself from conducting the arbitrator proceedings.

15. Respondent No. 1 had filed the reply and resisted the claim of the appellant. Learned Arbitrator vide order dated 28th March, 2012 rejected the application of the appellant and fixed the next date of hearing in the last week of April, 2012. The Arbitrator had passed the following order:--

7. After careful consideration of the circumstances and facts of this case and after analysing the arguments and, submissions of both the parties. I do not agree with the proposition of the claimant. Thus, the application of claimants dated 19-2-2012 is disallowed. The Arbitral Tribunal shall continue the arbitration proceedings and make an arbitral award.

16. Being aggrieved by the aforesaid order, the appellant had filed a writ petition before the Writ Court. Learned Single Judge has dismissed the writ petition after

holding that there is no proof of actual bias against the Arbitrator. He had granted adjournments to respondent No. 1 and the aforesaid act of the Arbitrator does not raise presumption of bias.

17. Learned Counsel appearing on behalf of the appellant has contended that the order passed by the learned Single Judge is contrary to law and the procedure adopted by the learned Arbitrator was contrary to the proceedings of the Act of 1996 and also against the fair play and justice. Learned Counsel further submitted that looking to the conduct of the learned Arbitrator, he has disqualified himself to act as an Arbitrator.

18. Section 12 of the Act of 1996 prescribes grounds for challenge of appointment as an Arbitrator. Section 12(3) prescribes the conditions on which an Arbitrator may be challenged. It is as under:--

(3) An Arbitrator may be challenged only if--

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality; or

(b) he does not possess the qualifications agreed to by the parties.

19. Section 13 of the Act of 1996 prescribes challenge procedure and Section 14 prescribes failure or impossibility to act. It prescribes that mandate of an Arbitrator shall terminate on certain conditions, which are as under:--

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

20. Section 15(2) of the Act of 1996 prescribes that where the mandate of an Arbitrator terminates, his substitute shall be appointed according to the rules that were applicable to the appointment of the Arbitrator being replaced.

21. From the perusal of the aforesaid provisions of the Act of 1996, it is clear that the appointment of Arbitrator can be challenged in accordance with Section 12 if there is justifiable doubt as to his independence or impartiality. Section 13 of the Act of 1996 prescribes challenge procedure. According to the aforesaid section, party has to send a written statement of the reasons for the challenge to the Arbitral Tribunal after becoming aware of any circumstances referred to in sub-section (3) of Section 12. Section 14 of the Act of 1996 prescribes that the mandate of an Arbitrator shall terminate if he becomes de jure or de facto unable to perform his functions. The scheme of the Act prescribes that Arbitrator has to function independently and impartially and he has to follow the procedure in accordance with the provisions of Act of 1996.

22. Section 18 under Chapter V of the Act of 1996, which is in regard to conduct of arbitral proceedings, prescribes equal treatment of parties. It is as under:--

18. Equal treatment of parties.-- The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

23. Section 19(2) of the Act of 1996 prescribes that the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings. Section 23 of the Act of 1996, which is, in our opinion, important, prescribes, filing of statement of claim and defence. It is as under:--

23. Statement of claim and defence.-- (1) Within the period of time agreed upon by the parties or determined by the Arbitral Tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the Arbitral Tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

24. In accordance with the aforesaid section, the parties are required to submit statements, all the documents and other evidence. Section 25 of the Act of 1996 prescribes default of a party. It is as under:--

25. Default of a party.-- Unless otherwise agreed by the parties where, without showing sufficient cause,--

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the arbitral award on the evidence before it.

25. Section 25(b) clearly stipulates that if the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant. The aforesaid section clearly stipulates that if respondent fails to submit his statement of defence, then it would amount to an admission of the allegations of the claimant. In the

present case, as stated above in the order, in spite of extending several opportunities by the Arbitrator and in spite of fixing the Schedule for submitting statement of defence, respondent No. 1 did not submit the statement of defence. Thereafter, the appellant had produced evidence of witness and witness of the appellant was also cross-examined and thereafter the learned Arbitrator had permitted respondent No. 1 on oral prayer to submit the statement of defence. This act of the learned Arbitrator is against the statutory provisions of Section 25(b) of the Act of 1996. In our opinion, the Act of 1996 does not give power to the Arbitrator to permit a party/respondent to file statement of defence after recording evidence and cross-examination of witness because it will negate the mandatory provisions of Section 25(b) of the Act of 1996.

26. It is well-settled principle of law that the Arbitrator has to perform its function in accordance with provisions of Act of 1996 and also in accordance with norms of judicial propriety. Russell on arbitration has observed as under in regard to disqualification of Arbitrator:--

There is universal agreement amongst jurists of all countries that it is of the first importance that Judicial Tribunals should be honest, impartial and disinterested. This rule applies in full force to Arbitral Tribunals, subject only to this exception, that the parties who are free to choose their own Tribunal may, provided they act with full knowledge, choose dishonest, partial or interested Arbitrators (though this exception in its turn is subject to a statutory exception which gives parties who have so chosen a locus poenitentiae in certain circumstances). But apart from this exception, Arbitrators who are in all other respects suitably qualified are disqualified by dishonesty, partiality or interest.

27. Hon"ble Supreme Court in *Ladli Construction Company (P) Ltd. Vs. Punjab Police Housing Corporation Ltd. and Others*, , has held as under in regard to bias by the Arbitrator and the requirement of arbitration proceedings to the effect that the proceedings must meet the requirement of Principles of Natural Justice and held as under:--

22. In *Gullapalli Nagewara Rao*, this Court restated the principle of natural justice that the authorities empowered to decide the dispute must be one without bias towards one side or the other in the dispute. There can hardly be any doubt about this fundamental Principle of Natural Justice. The question is: whether on facts, the contractor has been able to establish that the Arbitrator was biased against it? None of the circumstances pointed out by the contractor leads to any inference that the Arbitrator had any bias, personal or otherwise. No doubt, bias may be found in a variety of situations and each case, where bias of the adjudicator is alleged, has to be seen in the context of its own facts but a fanciful apprehension of bias is not enough.

23. The observations of Lord Atkinson in *Bristol Corpn.*, relied upon by the learned Counsel for the contractor, instead of supporting his argument go fully against the contractor. In *Bristol Corpn.*, Lord Atkinson stated thus:-- (All ER p.

1077 C-E)

..... If a contractor chooses to enter into a contract binding him to submit any disputes which arise between him and the Engineer of the persons with whom he contracts to that Engineer to arbitrate on, then he must be held to his contract; whether it be wise or unwise, prudent or the contrary, he stipulated that a person who is the servant of the persons with whom he contracted shall be the judge to decide upon matters upon which, necessarily that Engineer or Arbitrator has himself formed an opinion. But though the contractor is bound by that contract, still he has a right to demand that, notwithstanding those performed views of the Engineer, that gentleman should listen to argument, and should determine the matters submitted to him as fairly as he can, as an honest man; and if it be shown in fact that there is any reasonable prospect that he will be so biased as not to decide fairly upon those matters, then the contractor is allowed to escape from his bargain, and to have the matters in dispute tried by one of the ordinary Tribunals of the land. But he has more than that right. If, without any fault of his own, the Engineer has put himself in such a position that it is not fitting, or decorous, or proper that he should act as Arbitrator in any one or more of those disputes, the contractor has the right of appealing to a Court of law to exercise the discretion which Section 4 of the Arbitrator Act vests in them

The above observations exposit the legal position that a contractor is bound by the contract if he has agreed to submit the disputes to the Engineer for arbitration although he has to deal with such Engineer under the contract. It needs no emphasis that once the dispute is referred to such Arbitrator, the Arbitrator has to act fairly and objectively and the proceedings must meet the requirements of Principles of Natural Justice.

28. Hon"ble Supreme Court further in the case of Indian Oil Corporation Ltd. and Others Vs. Raja Transport (P) Ltd., , has held as under in regard to the effect that the Arbitrator has to work without bias:--

32. Section 18 requires the Arbitrator to treat the parties with equality (that is to say without bias) and give each party full opportunity to present his case. Nothing in Section 11, 12, 18 or other provisions of the Act suggests that any provision in an arbitration agreement, naming the Arbitrator will be invalid if such named Arbitrator is an employee of one of the parties to the arbitration agreement.

29. In the present case, it is an admitted fact that the Arbitrator had given time to the respondent No. 1 to file statement of defence even after cross-examination of witness of the appellant. It is contrary to the provisions of Section 25(b) of the Act of 1996. Earlier number of opportunities even the last chance was granted to the respondent, in spite of that the respondent had not filed the statement of defence and in that eventuality valuable right had accrued in favour of the appellant in accordance with the provisions of Section 25(b) of the Act of 1996, default of a party and the aforesaid section mandates that if the

respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, it would amount to an admission of the allegations by the claimant. It is similar to the provisions of Civil Procedure Code, where the defendants failed to file written statement. The Arbitrator did not consider the aforesaid statutory provisions and acted in violation of the statutory provisions. He has given undue favour to respondent No. 1, however, a duty was cast on him in accordance with Section 18 of the Act of 1996 to the effect that he has to work without any bias to any party. Hence, the Arbitrator has disqualified himself to continue the arbitral proceedings.

30. Hon"ble Supreme Court in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, , has held as under in regard to bias:--

26. "Bias" in common English parlance means and implies predisposition or prejudice. The Managing Director admittedly, was not well disposed of towards the respondent herein by reason wherefore, the respondent was denuded of the financial power as also the administrative management of the department. It is the selfsame Managing Director who levels thirteen charges against the respondent and is the person who appoints the Enquiry Officer, but affords a pretended hearing himself late in the afternoon on 26-11-1993 and communicates the order of termination consisting of eighteen pages by early evening, the chain is complete: prejudice apparent: bias as stated stands proved.

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35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom - in the event however, the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular Court, Tribunal or Authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case.

31. In the present case, looking to the facts of the case that at number of times opportunities were granted to the respondent No. 1 to file State of Defence and after cross-examination of the witness of the appellant, again an opportunity was granted by the Arbitrator, which is contrary to the statutory provisions of Section 25(b) of the Act of 1996 and proves the fact that there was a real bias in the mind of the Arbitrator. Consequently, the appeal filed by the appellant is hereby allowed. The order dated 17-5-2012 passed by the learned Single Judge and the order dated 28/30-3-2012 passed by the learned Arbitrator are hereby quashed. It is held that the learned Arbitrator, Mr. S.G. Pingle is disqualified to continue the arbitration proceedings. The proceedings conducted by the Arbitrator in the

present arbitration case upto 6-2-2012, recording the evidence of witness Suresh C. Shivhare only be treated as per law, but rest of the order and further proceedings allowing respondent to submit statement of defence are set aside. Now the arbitration case shall proceed further from the stage of after recording the evidence of witness Suresh C. Shivhare. The parties are at liberty to file appropriate application in accordance with the provisions of Act of 1996 for appointment of substituted Arbitrator in accordance with Section 15(2) of the Act of 1996. No order as to costs.