

THE NAVNIRMAN DEVELOPMENT  
CONSULTANTS (I) PVT. LTD.

A

v.

THE DIVISIONAL COMMISSIONER & PRESIDENT DISTRICT  
SPORTS COMPLEX EXECUTIVE COMMITTEE

(Civil Appeal Nos. 8408-09 of 2017)

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JULY 05, 2017

[ABHAY MANOHAR SAPRE AND R. BANUMATHI, JJ.]

*Arbitration and Conciliation Act, 1996 – Arbitration award – Pronouncement of, in favour of appellant – On challenge by respondent, District Judge modified the award by reducing the awarded sum – Appeal thereagainst as also review, dismissed by the High Court – On appeal, held: High Court while dismissing the appeal did not set out even the factual controversy properly much less in detail and nor dealt with any of the grounds taken by the parties – High Court erred in not recording any finding much less reasoned finding keeping in view the stand of the parties taken in the pleadings and the grounds of appeal – Also erred in not pointing out as to why the order of the District Judge is legally sustainable – High Court decided the appeal in the absence of both parties – In such situation, provisions of Or. XLI r. 17 CPC got attracted and, thus, the High Court should have taken recourse to the powers u/Or. XLI r. 17 for passing appropriate orders – Said approach and the cryptic reasoning of the High Court cannot be accepted – Thus, the impugned order is set aside and case is remanded back to the High Court for deciding the appeal afresh on merits.*

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**Partly allowing the appeals, the Court**

**HELD: 1.1** The High Court while dismissing the appeal did not set out even the factual controversy properly much less in detail and nor dealt with any of the grounds taken by the parties in their pleadings and in appeal in support of their respective contentions. In order to appreciate the factual and legal controversy involved in the *lis*, the least which was expected of was that the order which decides the *lis* between the parties should have contained the brief facts of the case and the grounds on which the action is impugned, the stand of the parties impugning

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**A** and defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the *lis*, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be. This enables the superior Court to examine the legality of the decision in its proper perspective in its appellate jurisdiction.

**B** [Paras 13-15] [351-C-F]

**C** 1.2 The High Court decided the appeal in the absence of both parties. In other words, when the appeal was called on for hearing, neither the counsel for the appellant nor the counsel for the respondent was present. In such situation, provisions of Or. XLI r. 17 CPC got attracted and, therefore, the High Court should have taken recourse to the powers under Or. XLI r. 17 for passing appropriate orders as contemplated in r. 17. In any event, the dismissal of appeal being essentially under Or. XLI r. 17, the appellant should have taken recourse to the remedy available under Or. XLI r. 19 by filing application to the High Court praying therein for readmission of their appeal by making out the sufficient cause for their non-appearance on the date when the appeal was listed for hearing instead of filing this appeal against the impugned order before this Court. [Para 16-18] [351-F-H ; 352-A-B]

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**E** 1.3 The High Court erred in not recording any finding much less reasoned finding keeping in view the stand of the parties taken in the pleadings and the grounds of appeal. The High Court also erred in not pointing out as to why the order of the District Judge is legally sustainable calling no interference therein. If the High Court decided to embark upon the merits of the appeal then it should have recorded findings by dealing with all the issues arising in the case. The said approach and the cryptic reasoning of the High Court cannot be accepted. The impugned order is set aside and the case is remanded back to the High Court for deciding the appeal afresh on merits in accordance with law. [Para 19-20] [352-C-D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 8408-8409 of 2017.

**H** From the Judgment and Order dated 13.09.2013 in Arbitration Appeal No. 9 of 2008 and 04.09.2014 in Review Petition No.1 of 2014 of the High Court of Judicature at Bombay.

Ms. Suruchi Aggarwal, Adv. for the Appellants. A

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. These appeals are filed against the final judgments and orders dated 13.09.2013 in Arbitration Appeal No.9 of 2008 and dated 04.09.2008 in Review Petition No.1 of 2014 passed by the High Court of Judicature at Bombay whereby the Arbitration Appeal and the Review Petition were respectively dismissed. B

3. Brief facts need mention to appreciate the controversy involved in these appeals. C

4. The respondent-a Government agency at Pune invited tenders for construction of "sports complex" at Pune. The appellant-Company was one of the tenderers whose tender was accepted and accordingly the appellant-Company was awarded contract for the said work.

5. According to the appellant, they completed the work in terms of the Agreement dated 26.05.2003 and submitted the bills for the work done but the amount claimed in the bills was not paid by the respondent. This led to rising of the disputes between the appellant and the respondent regarding the non-payment of some bills of the appellant. D

6. Since the Agreement contained an arbitration clause for resolving all kinds of disputes arising between the parties in relation to the agreement and hence the appellant served the notices to the respondent and called upon them to appoint the Arbitral Tribunal as provided in clause 3.8 of the Agreement and refer the disputes regarding non-payment of their bills to the Tribunal for its adjudication. The respondent, despite demand made by the appellant, failed to constitute the Arbitral Tribunal and, therefore, the appellant was constrained to file an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") before the High Court praying therein for appointment of Arbitral Tribunal for deciding the disputes which had arisen between the parties. E  
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7. By order dated 12.08.2005, the High Court allowed the appellant's application and appointed Arbitral Tribunal as per Clause 3.8 of the Agreement for deciding the disputes which had arisen between the parties. The Tribunal then embarked upon the reference and on H

A 03.11.2006 passed an award in favour of the appellant and against the respondent for a total sum of Rs.25,64,490/- with interest payable at the rate of 18% p.a. This was followed by one corrigendum issued by the Tribunal in relation to the award to correct some arithmetical errors, which had crept in the award.

B 8. Felt aggrieved, the respondent challenged the award before the District Judge, Pune by filing objections under Section 34 of the Act being Civil Misc. Application No 36 of 2007. The District Judge, by order dated 16.11.2007, allowed the respondent's application in part and modified the award by reducing the awarded sum from Rs.25,64,490/- to Rs.7,15,544/- and in so modifying also gave some directions.

C 9. Felt aggrieved, the appellant filed appeal under Section 37 of the Act before the High Court. By impugned order, the learned single Judge dismissed the appeal giving rise to first filing of the review petition by the appellant and consequent upon the dismissal of review, it gave rise to the filing of these appeals by way of special leave by the appellant(claimant) against the main order and review order.

D 10. Heard learned counsel for the appellant. None appeared for the respondent though served.

E 11. Having heard learned counsel for the appellant and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned order and remand the case to the High Court for deciding the appeal afresh on merits.

12. The impugned order reads as under:

F **"1. The award has been passed on 3<sup>rd</sup> November, 2006 in favour of the appellant for Rs.25.64 lacs. The appeal under Section 36 has been partly allowed on 16<sup>th</sup> November, 2007. Only the award for the amount of Rs.11.90 lacs under bill No. 1 has been set aside and the respondent herein has been directed to pay the appellant Rs.7.14 lacs instead constituting 75% of that amount. The amount has to be paid with interest specified in the impugned order along with costs.**

G **2. The ambit of this appeal is, therefore, extremely narrow.**

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**The award passed in favour of the appellant herein can be executed save and except 1/4<sup>th</sup> of the amount of bill No.1.** A

**3. The appellant has not shown how the order in appeal setting aside the award passed to the above extent calls for interference in a further appeal. Arbitration Appeal is dismissed.”** B

13. In our considered opinion, the need to remand the case to the High Court has occasioned due to the reason that the High Court while dismissing the appeal did not set out even the factual controversy properly much less in detail and nor dealt with any of the grounds taken by the parties in their pleadings and in appeal in support of their respective contentions. C

14. In our considered view, in order to appreciate the factual and legal controversy involved in the *lis*, the least which was expected of was that the order which decides the *lis* between the parties should have contained the brief facts of the case so as to know as to how the factual controversy arose and the grounds on which the action is impugned, the stand of the parties impugning and defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the *lis*, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be. D  
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15. This enables the superior Court to examine the legality of the decision in its proper perspective in its appellate jurisdiction.

16. We find from the record that the High Court decided the appeal in the absence of both parties. In other words, when the appeal was called on for hearing, neither the counsel for the appellant nor the counsel for the respondent was present. F

17. In such situation, provisions of Order 41 Rule 17 of the Civil Procedure Code, 1908 got attracted and, therefore, the High Court should have taken recourse to the powers under Order 41 Rule 17 for passing appropriate orders as contemplated in Rule 17. Indeed the explanation appended to Rule 17 in clear terms provides that nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on merits. G

A 18. In any event, the dismissal of appeal being essentially under  
Order 41 Rule 17, the appellant herein should have taken recourse to the  
remedy available under Order 41 Rule 19 by filing application to the  
High Court praying therein for readmission of their appeal by making  
out the sufficient cause for their non-appearance on the date when the  
B appeal was listed for hearing instead of filing this appeal against the  
impugned order before this Court.

19. Be that as it may, the High Court erred in not recording any  
finding much less reasoned finding keeping in view the stand of the  
parties taken in the pleadings and the grounds of appeal. The High Court  
C also erred in not pointing out as to why the order of the District Judge is  
legally sustainable calling no interference therein. If the High Court  
decided to embark upon the merits of the appeal then it should have  
recorded findings by dealing with all the issues arising in the case. It  
was, however, not done and hence it calls for interference by this Court.

D 20. In the light of foregoing discussion, we cannot countenance  
the approach and the cryptic reasoning of the High Court and are,  
therefore, constrained to set aside the impugned order and remand the  
case to the High Court for deciding the appeal afresh on merits in  
accordance with law.

E 21. Since we have formed an opinion to remand the case, we  
have refrained from recording any finding on merits on any of the issues  
arising in the case.

F 22. In view of foregoing discussion, the appeals succeed and are  
accordingly allowed in part. The impugned order is set aside. The appeal  
out of which these appeals arise is restored to its file. The learned single  
Judge of the High Court is requested to decide the appeal on merits in  
accordance with law uninfluenced by any of our observations.

G 23. Since the matter is old, we request the Single Judge to decide  
the appeal expeditiously after serving notice of hearing of the appeal to  
the parties because the respondent despite service did not appear today  
before this Court.