

HINDUSTAN ANTIBIOTICS LIMITED

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v.

MAHARASHTRA HOUSING AND AREA DEVELOPMENT
AUTHORITY (MHADA) & ORS.

(Civil Appeal No. 10203 of 2018)

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OCTOBER 04, 2018

[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]

Arbitration: Dispute between a sick company and the Development Authority – Regarding the land owned by the Company – Writ petition by the Company seeking to resolve the dispute – High Court dismissed the petition holding that the appropriate remedy for the relief was a suit and not a writ petition – On appeal direction by Supreme Court to settle the dispute amicably – Amicable settlement failed – Request of the parties to refer the matter to sole Arbitrator – Held: Various disputes including the issue in the appeal, referred to sole Arbitrator – Sole Arbitrator appointed to decide the disputes – Appeal disposed of.

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Oil and Natural Gas Commission and Anr. v. Collector of Central Excise (1995) Supp 4 SCC 541; Oil and Natural Gas Corpn. Ltd. vs. City & Industrial Development Corporation, Maharashtra Ltd. And Ors. (2007) 7 SCC 39 : [2007] 8 SCR 429 – referred to.

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Case Law Reference

(1995) Supp (4) SCC 541 referred to Para 11
[2007] 8 SCR 429 referred to Para 11

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10203 of 2018

From the Judgment and Order dated 06.07.2018 of the High Court of Judicature at Bombay in Writ Petition No. 5122 of 2018.

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Debabrata Ray Choudhuri, Sr. Adv., Ranjan Kumar Rai, Amol Nirmalkumar Suryawanshi, Chirag M.Shroff, Ms. Sanjana Nangia, Ms. Joyshree Barman, Ms. Monisha Suri, Advs. for the appearing parties.

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A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated 06.07.2018 passed by the High Court of Judicature at Bombay in Writ Petition No. 5122 of 2018 whereby the High Court dismissed the Writ Petition filed by the appellant herein.

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3. It is not necessary to set out the entire factual details except few one, which are necessary for the disposal of the appeal.

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4. The appellant (Company) is a Government of India Undertaking, which is controlled and function under the Ministry of Chemicals and Fertilizers, having its registered office at Pimpri, Pune.

5. The appellant (Company) is engaged in the manufacturing of life saving drugs at affordable prices for the weaker sections of the Society. One such drug manufactured by the appellant is “Penicillin-G”.

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6. The appellant (Company) entered into a joint venture with one foreign Company-Royal Gist Brocades, Netherlands for doing business of manufacturing “Penicillin-G”. However, for myriad reasons, it did not do well and the joint venture was forced to close down their activities. The matter was then referred to the Board for Industrial & Financial Reconstruction (BIFR), which eventually prepared a rehabilitation scheme under the Sick Industrial Companies (Special Protection) Act, 1985 (SICA).

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7. The appellant (Company) owns and in possession of 263.57 acres of land at Pimpri, Pune on which the factory and the residential colony are built. Some land, however, remains lying idle.

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8. The disputes have arisen between the appellant (Company) and the State through its Authority called - Maharashtra Housing and Area Development Authority (MHADA) in relation to the aforementioned land for its disposal etc.

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9. The appellant (Company), therefore, in order to resolve the disputes filed a writ petition in the High Court of Bombay against the respondents (State and MHADA) out of which this appeal arises seeking appropriate mandamus or/and any other writ, order, as the case may be, for disposal of the part of the aforesaid land (plot Nos. 8 and 9).

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10. The Division Bench of the High Court, by impugned order, dismissed the writ petition filed by the appellant (Company) on the ground that having regard to the nature of the reliefs and averments on which they are founded, the proper remedy of the appellant would lie in filing the suit in the Civil Court and not in filing the writ petition in the High Court under Article 226/227 of the Constitution of India. It is this order, which has given rise to filing of this appeal by way of special leave by the appellant (Company) in this Court.

11. On 20.09.2018, when this matter came up for consideration, we felt that since all parties to the appeal are either Public Undertaking or/and the State and its agencies (MHADA), the matter should be amicably settled by the parties concerned sitting across the table rather than to drag the dispute(s) in the Court. It was also felt that it is more so keeping in view the observations of this Court made in **Oil And Natural Gas Commission And Another vs. Collector Of Central Excise**, 1995 Supp (4) SCC 541 and **Oil & Natural Gas Corpn. Ltd. vs. City & Industrial Development Corporation, Maharashtra Ltd. And Others**, 2007 (7) SCC 39 and the mandate of Order 27 Rule 5 of the Civil Procedure Code, 1908 (hereinafter referred to as “the Code”) which cast a duty on the Court to ensure that such dispute should be resolved amicably.

12. The parties were accordingly granted time to report by the next date of hearing of the outcome of their talk and the mode on which the disputes arising between them can be settled. The matter was accordingly adjourned for 28.09.2018.

13. The parties, however, on the next date of hearing expressed that it is not possible to come to any mutually acceptable terms due to myriad reasons. The parties, however, requested to refer the matter to any sole Arbitrator and left it to the Court to pass appropriate orders in that behalf including an order appointing an Arbitrator to decide the dispute(s) by an award.

14. On hearing the learned counsel for the parties and keeping in view the nature of the controversy, the observations of this Court made in both the **ONGC cases** cited supra, the status of the parties and lastly, the mandate contained in Order 27 Rule 5 of the Code, we are of the considered opinion that the various disputes which have arisen

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A between the parties including the one which is the subject matter of the writ petition/appeal be referred to the sole Arbitrator for his decision.

15. We, accordingly, request Mr. Justice R.V. Raveendran- former Judge of this Court to act as a sole Arbitrator for deciding the dispute(s), which have arisen between the parties to this appeal.

B 16. The parties are accordingly directed to obtain the consent of Mr. Justice R.V. Raveendran to act as a sole Arbitrator on the terms suggested by him. Let it be done within 2 weeks.

17. We leave it for the learned Arbitrator to decide the terms of reference for its adjudication after hearing the parties.

C 18. The appeal stands accordingly disposed of.

Kalpana K. Tripathi

Appeal disposed of.