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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10553 OF 2019**

Jagubai Jaganath Patil and Ors ... Petitioners

vs.

Vasudha Construction Company through ... Respondents
Partners and Ors

Mr. Amit Dubey a/w. Ms. Ritika Gupta, Mr. Shubham Mishra i/b. Law
Counsellors for the Petitioners.

Mr. Aniruddha A. Garge a/w. Mr. Jitendra H. Oak for Respondent
Nos. 1 to 3.

CORAM : GAURI GODSE, J.

DATED : 21st APRIL 2026

ORDER:

1. This petition is filed by the defendants to challenge the order passed by the trial court rejecting the application filed under Section 8 of the Arbitration and Conciliation Act, 1996('Arbitration Act'). The trial court has held that the court has jurisdiction to entertain the suit.

2. Learned counsel for the respondent raises a preliminary objection by referring to Section 37 of the Arbitration Act. He submits that under Section 37(1)(a) of the Arbitration Act, 1996, an order refusing to refer the parties to arbitration under Section 8 is appealable to the court authorised to hear the appeal from the

original decree of the court passing the order. He therefore submits that the impugned order would be appealable.

3. Learned counsel for the petitioners submits that there are two orders challenged in the petition. One order is under Section 8 of Arbitration Act and another order is on the application on behalf of the defendants to vacate the order of status quo dated 13th March 2019. He, therefore, submits that this court can entertain this petition.

4. I have perused the papers. The order dated 26th April 2019, rejecting the application at Exhibit 31 is the order refusing to vacate the status quo order. There is no dispute that the main application under Order 39, Rule 1 of CPC is still pending before the trial court. Hence, it is always upon for the defendants to file a reply to the application and argue the main application on merits.

5. So far as the order refusing to refer the parties to arbitration is appealable in view of Section 37 of the Arbitration Act. Hence, I do not see any reason to interfere with the impugned order in the exercise of discretionary jurisdiction under Article 227 of the Constitution of India. The petitioners shall be at liberty to adopt appropriate proceedings as permissible in law to challenge the order dated 26th April 2019, passed under Section 8 of the Arbitration Act.

In the event, said order is challenged, all rival contentions of the parties on merits are kept open.

6. It is clarified that if appropriate proceedings to file an appeal are adopted within six weeks from today, the petitioners shall be entitled to seek the benefit of pendency of this petition in applying for condonation of delay.

7. The writ petition is dismissed, subject to the aforesaid liberty.

8. At this stage, learned counsel for the petitioners requests to extend the interim protection granted by this court vide order dated 17th December 2019. By the said order, this court had requested the trial court to defer hearing of the suit beyond the next date in this petition.

9. To enable the petitioners to challenge the order under Section 8 of the Arbitration Act, the trial court shall defer the hearing of the suit beyond the period of six weeks, from today.

(GAURI GODSE, J.)