

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No 1691 of 2021
(Arising out of SLP(C) No 6212 of 2021)

Panipat Jalandhar NH-1 Tollway Pvt Ltd

.... Appellant(s)

Versus

National Highways Authority of India

....Respondent(s)

ORDER

1 Leave granted.

2 By an order dated 12 March 2021, a learned Single Judge of the High Court of Delhi entertained the application filed by the appellant under Section 9 of the Arbitration and Conciliation Act 1996¹. After holding that a *prima facie* case for the grant of *ad-interim* relief was established, the learned Single Judge stayed the notice of termination dated 5 March 2021 till the next date of hearing by directing it to be kept in abeyance. The application under Section 9 was directed to be listed on 13 April 2021. The Division Bench, in an appeal moved by the National Highways Authority of India,² came to conclusion that the learned Single Judge was in error in staying the termination. The Division Bench held that Articles 36 and 37 of the Concession Agreement are not mutually exclusive and the invocation of the right to suspend under Article 36 did not preclude NHAI from exercising its right of termination under Article 37. However, having come to the conclusion that the learned Single Judge was in error by restraining NHAI from exercising its right of termination, the Division Bench not only vacated the

1 “1996 Act”

2 “NHAI”

order of stay granted by the learned Single Judge on 12 March 2021, but proceeded to dispose of the application under Section 9 of the 1996 Act in its entirety on the ground that it seeks the same relief.

2 Having heard Dr Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the appellant and Mr Parag P Tripathi, learned Senior Counsel appearing on behalf of the respondent, we are of the view that the Division Bench was not in error in deciding the correctness of the *ad-interim* order passed by the learned Single Judge. However, it was inappropriate for the Division Bench in the facts of the present case to take up the application under Section 9 and to dispose it of in its entirety without the appellant having been given an opportunity to urge all facets before the Single Judge. In the course of pursuing the application under Section 9, the appellant was entitled to place its submissions in regard to the existence of a *prima facie* case, the balance of convenience and irreparable injury.

3 Hence, on these facts, we are of the view that the interests of fairness would require that the application under Section 9 of the 1996 Act should be restored to the file of the Single Judge to be heard and disposed of expeditiously. The Single Judge had directed the application under Section 9 to be listed for final disposal on 13 April 2021, which date has already elapsed during the pendency of the proceedings emanating from the order of the learned Single Judge. In that view of the matter, we restore the application under Section 9 of the 1996 Act for disposal before Single Judge of the High Court of Delhi. The observations which are contained in the impugned order of the Division Bench of the High Court dated 13 April 2021 shall only be treated as *prima facie* observations confined to the disposal of the appeal against the *ad-interim* order and shall not come in the way of both the parties urging all appropriate contentions before the Single Judge. Upon the conclusion of the proceedings under Section 9 of the

1996 Act, the Single Judge would be at liberty to pass such orders as are deemed appropriate and proper in law and having due regard to the facts and circumstances of the case.

4 Keeping open all the rights and contentions on merits and subject to the aforesaid directions, the application under Section 9 of the 1996 Act, being OMP (I) (COMM) 98 of 2021, is restored to the file of the Single Judge for disposal

5 The appeal is accordingly disposed of.

6 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

New Delhi;
April 27, 2021
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ITEM NO.5 Court 5 (Video Conferencing) SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).6212/2021

(Arising out of impugned final judgment and order dated 13-04-2021 in FAO(OS)(COMM) No. 55/2021 passed by the High Court of Delhi at New Delhi)

PANIPAT JALANDHAR NH-1 TOLLWAY PVT. LTD. Petitioner(s)

VERSUS

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent(s)

(WITH IA No.54640/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 27-04-2021 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
 HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Dr Abhishek Manu Singhvi, Sr. Adv.
 Mr. Mukul Rohatgi, Sr. Adv.
 Mr. Dhirendra Negi, Adv.
 Mr. Sidharth Sethi, AOR
 Ms. Pragya Chauhan, Adv.
 Mr. Avinash Das, Adv.

For Respondent(s) Mr. Parag P. Tripathi, Sr. Adv.
 Ms. Astha Tyagi, AOR
 Ms. Madhu Sweta, Adv.
 Mr. Akshay Kumar Tiwari, Adv.
 Mr. Srinivas Ramaswamy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 Leave granted.
- 2 The appeal is disposed of in terms of the signed order.
- 3 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)