

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).514/2007

(From the judgement and order dated 15/11/2006 in AP No. 287/2006 of The
HIGH COURT OF BOMBAY)

M/S MASCON MULTISERVICES & CONSUL.PVT.LT

Petitioner(s)

VERSUS

BHARAT OMAN REFINERIES LTD.& ANR.

Respondent(s)

(With prayer for interim relief and office report)

Date: 06/12/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P.P. NAOLEKAR
HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Ms. Meenakshi Arora,Adv.

For Respondent(s) Mr. M.L. Verma,Sr.Adv.

Mr. Parijat Sinha,Adv.
Mr. Soumitra Ghose Chaudhuri,Adv.
Mr. R. Rea Sinha,Adv.
Ms. Snehashish Mukherjee,Advl

UPON hearing counsel the Court made the following
ORDER

Leave granted. The appeal is disposed of in terms of
the signed order.

(Ganga Thakur)
P.S. to Registrar

(Neeru Bala Vij)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5670 OF 2007
(Arising out of SLP(C) No.514/2007)

M/S MASCON MULTISERVICES & CONSUL.
PVT. LTD.

...APPELLANT (S)

Versus

BHARAT OMAN REFINERIES LTD. & ANR.

..RESPONDENT
(S)

ORDER

Leave granted.

Heard learned counsel for the parties.

On 10th of March, 2006, the appellant moved an application that the Arbitrator had become functus officio and a request was made to the Arbitrator not to proceed with the arbitration proceedings. On 8th May, 2006, the Arbitrator dismissed the application filed by the appellant. This order of the Arbitrator was challenged by the appellant on 12.7.2006 by filing Arbitration Petition No. 287/06 under Sections 14, 15, 16, 21 and 34 of the Arbitration & Conciliation Act seeking declaration that Mr. S.K. Saini, Arbitrator had become functus officio, thus could not proceed with the arbitration proceeding. The petition filed by the appellant was admitted on 26.7.2006 and the Arbitrator was restrained from continuing further proceedings. During the pendency of the proceedings, learned counsel for the respondent suggested appointment of Mr. R.P. Singh, Managing Director as the Arbitrator. It is alleged that learned counsel for the appellant had conveyed to the court the refusal of consent to the appointment of Mr. R.P. Singh as Arbitrator. By order dated 15.11.2006, the High Court accepted the request of learned counsel for the respondent to appoint Mr. R.P. Singh, Managing Director as sole Arbitrator. This order is under challenge before us.

On 4.10.1996, Work Order was issued in favour of the appellant and the work was to commence from 10.10.1996 and to be completed by 9.10.1997. On 30th December, 1996 Work Agreement was executed. On 6.8.1999 the contract of the appellant was terminated by the respondent. On termination of the contract, the appellant raised claim before the respondent on 9.9.1999 which was rejected on 13.1.2000. On 27.4.2000, the appellant issued notice demanding arbitration in terms of Clause 29.3 read with Clause 91 of General Conditions of Contract. The notice of the appellant was replied by the respondent on

5.5.2000, however, no Arbitrator was appointed by the respondent. On 22nd of June, 2000, petition was moved before the High Court under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of Arbitrator. After filing of the application under Section 11 of the said Act in the court, on 24.6.2000 respondent appointed Mr. S.K. Saini, Executive Director as an Arbitrator. By order dated 23rd of February, 2001, the High Court appointed Mr. S.K. Saini as an Arbitrator. Thereafter, proceedings were taken up by the Arbitrator.

From the statements of fact mentioned hereinabove, it is apparent that the court has not decided the application filed by the appellant claiming that the Arbitrator had become functus officio and therefore could not have proceeded with the arbitration proceedings. Unfortunately a decision is not given on the application filed by the appellant claiming relief of declaration that Mr. S.K. Saini, Arbitrator appointed by the court had lost his right to proceed with the arbitration as he had become functus officio. There is no question of appointment of new Arbitrator to take up the arbitration proceedings. Learned counsel for both sides have agreed to this position.

In view thereof, in the facts and circumstances of this case, we set aside the impugned order dated 15.11.2006 passed by the High Court and the matter is remanded for consideration of Arbitration Petition No.287/06 by the High Court in accordance with law. It will be open for the parties to raise respective contentions before the High Court in relation to the appointment of the Arbitrator.

The appeal is disposed of accordingly.

(P.P. NAOLEKAR)

.....J.

(DALVEER BHANDARI)

.....J.

New Delhi,
December 6, 2007.