

(2016) 10 BOM CK 0174

Bombay High Court

Case No: Appeal No. 253 Of 2015, Chamber Summons (L) No. 1341 Of 2014, Notice No. 716 Of 2014, Exeuction Application No. 320 Of 2014

Vikram

APPELLANT

Vs

Vyas And Ors Vs Madhusudan G.
Vyas And Ors

RESPONDENT

Date of Decision: Oct. 26, 2016

Acts Referred:

- Arbitration And Conciliation Act, 1996 - Section 2(2), 36, 37, 47

Hon'ble Judges: Manjula Chellur, CJ; M.S. Sonak, J

Bench: Division Bench

Advocate: Arief Bookwala, Farid Karachiwala, Sahil Saiyed, Nikhil Apte, D.D. Madon

Final Decision: Dismissed

Judgement

1. The present appeal challenges the impugned order, which is in execution proceedings for implementing an award passed in the arbitration proceedings.

2. When the appeal came up for admission, Mr. D.D. Madon, learned senior advocate appearing for respondent Nos. 1, 2 and 7, raises the question of

maintainability of the appeal by placing reliance upon the decision of the Division Bench of this Court in Jet Airways (India) Limited v. Subrata Roy,

Sahara (2012) 2 AIR Bom R 855 With regard to maintainability of the appeal, the Division Bench of this Court, in Jet Airways (India) Limited (supra),

has raised three issues for consideration, which read as under;

â€œA. Whether the proceedings under section 36 of the 1996 Act are proceedings under the Code of Civil Procedure, 1908?

B. Whether the provisions of clause 15 of the Letters Patent are applicable to the impugned Judgment and Order and whether applicability of clause

15 has been impliedly excluded by section 37 of the 1996 Act or by the amendment of section 2(2), 47 by Act 104 of 1976 amending the Code?

C. Whether the Judgment of Supreme Court in the case of Fuerst Day Lawson (supra) is an authority which is applicable only in respect of a foreign

award covered by Part II of the 1996 Act or whether the ratio of the said Judgment is a binding precedent even in respect of proceedings under part I

of the 1996 Act or the same is obiter dicta?â€

3. Ultimately, while answering the issues A, B & C, the Division Bench has opined that the appeal is not maintainable in the light of observations made

in the various paragraphs of the said decision. Learned senior advocate for respondent Nos. 1, 2 and 7 also referred to the decision of the Supreme

Court in Fuerst Day Lawson Limited v. Jindal Exports Limited (2011) 8 SCC 333 with reference to maintainability of the appeal.

4. In view of the decision of the Division Bench of this Court in Jet Airways (India) Limited (supra) and also the decision of the Supreme Court in

Fuerst Day Lawson Limited (supra), we are of the opinion that the present appeal is not maintainable and the same is dismissed accordingly.