

HIGH COURT OF GUJARAT (D.B.)**METAS OF SEVENTH-DAY ADVENTIST***Versus***WOCKHARDT HOSPITALS LIMITED****Date of Decision:** 10 January 2018**Citation:** 2018 LawSuit(Guj) 17**Hon'ble Judges:** [M R Shah](#), [Biren Vaishnav](#)**Case Type:** First Appeal; Civil Application**Case No:** 3769 of 2017; 15042 of 2017, 15081 of 2017**Subject:** Arbitration, Civil**Acts Referred:**[Code Of Civil Procedure, 1908 Or 39R 2\(a\)](#)[Arbitration And Conciliation Act, 1996 Sec 9, Sec 17](#)**Advocates:** [Mihir Joshi](#), [Tanvish U Bhatt](#), [Wadiaghandy](#), [Mihir Thakore](#), [Nandish Chudgar](#), [Nanavati Associates](#)**M.R. Shah, J.**

[1] Feeling aggrieved and dissatisfied with the impugned order passed by the learned Judge, Commercial Court, Vadodara passed in Commercial CMA No.44 of 2017, by which the learned Judge has allowed the application preferred by the respondent herein - original applicant submitted under section 9 of the Arbitration Act, the original respondent has preferred the present First Appeal.

[2] At the outset, it is required to be noted that during the pendency and final disposal of the present First Appeal, by detailed order this Court has suspended / stayed the impugned order passed by the learned Judge, Commercial Court. However, by way of interim arrangement, earlier ad-interim order dated 2/11/2017 has been continued and it was clarified that earlier ad-interim order dated 2/11/2017 is not disturbed / stayed at this stage.

2.01. It appears that some proceedings initiated by the original applicant under Order 39 Rule 2(A) of the Code of Civil Procedure alleging breach of earlier ad-

interim order dated 2/11/2017, is pending before the learned Judge, Commercial Court pursuant to the impugned order passed by the learned Judge dated 17/11/2017 and the same is separately ordered to be numbered. It also appears that even one application preferred by the appellant herein - original respondent for clarification of the earlier ad-interim order dated 2/11/2017 is also pending.

[3] Today when the present appeal is taken up for further hearing, Mr.Mihir Thakore, learned counsel appearing on behalf of the respondent herein - original applicant has submitted that after the interim order was passed by this Court dated 17/11/2017 passed in Civil Application No.15042 of 2017 and as such, after the impugned order dated 17/11/2017 passed by the learned Judge, Commercial Court allowing the application under section 9 of the Arbitration Act, development has taken place and pursuant to one another order passed by this Court, now dispute between the parties is referred to the learned sole Arbitrator who is now seized with the matter. He has also stated at the bar that the application under section 17 before the learned sole Arbitrator shall be filed today.

Therefore, Mr.Mihir Thakore, learned counsel appearing on behalf of the respondent herein - original applicant has requested to dispose of the present appeal by further submitting that the original applicant has no objection if the impugned order dated 17/11/2017 passed in the application under section 9 of the Arbitration Act is ordered to be permanently suspended.

3.01. Mr.Mihir Thakore, learned counsel appearing on behalf of the respondent herein - original applicant has also requested to make suitable observations that the learned Arbitral Tribunal to decide and dispose of the applications under section 17 of the Arbitration Act in accordance with law and on its own merits and without in any way being influenced by the present order of permanently suspending the order dated 17/11/2017.

3.02. Mr.Mihir Thakore, learned counsel appearing on behalf of the respondent herein - original applicant has further requested to make suitable observations that the concerned Court to decide and dispose of the application under Order 39 Rule 2(A) of the Code of Civil Procedure and the applications for clarification in accordance with law and on its own merits and without in any way being influenced by the present order of permanently suspending the impugned order dated 17/11/2017, as the alleged breach is of the earlier ad-interim order dated 2/11/2017.

[4] Mr.Mihir Joshi, learned counsel appearing on behalf of the appellant herein has requested that the appellant herein may be permitted to raise contention / defence

before the learned Arbitral Tribunal in the applications under section 17 of the Arbitration Act that once the original applicant invoked jurisdiction under section 9 of the Arbitration Act, thereafter it will not be open for the original applicant to submit applications under section 17 of the Arbitration Act and that too for the same reliefs sought in the application under section 9 of the Arbitration Act.

[5] Having heard the learned counsel appearing on behalf of the respective parties and considering the stand taken by the learned counsel appearing on behalf of the original applicant now as recorded hereinabove, that the original applicant has no objection if the impugned order passed by the learned Judge, Commercial Court dated 17/11/2017 passed in the application under section 9 of the Arbitration Act is permanently suspended, meaning thereby, the order passed by the learned Judge, Commercial Court passed in the application under section 9 of the Arbitration Act is not to be given effect permanently, as if the impugned order dated 17/11/2017 has not been passed under section 9 of the Arbitration Act, we dispose of the present First Appeal by permanently suspending / staying the impugned order 17/11/2017 passed in the application under section 9 of the Arbitration Act, as if the learned Judge has not passed the impugned order dated 17/11/2017 at all and the impugned order passed by the learned Judge may not be given effect for any purpose whatsoever. Under the circumstances, as such to the aforesaid extent it can be said that the present First Appeal is allowed.

[6] Now, so far as the proceedings initiated before the learned Arbitral Tribunal and/or to be initiated by further submitting applications under section 17 of the Arbitration Act are concerned, it is observed that the learned Arbitral Tribunal to consider the said applications under section 17 of the Arbitration Act independently, in accordance with law and on its own merits and all the contentions and defences which may be available to the respective parties are kept open to be considered by the learned Arbitral Tribunal. It is further observed that the proceedings under Order 39 Rule 2(A) of the Code of Civil Procedure initiated by the original applicant and the applications for clarifications be considered by the learned trial court in accordance with law and on its own merits for which we have not expressed anything on merits and even with respect to entertainability and/or maintainability of such proceedings and all the contentions and defences which may be available to the respective parties are kept open to be considered by the concerned Court, independently in accordance with law and on its own merits.

In view of the disposal of the First Appeal, Civil Application Nos. 15042 of 2017 and 15081 of 2017 stand disposed of.

In the facts and circumstances of the case, there shall be no order as to costs.