

M/S. GAIL (I) LTD.

v.

BAL KISHAN AGARWAL GLASS INDUSTRIES LTD.  
(Civil Appeal No. 4918 of 2008)

AUGUST 7, 2008

[DR. ARIJIT PASAYAT AND DR.MUKUNDAKAM  
SHARMA, JJ.]

*Arbitration and Conciliation Act, 1996 – s.17 – Interim orders – Agreement between appellant and respondent for supply of gas – Supply discontinued – Dispute over terms of re-connection – Suit filed by respondent notwithstanding pending arbitral proceedings – Orders passed by Civil Court and High Court – Held: Under s.17, interim orders can be passed by arbitrator – Respondent directed to make application for interim arrangement before the arbitrator.*

**An agreement was entered into between the appellant and the respondent for supply of gas. The gas meter was found tampered and consequently, the gas supply was discontinued. The appellant, in accordance with the terms for re-connection asked the respondent to deposit 50% of the outstanding amount and security for balance. The respondent filed a civil suit praying for direction to the appellant to execute deed for renewal of gas supply without demanding any payment or security. The interim orders passed by the trial court and the High Court to resume supply of gas on the terms suggested gave rise to the instant appeal.**

**It was contended for the appellant that inasmuch as the matter was pending before the Arbitrator, the Civil Court ought not to have passed any order in the civil suit and the High Court was not justified in practically affirming the order of the Civil Court except variation of certain conditions.**

**Disposing of the appeal, the Court**

A HELD: In the instant case, proceedings are pending  
before the arbitrator. Under s.17 of the Arbitration and Con-  
ciliation Act, 1996, interim orders can be passed by the  
Arbitrator. In the circumstances of the case, the following  
directions are being given: (1) Within a period of ten days,  
B the respondent shall make an appropriate application for  
interim arrangement before the Arbitrator; (2) Within a  
period of three days from the date of receipt of copy of  
the application, the appellant shall file the response/obj-  
C ection, if any and (3) Within a period of ten days thereaf-  
ter the Arbitrator is requested to dispose of the applica-  
tion in accordance with law. It is open to the respondent  
to place the proposal which was filed in the Court. The  
Arbitrator shall consider the matter in proper perspective.  
[Paras 7, 8] [1030 E,F 1030 F,G,H, 1031 A,B]

D CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4918  
of 2008

From the final Judgment and Order dated 18.9.2007 of  
the High Court of Judicature at Allahabad in F.A.F.O. No. 1339-  
D of 2007

E G. Vahanvati, S.G. Udit Kumar, Chanchal Biswal and Rajiv  
Tyagi for the Appellant.

F T.R. Andhyarujina, Abhishek Mohan Sinha, Jaya Bharuka,  
Hansa Bharuka and Devashish Bharuka for the Respondent.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT.** 1. Leave granted.

G 2. Challenge in this appeal is to the judgment of a Division  
Bench of the Allahabad High Court disposing of appeal (FAFO  
No. 1339-D of 2007) which was preferred by the appellant  
against the order dated 31.8.2007 passed by learned Judge of  
Small Causes Court/Civil Judge (Senior Division) Agra, in Suit  
No. 285 of 2007. By the said order the application for interim  
H mandatory injunction was disposed of with certain directions.

3. Background facts as projected by the appellant giving rise to the appeal in a nutshell are as follows:

On 17.9.1996 an agreement was entered into between the appellant and the respondent for supply of gas. The agreement was valid upto 31.3.2002 and was further extended from time to time upto 31.3.2006. On 3.12.2004 officials of the appellant inspected the factory premises of the respondent and found that gas supply has been tampered with. Similar incidents were noticed on 15.1.2005 and 17.3.2005. Therefore on 28.5.2005 gas supply was discontinued. Respondent filed writ petition No. 44679 of 2005 before the Allahabad High Court. By order dated 18.7.2005 the High Court dismissed the writ petition on the ground that alternative remedy of arbitration was available under Section 9 of the Arbitration and Conciliation Act, 1996 (in short the 'Arbitration Act'). The order was not challenged by the respondent. On 10.8.2005 proposal was given for restoration of gas supply on the respondent furnishing undertakings, which was in fact done. Thereafter gas supply was reconnected on 22.2.2006. It was again found that the gas meter was tampered with, which lead to disconnection on 28.2.2006. On 27.3.2006 an order was passed by the District Judge, Agra to continue gas supply till 31.3.2006. On 3.4.2006 gas supply was stopped. Again a writ petition was filed by the respondent i.e. Writ petition No. 2283 of 2006. By order dated 1.11.2006 the Allahabad High Court disposed of the writ petition holding that the proper remedy for the respondent was to make a representation to the appellant since no mandamus can be issued for extension of contract or for giving benefit to any proposed contract. On 29.3.2007 appellant indicated the terms for re-connection namely deposit of 50% of the outstanding amount of Rs.8,10,79,057/- and security for balance through mortgage of immovable property and clearance of all outstanding dues in respect of the gas supply. Civil Suit No.285 of 2007 was filed by the respondent with inter alia a prayer for directing the appellant to execute the deed of renewal of gas supply without

A demanding any payment or security. An application was filed by the appellant in terms of Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short the 'CPC') and Section 8 of the Arbitration Act. Learned Civil Judge directed that the fresh proposal dated 9.2.2006 should be given effect to without any further terms and conditions. As noted above an appeal was preferred which was disposed of by the impugned order dated 18.9.2007 on certain terms. The terms read as follows:

- C 1. The Plaintiff-Respondent shall deposit a sum of two crores with the respondent and a security to the tune of six crores in the form of second charge of the immovable property along with bond for payment with the Defendant-Appellant.
- D 2. Out of two crores, the plaintiff-respondent shall deposit a sum of Rs.50 lac with the defendant-appellant within a period of one month. The security to the tune of six crore will also be deposited within a month.
- E 3. They will further continue to deposit a sum of Rs.5 lac per month with the plaintiff-respondent in the first week of every month till entire Rs. two crores are deposited. The first installment of Rs.5 lac will start from the month of November, 2007 i.e., the first installment of 5 lac has to be paid by 7<sup>th</sup> of November, 2007. These deposits will be in addition to the charges of the gas to be supplied to the Plaintiff-Respondent. They will be kept by the Defendant-Appellant in fixed deposit in any nationalised bank and will abide the Arbitration proceedings and subject to final decision of the case.
- F 4. The Defendant-Appellant will resume gas supply of the Plaintiff-Respondent after deposit of Rs. 50 lac and the security for 6 crores.
- G 5. It will be open to the Defendant-Appellant to stop the
- H

- gas supply in case of default in depositing the payment within the above stipulated time. A
6. Defendant-Appellant will also be entitled to inspect the meters and any if tampering in meter is found, it will be open to the Defendant-Appellant to stop the supply of gas after giving notice to the Plaintiff-Respondent. B
4. According to Mr. G.E. Vahanvati learned Solicitor General what in essence the respondent sought for in the suit is relief in terms of Section 10 of the Specific Relief Act, 1963 (in short the 'Act'). In order to bring application of the said provision there must be a contract. Section 39 of the said Act relates to an obligation flowing from a contract upon mutually agreed upon terms. There was no question of any automatic renewal. As a matter of fact the extension of the period of contract is not automatic and has to be done on mutually agreed upon terms. In the instant case, there was no contract in existence, and therefore there is no question of granting any relief in the suit. Additionally, there was a specific clause relating to arbitration. It is pointed out that the Civil court was aware of the earlier order of the High Court. It is, therefore, submitted that the learned Civil judge could not have passed the order which was impugned before the High Court. Unfortunately the High Court disposed of the appeal before it without taking note of the fact that earlier in Writ Petition No. 44679 of 2005, the court had dismissed the writ petition on the ground of alternative remedy. The said order was not challenged. It is accepted that an arbitrator has in fact been appointed. C D E F G
5. Mr. T.R. Andhyarujina, Learned Senior Counsel appearing for the respondent on the other hand H

A submitted that the appellant's conduct was not above  
board. Initially, it had suggested certain terms for  
reconnection. But backed out of it and even it was  
not keen on the early disposal of the proceeding  
before the arbitrator. The question whether any  
B amount is payable as penalty as claimed by the  
appellant can be the subject matter of adjudication  
by the arbitrator. Since unreasonable terms were  
indicated for resumption of gas supply, the  
respondent had no alternative but to avail the civil  
C suit. It was suffering huge losses and there were  
human problems like unemployment of a large  
number of employees who earn their livelihood from  
their employment in the respondent's factory. A  
proposal has also been filed by the respondent during  
D the hearing of the appeal.

6. Mr. Vahanvati, submitted that since the matter is  
pending before the Arbitrator, the Civil Court should  
not have passed any order and the High Court was  
not justified in practically affirming the order of the  
E trial court except variation of certain conditions.

7. Undisputedly, the proceedings are pending before  
the arbitrator. Under Section 17 of the Act, interim  
orders can be passed by the Arbitrator.

F 8. In the circumstances we dispose of the appeal with  
the following directions:

1. Within a period of ten days from today the  
respondent shall make an appropriate application  
G for interim arrangement before the Arbitrator;

2. Within a period of three days from the date of  
receipt of copy of the application, the appellant  
shall file the response/objection, if any;

H 3. Within a period of ten days thereafter the

Arbitrator is requested to dispose of the application in accordance with law. It is open to the respondent to place the proposal which was filed in the Court. Needless to say, the Arbitrator shall consider the matter in proper perspective. A

9. We make it clear that we have not expressed any opinion on the terms of the conditions, if any, which can be imposed and/or whether any interim order is called for in the matter. The appeal is accordingly disposed of without any order as to costs. B

B.B.B.

Appeal disposed of. C