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Bombay High Court upholds interim arbitral order refusing relief to Max Healthcare in dispute with CARE Hospitals

The arbitrator passed an interim order on the Section 17 application against Max, which approached the High Court for the second time on July 27 to challenge the order.



Max Healthcare Institute and Care Hospitals

Neha Joshi

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The Bombay High Court on Tuesday upheld an interim order passed by the court-appointed arbitrator in the contractual dispute between Max Healthcare, Care Hospitals and TPG Inc. [*Max Healthcare v. Care Hospitals*]

Justice **Manish Pitale** upheld a July 19 order passed by arbitrator and former High Court judge Justice **SJ Kathawalla**, who refused to grant urgent interim relief to Max and also refused to grant status quo as regards third-party right.



Max Healthcare approached the High Court on May 3, 2023 to protect its rights under the term sheet signed with Care Hospitals and Touch Healthcare, Quality Healthcare and Evercare Group Management, to acquire the hospital chain.

Quality Care is the company that operates Care Hospitals, while Touch Healthcare and Evercare are part of the US-headquartered fund TPG.

Max filed a petition under Section 9 of the Arbitration and Conciliation Act to protect its contractual rights before commencement of the arbitration proceedings.

Justice **Milind Jadhav** on May 3 **directed the parties** to adjudicate their issues before an arbitrator instead and appointed Justice Kathawalla as the sole arbitrator.

The arbitrator was also directed to decide Max's interim application under Section 17 of the Arbitration Act for urgent relief, within two weeks.

The arbitrator passed an interim order on the Section 17 application against Max, which **approached the High Court** for the second time on July 27 to challenge the order.

Max's urgency was that Care Group had already assigned third-party rights to another company.

This, it claimed, was in violation of a binding term sheet signed by Max with Care Hospitals. It thus sought an order of status quo on third-party rights.

Max Healthcare was represented by Senior Advocate **Janak Dwarkadas**, who was briefed by a team from Nishith Desai Associates led by Partner Vyapak Desai.

Care Hospitals was represented by Senior Advocate **Darius Khambata**, who was briefed by a team from Shardul Amarchand Mangaldas led by Partner Meghna Rajadhyaksha.

A detailed order is awaited.

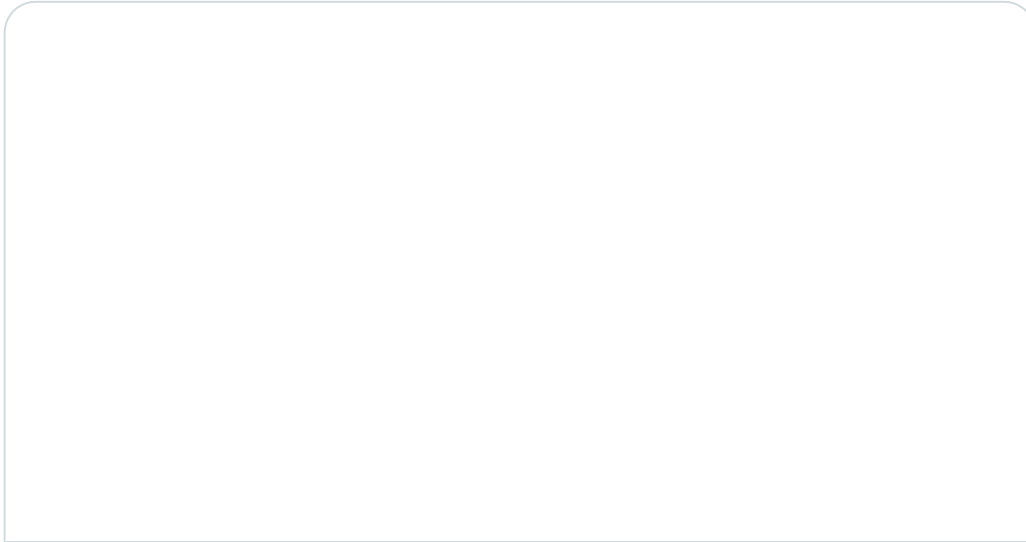
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Bombay High Court directs State to frame guidelines for test identification parades in POCSO cases

The Court was astonished to note from the evidence that a minor victim of 6 years was made to appear in jail premises in order to identify the culprit amongst a line of dummies and she was asked to touch the perpetrator.



Aurangabad Bench with POCSO Act

Neha Joshi

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The Aurangabad bench of Bombay High Court on December 19 directed the Maharashtra government to frame guidelines for conducting test identification parades (TI parades) in cases under the Protection of Children from Sexual Offences (POCSO) Act [*Parvej Khan v. State of Maharashtra & Ors.*].

A test identification parade is to test the witness on her capability to identify from among several persons, an unknown person whom the witness had seen in the context of an offence.

A division bench of Justices **Vibha Kankanwadi** and **Abhay Waghvase** directed the State government to come up with a standard operating procedure (SOP) to keep details of the victim confidential while participating in the TI parade.

“We direct State to formulate suitable guidelines to be adhered to, while conducting TI parade in cases attracting provisions of Protection of Children from Sexual Offences Act, 2012 and to further suggest Standard Operating Procedure to be adopted, keeping in mind the aspect of confidentiality of details of the victim and also suggest necessary precautionary measures to be taken while making victim participate in TI parade for identifying perpetrator, with requisite infrastructural set up for the same,” the Court said.

The Court was hearing an appeal filed by a convict sentenced to life imprisonment in 2019 for raping a minor girl in 2018.

The Court was astonished to note from the evidence that a minor victim of 6 years was made to appear in jail premises in order to identify the culprit amongst a line of dummies and she was asked to touch the perpetrator.

The Court expressed serious concern at the disregard shown by the special executive magistrate by not complying with the procedure stipulated under the POCSO Act to take precautions to avoid confrontation of the accused and victim.

The Court also noted that medical experts and investigators had failed to take due care to follow guidelines for collection, preservation and documentation of evidence, including the doctor who failed to distinctly seal the biological evidence samples.

“We have noticed that in spite of directions issued by the Apex Court time and again regarding meticulous compliance of Standard Operating Procedure to be adopted during collection of biological and non-biological evidence and its preservation to avoid its degradation and to further maintain its integrity, the stakeholders like medical experts, who conducted physical examination of both, victim and accused, and retrieved samples, so also the police machinery and the forensic experts have shown utter disregard to the procedure contemplated and spelt out in the form of guidelines,” the Court observed.

It directed the District Legal Services Authority to enquire into the current status of the victim and check whether she has received adequate compensation.

It also directed the government to organise periodic sensitisation programmes for all the stakeholders including the police, medical experts, forensic experts and prosecutors.

“We take this opportunity to bring it to the notice of the State as well as prosecution that, all stakeholders like police, medical experts, forensic experts and even prosecutors to be sensitive to the need of proper collection, sampling, preservation and safe custody to rule out possibility of diminishing and/or degrading the quality of evidence. Such authorities need to keep themselves well informed and updated on the guidelines issued by Health Ministry/Home Ministry,” the bench ordered.

[Read Order]

Attachment



Parvej Khan v. State of Maharashtra.pdf

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