

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 2.4.2009
Date of Order: 25th May, 2009

OMP No. 86/2009

%

25.05.2009

Arun Kathpalia

... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with
Mr. M.Dutta, Advocate

Versus

J.M.Mukhi

... Respondent

Through: Mr. J.M.Mukhi, Respondent-in-Person

JUSTICE SHIV NARAYAN DHINGRA

- | | |
|--|------|
| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the reporter or not? | Yes. |
| 3. Whether judgment should be reported in Digest? | Yes. |

JUDGMENT

This application/petition has been made by the petitioner under Sections 14/15/23 and 25 of the Arbitration & Conciliation Act, 1996 (in short "the Act") seeking termination of the mandate of the present Arbitrator and for appointment of another Arbitrator in his place. It is stated by the applicant/petitioner that the learned Arbitrator in this case was appointed by this Court on 19th January, 2005, despite passage of more than four years, the

respondent has avoided filing of his statement of claim before the learned Arbitrator and the learned Arbitrator continued the proceedings and refused to terminate the proceedings in accordance with Section 25 of the Act resulting into the abuse of the arbitral proceedings by the respondent.

2. The petitioner and the respondent in this case both are advocates and the dispute between them is in respect of dissolution and accounts of a partnership firm of advocates. The petitioner submits that the prolonged arbitration proceedings without even filing of the claim by the respondent was paralyzing his professional career and the fact that for four years the Arbitrator has not even obtained statement of claim from the respondent, who was claimant before the Arbitrator, was sufficient to terminate the mandate of the Arbitrator.

3. It is submitted that when the proceedings commenced by an order dated 5th February, 2005, the respondent/claimant was directed to file a statement of claim within six weeks. No statement of claim was filed within this period and by an order dated 14th May, 2005, the learned Arbitrator extended time for filing claim by another six weeks from 14th May, 2005. No statement of claim was yet filed and the claimant made an application that he was unable to file his statement of claim in absence of certain records and asked for extension of time. Thereafter, the matter was routinely adjourned from time to time between 5th May, 2005 and 29th November, 2005 at the request of the respondent/claimant. On 29th November, 2005 the claimant filed an application

under Section 17 of the Arbitration and Conciliation Act, 1996 seeking certain interim directions. The Arbitrator then proceeded with disposal of this application and pleadings in this application were completed on 9th February, 2006. The application was finally argued and on 17th March, 2006, the learned Arbitrator decided this application in favour of the claimant. The petitioner herein preferred an appeal against the order and the same was set aside by this Court by a judgment dated 17th May, 2006 passed in OMP No. 150/2006. Thereafter till date no statement of claim has been filed by the claimant and the proceedings were continuing only on application under Section 17. The applicant/petitioner on 18th January, 2008 filed an application under Section 12 & 13 of the Arbitration & Conciliation Act, 1996 expressing loss of confidence in the Arbitrator due to above circumstances. This application was dismissed/disposed of vide order dated 21st November, 2008 by the learned Arbitrator.

4. A prayer is made that the mandate of the Arbitrator should be terminated in terms of provisions of Section 14 (1)(a) because of failure of the Arbitrator to act without undue delay.

5. The application is opposed by the respondent, who appeared in person, being an advocate, and stated that he did not want to file reply to the petition and shall straightway argue the matter. He submitted that there was no delay on his part and it was the petitioner, who was responsible for delay in proceedings before the learned Arbitrator. The petitioner and he were running a

partnership firm and in between he had to go abroad. At his back the petitioner did all kinds of misdeeds resulting into loss of his prime clientage. He was unable to file the claim before the Arbitrator because of non-availability of copies of balance-sheet, copies of bank statements, income expenditure accounts for the financial year upto 31st March, 2004. Directions were given to the petitioner by the Arbitrator and by this Court from time to time, but the petitioner had not been furnishing full documents to him showing details of earnings, details of expenditure and other aspects of the partnership firm and the dissolution thereof later on. The respondent placed on record various orders passed from 26th March, 2004 to 5th December, 2007 and stated that in view of non-giving of details by the petitioner, the respondent had not been able to file the statement of claim before the learned Arbitrator. The petitioner cannot take benefit of his own wrong.

6. I consider that the basic premise of moving the Court for appointment of an Arbitrator for resolution of dispute is that the claimant knows, what are his claims that are required to be adjudicated. If the claimant/respondent was not aware as to what were his claims against the petitioner, there was no reason for resorting to arbitration and there was no reason for this Court to appoint the Arbitrator. Appointment of an Arbitrator had taken place only because the respondent represented to the Court that there was dispute between him and petitioner and he had known claims against the

petitioner to be adjudicated. It is strange that even today, the respondent is taking stand that he does not know what is the extent of his claims against the petitioner and he is not able to file statement of claim before the Arbitrator. I think this itself should be a sufficient ground to terminate the arbitration proceedings. The plea of holding back of documents by the petitioner or non discovery of documents by the petitioner is concerned, I consider that this plea could have succeeded only if the respondent had filed his claim before the Arbitrator and asked the Arbitrator or this Court under Section 9 to pass necessary orders for discovery of documents from the petitioner. The respondent was at liberty to produce evidence before the Arbitrator in respect of his claim. The evidence includes oral evidence, the evidence of clients, the evidence from Registrar of Firms, evidence from banks etc. If during the course of evidence, respondent had come to know that he had claimed lessor amount than what was due, the Arbitration and Conciliation Act, 1996 gives liberty to him to amend the claim. However, the Arbitration & Conciliation Act, 1996 does not envisage the arbitration proceedings without the claimant knowing what his claim is or without claimant filing his claim before the arbitrator.

7. I consider that the learned Arbitrator in this case miserably failed to act in accordance with the basic principles of settlement of a dispute. The basic principle of settlement of a dispute is that the learned Arbitrator should know what is the claim of the claimant and what is the stand of the respondent and

what are factual or legal issues involved. In absence of any claim having been filed before the Arbitrator, the learned Arbitrator should have terminated the proceedings in terms of the Section 25(a) of the Arbitration & Conciliation Act, 1996. Non-availability of documents cannot be a cause to continue arbitration proceedings without a claim for more than four years. However, the Arbitrator in this case did not terminate the arbitral proceedings and that is why the petitioner is before the Court.

8. Section 5 of the Arbitration Act prohibits intervention of the Court in the matters governed by part I of the Arbitration & Conciliation Act except where it is so provided in this part. Section 14 of the Act gives powers to the Court to terminate the mandate in the circumstances where the Arbitrator fails to act without undue delay. In the present case, the learned Arbitrator failed to act and to give directions to the respondent/claimant to file claim within a reasonable time. Though the directions were initially given to the respondent to file claim within six weeks, which period was further extended by another six weeks after May ' 01 but when the respondent did not file the claim, the Arbitrator failed to act thereafter and did not press the respondent to file the claim for four years. I consider that in view of Section 14(2) of the Act, it is appropriate that mandate of the Arbitrator should be terminated.

9. Normally, when the mandate of an Arbitrator is terminated, the Court under Section 15(2) of the Arbitration & Conciliation Act should appoint an

Arbitrator in place of the Arbitrator whose mandate is terminated, but in the present case, there is no claim of the respondent/claimant, to be adjudicated by the Arbitrator. Had there been a claim of the respondent/claimant, he would have filed it before the existing Arbitrator. In absence of any claim made by the claimant, I consider that there is no use of appointing another Arbitrator in place of the existing Arbitrator, since the succeeding Arbitrator will not have anything to decide.

10. The proceedings in this case should have been terminated long back under Section 25(a) of the Act, because of failure of the respondent/claimant to file the claims. I, therefore, allow this petition. The mandate of the Arbitrator is hereby terminated.

May 25, 2009
vn

SHIV NARAYAN DHINGRA, J.