

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
(Not reportable)

F-226

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OMP No. 684 of 2007

S.S. SINHA

..... Petitioner

Through: Mr. Krishna Kumar with
Mr. Pradeep Kumar, Advocates.

Versus

HCL TECHNOLOGIES LTD & ANR

..... Respondents

Through: Ms. Anita Bahri with
Mr. Gaurav Puri, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

01.11.2012

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1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an impugned Award dated 5th July 2007 passed by the learned sole Arbitrator in the dispute between the Petitioner, Mr. S.S. Sinha, and the Respondent No. 1, HCL Technologies Limited ('HCL'). By the impugned Award, the learned Arbitrator allowed the claims filed by the HCL in the sum of Rs. 22 lakhs together with interest @ 8% per annum from 1st March 1999 till the date of actual payment and rejected the counter claim filed by the Petitioner.

2. The background to the present petition is that the Petitioner was issued a letter of appointment dated 20th September 1996 by HCL offering him a post of President, Software Development Centre. Apart from specifying the

compensation package which worked out to Rs. 1.50 lakhs per month, the said letter *inter alia* stated that the Petitioner would be covered under “Attractive Performance Bonus Scheme of the company subject to a maximum of Rs. 1,50,000”, flexible expenses plan basket of Rs. 5.5 lakhs, hard furnishing scheme up to Rs. 1,50,000. The Petitioner was also covered by the Equity linked Wealth Creation Scheme in the following terms:

“You shall be covered under Attractive Equity Linked Wealth Creation Scheme of the Company, under which you shall be provided with Housing Loan at nominal interest and Stocks sufficient to cover this amount shall be offered to you. Details of this scheme shall be communicated to you on joining.”

3. It is not in dispute that on 23rd January 1997 the Petitioner received a cheque in the sum of Rs. 22 lakhs from HCL. There is a handwritten receipt of the Petitioner in this regard which was marked as Ex. P-2A in the arbitral proceedings. The case of HCL was that the said amount was given to the Petitioner as loan. This was disputed by the Petitioner. According to him, although he did sign the loan agreement (which was marked as Ex. P-1 in the arbitral proceedings), no person on behalf of HCL had signed it. This was the principal dispute between the parties.

4. Another critical document is a mortgage deed dated 28th January 1997, a copy of which was exhibited as P-2 in the arbitral proceedings. This

mortgage deed was entered into between the Petitioner's wife and HCL. In the preamble clause of the said mortgage deed, it was noted that the Petitioner's wife had approached the HCL requesting to lend her a sum of Rs. 22 lakhs "on mortgage of the property described in the schedule attached, since she is the sole and absolute owner." The said mortgage deed was signed not only by the wife of the Petitioner but the Petitioner himself as well as a representative of HCL.

5. The Petitioner served with HCL till 28th February 1999. Thereafter while on the one hand HCL was asking the Petitioner to repay the loan, the Petitioner made representations to it on 27th April 1999, 4th October 1999 and 12th January 2000 for payment of certain amounts to which he claimed he was entitled in terms of the appointment letter dated 20th September 1996. The stand of HCL as evidenced from the email dated 14th June 1999 addressed to the Petitioner by Mr. Sujeet Bakshi was that since the Petitioner had not served the full tenure in terms of the employment letter dated 20th September 1996 he was not entitled to the Employees' Stock Option Plan ('ESOP'). The Petitioner through his advocate sent a legal notice dated 4th October 1999 calling upon HCL to make payment of Rs. 72.50 lakhs together with interest @ 18% per annum. Reminders were sent on 12th January 2000 and 9th June 2000.

6. HCL filed Arbitration Petition No. 83 of 2000 under Section 11 of the Act in this Court. The case of HCL was that there was a loan agreement between the parties which fact has been disputed by the Petitioner. The aforementioned petition was disposed of by this Court by an order dated 15th February 2002 which reads as under:

“In spite of several opportunities, Respondent has not filed reply to the instant petition through which appointment of Arbitrator is being sought for adjudicating the disputes raised therein. In view of the failure of the Respondent to file reply in spite of several opportunities, petition has to be allowed. There is no dispute as to the existence of arbitration clause in the correspondence as well as loan agreement between the parties. Petition is allowed.

Justice A.B. Rohtagi, Retd. Judge of this Court is appointed as Arbitrator. The learned Arbitrator shall fix his own fee. The parties shall appear before the learned Arbitrator on 18th March 2002. However, the Respondent shall be at liberty to prefer counter claim, if any, before the learned Arbitrator in order to adjudicate all the disputes arising from the said agreement.

Copy of this order be sent to the learned Arbitrator.”

7. Before the learned Arbitrator, HCL filed its claim in May 2002. The Petitioner filed his reply as well as counter claim on 30th July 2002. HCL filed its affidavit by way of evidence in February 2003 and the Petitioner filed his affidavit by way of evidence dated 14th October 2003. Long thereafter, the Petitioner filed an additional affidavit dated 31st May 2007 enclosing a photocopy of a purported document bearing monogram of HCL

containing a handwritten note. According to the Petitioner, this was written by Mr. Shiv Nadar, Chairman of HCL. On the basis of the said document, the Petitioner sought the summoning of Mr. Shiv Nadar as witness in the arbitral proceedings.

8. In the impugned Award dated 5th July 2007, the learned Arbitrator negated the contention of the Petitioner that the sum of Rs. 22 lakhs was not repayable by him to HCL and that it was to be adjusted against the dues owing to the Petitioner by HCL. The learned Arbitrator categorically held that there was a loan transaction between the parties whereby a sum of Rs. 22 lakhs was advanced to the Petitioner on the express understanding that it would become repayable once the Petitioner's service with HCL ceased. The learned Arbitrator declined the prayer of the Petitioner for summoning of Mr. Shiv Nadar as a witness in the arbitral proceedings.

9. The learned Arbitrator proceeded to hold that the Petitioner's counter claim was barred by limitation; it was beyond the scope and purview of the arbitration clause; that the Petitioner had failed to prove the amount of Rs. 89.23 lakhs claimed by him from HCL. The learned Arbitrator further held that in the absence of the signature of HCL's representative, the loan agreement was not valid and that in any event the advancing of a sum of Rs. 22 lakhs to the Petitioner by HCL stood proved by other documents.

Accordingly, the learned Arbitrator held that the Petitioner should pay HCL a sum of Rs. 22 lakhs together with interest @ 8% per annum from 1st March 1999 till the date of actual payment and also pay Rs. 3 lakhs as costs of arbitration. The Petitioner's counter claim was rejected.

10. It was first contended by Mr. Krishna Kumar, learned counsel for the Petitioner, that the Petitioner had not conceded to the existence of the arbitration clause between the parties as there was no such clause in the service contract but only in the loan agreement which in any event was not signed by HCL's representative. This Court is unable to accept the above plea in view of the order dated 15th February 2002 passed by this Court while appointing the sole Arbitrator where it was specifically stated that "there is no dispute as to the existence of arbitration clause in the correspondence as well as loan agreement between the parties." The above order has not been challenged by the Petitioner.

11. This Court was taken through the arbitral record including the affidavits by way of evidence, the statement of claims, reply and counter claim. It was urged by Mr. Krishna Kumar that the learned Arbitrator grievously erred in observing that there was a transaction of loan and that "there is no nexus between the loan and employment benefits." Mr. Krishna Kumar repeatedly urged that the service contract made it clear that

the Petitioner would be entitled to be “covered by the stock option plan” offered to the Petitioner and as long as the Petitioner was not actually provided the stock option plan of HCL the question of the Petitioner having to repay a sum of Rs. 22 lakhs to HCL did not arise at all. According to the Petitioner, the said sum was to be adjusted against stocks or any employee benefit scheme owing to the Petitioner. In his counter claim, the Petitioner quantified the amount due to him under the ESOP as Rs. 15 lakhs @ Rs. 7.5 lakhs per year for the period 1997-98, 1998-99 when he had rendered service with HCL. Additionally, he had claimed performance bonus of Rs. 6 lakhs under profit sharing bonus option and additional payment of Rs. 50 lakhs over and above the ESOP gains for two years.

12. The scope of this Court’s powers under Section 34 of the Act is limited. The Court is not expected to re-appreciate the evidence and come to a different conclusion only because it is possible to do so. In other words, this Court is not exercising an appellate jurisdiction under Section 34 of the Act. It is only expected to determine if the impugned Award suffers from patent illegality or whether it is opposed to the public policy of India.

13. The learned Arbitrator had examined both the documents and evidence carefully. In his cross-examination, the Petitioner admitted to having signed the mortgage deed dated 28th January 1997 together with his wife

and that the said mortgage deed was a collateral security. When asked whether there was any writing to show that the loan amount given as an advance was not returned to HCL and to be adjusted against benefits owing to him under other schemes, he replied 'there is no writing to this effect'.

14. It must be observed at this stage apart from reading the relevant portions of the Petitioner's affidavit by way of evidence, the learned counsel for the Petitioner was unable to show any document in terms of which the Petitioner was not required to repay the amount of Rs. 22 lakhs. There is also no document to show that the loan amount was to be adjusted against other amounts owing to the Petitioner by HCL. The learned Arbitrator was right in highlighting the preamble clause of the mortgage deed which clearly stated that the Petitioner's wife had requested HCL to lend a sum of Rs. 22 lakhs to him on mortgage of the property described in the schedule. This recital further showed that a sum of Rs. 22 lakhs was advanced as loan to the Petitioner and towards the security of which a mortgage was created on the property standing in the name of his wife. The conclusion of the learned Arbitrator that there was a loan transaction and that the sum of Rs. 22 lakhs was repayable by the Petitioner to HCL cannot be said to be suffering from any patent illegality.

15. Learned counsel for the Petitioner was also unable to show any

document which entitled the Petitioner to payments under the ESOP. The learned Arbitrator while referring to the email written by Mr. Bakshi observed that ESOP would be available to the Petitioner only if he served four years. If there was any understanding to the contrary then the burden was on the Petitioner to prove it in accordance with law. The Petitioner was unable to do so. The relevant clause of the letter dated 20th September 1996 concerning the Equity linked Wealth Creation Scheme was repeatedly read by learned counsel for the Petitioner to urge that there was an obligation thereunder on HCL to issue stocks worth Rs. 7.5 lakhs to the Petitioner for every year of service. This Court is unable to read into the said clause any such obligation on the HCL.

16. Learned counsel for the Petitioner was critical of the learned Arbitrator declining the prayer to summon Mr. Shiv Nadar as a witness. This Court was also shown the handwritten note which contains a single line as under:

“one crore worth in 4 years outside housing programme in ESOP”.

The said line hardly advances the case of the Petitioner that the loan amount was not to be repaid or to be adjusted against other entitlements. No purpose would have been served in summoning Mr. Nadar for that purpose. This Court is unable to find any illegality in the decision of the learned Arbitrator rejecting the Petitioner’s request for summoning Mr.

Nadar as witness.

17. The learned Arbitrator has rightly drawn a distinction between the counter claim and a set off. It is not in dispute that the counter claim was admittedly filed on 30th July 2002 whereas the Petitioner had left the services of HCL before 1st March 1999 itself. It was for the Petitioner to show how his counter claim was within time. In any event even on merits, the Petitioner was unable to prove his entitlement to the specific amounts claimed by him by way of counter claim.

18. Finally, it is urged by Mr. Krishna Kumar that the loan was advanced to the Petitioner with simple interest @ 2% per annum and therefore, the learned Arbitrator ought not to have awarded HCL simple interest @ 8% per annum. The above submission is based on the misreading of the relevant clause which required the Petitioner to pay 2% interest on a monthly basis. In any event the learned Arbitrator has only awarded interest for the pre-reference period, i.e., from 1st March 1999 and not from the date when the loan was advanced to the Petitioner. The rate of simple interest @ 8% per annum can hardly be said to be excessive or unreasonable. Considering the number of years over which the dispute has been pending, award of Rs. 3 lakhs as costs of arbitration cannot be said to be unreasonable.

19. The finding of the learned Arbitrator was based on a proper analysis of the evidence on record. This Court is unable to find any patent illegality vitiating the impugned Award dated 5th July 2007. The petition is dismissed, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J.

NOVEMBER 01, 2012

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