

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11.11.2013
Pronounced on: 24.01.2014

+ **WP(C) No.2401/2013 & CM Nos.14605-14607/2013**

MR. DEEPAK KHOSLA

.....Petitioner

Through: Mr. Deepak Khosla, Petitioner in person.

Versus

HON'BLE HIGH COURT OF DELHI & ORS. Respondents

Through : Mr. A.Sharma, proxy counsel for Mr. Rajiv Bansal, Advocate for Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. In this writ proceeding, the petitioner Mr. Deepak Khosla claims several directions. These concern six general issues, i.e., the need to frame rules under the Arbitration and Conciliation Act, 1996, rules as to when orders should be pronounced after the judgment is reserved and procedure to be adopted when applications are filed in such reserved cases, norms to enforce judicial discipline and avoid conflicting orders and practice directions with respect to listing of petitions under Section 9 and 11 of the Arbitration and Conciliation Act, 1996.

2. The pleadings in the writ petition run in to 87 pages, with a total of about 15 reliefs being claimed. During the hearing, Mr. Khosla, who

represented himself, highlighted that there is need for the various Benches of this Court to be uniform and consistent in respect of previous orders. He highlighted in this regard especially that orders dated 29.05.2009 in OMP 316/2009 were disregarded by another learned Single Judge on 16.11.2010 in OMP 613/2010. Similarly, he states that the order in CCP 165/2008 dated 3.2.2010 was not followed by another learned Single Judge in the course of the same matter, on 15.12.2011. Likewise, it is stated that the order of 25.08.2009 in CCP 165/2008 was not followed on 15.12.2011 in the very same proceedings. Other instances of learned Single Judges not following previous orders have been mentioned. Mr. Khosla submitted that such approach not only disclose lack of judicial discipline and lack of consistency but amount to nullity and have to be declared as such.

3. It is submitted that each of these five instances clearly bring out the inconsistency of approach on the vital question whether a party in a proceedings under Section 9 of the Arbitration and Conciliation Act who is not a party to the arbitration agreement can be proceeded against and whether such proceedings are maintainable.

4. Mr. Khosla relied upon the rulings reported as *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra*, AIR 2005 SC 752 and *Heinz Italia v. Dabur India Ltd.*, AIR 2005 Cal 89 to argue that once in the course of proceedings a view is expressed by a Judge of the Court, the parties to the said litigation or *lis* are bound by it and in subsequent matters concerning the same *lis* or with respect to the same parties, other Benches of the same Court cannot take a different view. It was urged that unless the view is displaced by a larger formation of a

Division Bench or Full Bench, the initial view has to prevail.

5. Mr. Khosla underlines that the overwhelming view regarding maintainability of a petition under Section 9 proceedings (and orders) made against non-parties to arbitration agreements has been that such petitions cannot be entertained. In that regard, he placed reliance on 12 orders made in different cases – listed in paragraph 49 of the writ petition – and submitted that out of these 12, in 9 cases different Benches of the Court had held that such non-parties to the agreement could not be joined in a proceedings under Section 9 whereas there was only one solitary instance where the categorical answer was that such proceeding was maintainable.

6. It was submitted that in all decisions where different Benches of this Court disregarded the previous view holding that Section 9 proceedings could not be initiated against non-parties to the arbitration agreement were in nullity and had to be disregarded and had to be declared as such.

7. It was argued next that for the sake of consistency, this Court should declare or at least direct framing of practice directions and rules with respect to how matters should be proceeded with at the time of their being reserved. Mr. Khosla submitted that suitable rules had to be made in tune with the decision of the Supreme Court in *Anil Rai v. State of Bihar*, (2001) 7 SCC 318. He next urges that the difficulty faced by the litigants is that when orders are reserved by the Court and if any application is to be moved, the Registry does not permit such a course and refuses to entertain matters without express authority of the concerned Judge. It is submitted that this not only causes inconvenience

but compels the litigant or the party to approach the Court for leave to even file such applications that seek urgent orders. Mr. Khosla submits that this procedure is unwarranted and that applications ought to be entertained even after the matters are reserved in the same manner as in the other cases.

8. It was urged next that apart from the practice directions this Court should also declare that all proceedings and actions taken pursuant to the first listing of certain matters, i.e., OMP 613/2010, AA No.93/2008 and CCP 165/2008 are nullity for the reasons that in each of these cases those impleaded as parties were not in reality parties under the arbitration agreement. It was also urged that consequently the orders made in those proceedings including interim orders are nullity in law. Mr. Khosla relied upon *Udai Shankar Triyar v. Ram Kalewar Prasad Singh*, AIR 2006 SC 269 to say that ordinarily procedure only assists the quest of justice but at the same time if the filing of a petition or initiation of proceedings is contrary to statute, all actions taken pursuant to it are a nullity.

9. It was urged that in view of Rules 1 and 2 of Chapter 12 of the Original Side Rules governing this High Court, adjournments cannot be granted on the asking of any one party or even by the Court on its own motion except for good cause. Mr. Khosla submitted that even in such cases where the adjournments are unavoidable for reasons of large number of cases or causes being listed before the concerned Judge or Bench, the litigant has a right to insist that his case ought to be adjourned to the very next hearing date and not to some distant date which might cause him untold hardship and inconvenience. Furthermore, Mr. Khosla argued that not only the reasons for granting adjournments should be

recorded but the litigant or party is also entitled to costs. He submitted that the Courts routinely re-notify matters on account of insufficient time or other reasons. Such a practice, according to him, should not be allowed. He made several suggestions, the effect of which was that the hearing of each case should be regulated in terms of time and that every Judge or Bench should have fixed number of cases beyond which the causes should be fixed for other dates. This, according to him, would obviate the need for frequent adjournment of cases and ensure that litigants are afforded reasonable opportunity of hearing of their cases and reasonable time frame for their resolution.

10. After arguments were heard, the order was reserved on 11.11.2013. The matter was again listed on 18.11.2013 when Mr. Khosla insisted that he would argue some applications and proceeded to do so in respect of CM Application Nos.15161-63/2013. In these applications, it was urged that whenever conflicting orders as to the rights and liabilities of parties in the course of *inter se* disputes is noticed or wherever there is dichotomy of judicial opinion their ought to be no scope for further debate and the litigant would have a right to insist that such matters should be referred to a larger bench. He argued that in the present instance too it was brought to the notice of the Court that on no less than five occasions, different Judges have passed orders despite being informed of the previous orders to the contrary. He stated that therefore, this Court has no choice but to refer the present writ petition itself for decision by a larger bench.

11. From the above discussion, it is evident that the petitioner seeks directions for the framing of rules under the Arbitration and Conciliation

Act, 1996. He also attacks what he terms as inconsistent orders made in the course of certain proceedings to which either he or members of his group including his wife Ms. Sonia Khosla were not parties. The thrust of the grievance in this regard is that such orders were contrary to the intent and purpose of the previous orders made in other proceedings or in the course of the very same proceedings. The underlying theme, however, was that in those cases despite being informed that under Section 9 proceedings non-parties to arbitration agreement cannot be issued with restraints orders, learned Judges of this Court proceeded to do so. The petitioner, therefore, seeks – in the first part – the relief that such orders and even the initiation of legal proceedings by which the petitions were registered and all further proceedings and actions thereon - are a nullity. What is particularly relied upon is an order of 26.04.2010 in CCP (CO) 11/09 (*Montreaux Resorts Pvt. Ltd. v. Vikram Bakshi & Anr.*) and the further order in FAO 394/2010 dated 1.6.2010. According to Mr. Khosla, this order was disregarded and a contrary order was made on 16.11.2010.

12. This Court notices that the subsequent order - in OMP 613/2010 - was delivered after hearing on 16.11.2010. In paragraph 24 of that order, the Court discussed the same submission which Mr. Khosla made in this case, as to the binding nature of the order in CCP (CO) 11/2009. In that case, the learned Single Judge discussed the effect of it and held that it did not constitute a binding precedent. The learned Single Judge also proceeded to discuss other contentions with regard to as to whether the company was a party to the arbitration agreement and held that since it is bound by such agreement, proceedings under Section 9 were

maintainable. Likewise, the order of 15.12.2011 in Contempt Case No.165/2010 was taken into consideration. Mr. Khosla has nowhere mentioned whether he felt aggrieved by any of these orders, especially the order of 16.11.2009 and if such matters are pending in appeal.

13. This Court is of the opinion that the arguments of the petitioner with regard to “nullity” of what he characterizes the orders impugned by him have no force. Nullity can have several meanings, and it is not within the scope of these proceedings, nor is it appropriate to explore each of them. What the petitioner seems to suggest is that nullity signifies (a) the refusal to follow or give effect to observations and orders made previously in the course of the same proceeding, and (b) refusal to follow or give effect to previous orders, by the Court, in later matters or subsequent cases, amount to nullity.

14. As observed previously, the petitioner’s emphasis was the “indiscipline” and inconsistency in the approach of various benches and judges of this Court in respect of whether those who are not parties to arbitration agreements can be arrayed as parties in Section 9 proceedings. A list of 12 judgments outlining the views expressed on the issue was pressed into service. The argument here was that when in 9 of those 12 judgments, the Court ruled that such injunctions could not be issued, the Benches which gave such orders, acted in violation of law and that such orders amounted to nullity.

15. Nullity then, as understood by the petitioner and urged by him, of such orders is because the Court failed to adhere to precedent. This Court is of opinion that such a wide interpretation of the term “nullity” cannot be accepted. The petitioner does not dispute that these orders were

made in the course of judicial proceedings. It is undisputed that the Court possessed territorial and subject matter jurisdiction. If the Court did not adhere to precedent, such orders do not result in nullity, in that they are, without any subsequent review mechanism, unenforceable. Rather, these orders can be subject to appeal. The petitioner does not say if indeed he sought the correction of such orders or their setting aside in appeal. In these circumstances, to entertain a broad based attack on orders made 3-4 years ago on the ground of their nullity would, in this Court's opinion, be inexpedient and wholly inappropriate. Besides, those orders were made by single judges and resulted in orders of court. The exercise of powers by this Division Bench on the assumption that orders made in exercise of original subject matter jurisdiction can be subject to correction or supervision under Article 226 of the Constitution is without any legal basis.

16. This Court is of the opinion that as to whether a third party (to arbitration agreements) cannot be restrained under Section 9 of the Arbitration Act is not a subject matter to be gone into academically. In this writ petition, the Court is not seized of any elements of the *lis* between the parties, and nor can it do so for the simple reason that they are private disputes. Expressing an opinion on the question – even though pertaining to a legal issue – would be indulging in an academic exercise, and crucially, one that lies beyond the jurisdiction of the Court in the present proceedings. Besides, the Court notices that in one of the rulings (*Value Advisory Services v. Zte Corporation & Ors.*, OMP 65/2008, decided on 15.07.2009) the opinion expressed was that there

can be no rigid “yes” or “no” answer to this question and the grant or refusal of order would depend on the facts of each case. The Court there also listed known and established instances where non-parties to litigation are bound by interim orders, during pendency of proceedings, and even thereafter, in execution. Furthermore, a Division Bench (in *Indian Railways Catering & Ors. v. Cox & Kings (India) Ltd.*, FAO (OS) No.433-35/2011, decided on 6.1.2012) had the occasion to examine this point. The Court did not accept the proposition that such third parties cannot be made subject to proceedings or orders under Section 9. A judgment of the Supreme Court in *Chloro Controls (India) Pvt Ltd. v. Severn Trent Water Purification Inc. & Ors* 2012 (9) SCALE 595 has also held that there can be no absolute or rigid proposition that third parties to arbitration agreements cannot be made parties to proceedings under the Act. For the above reasons, this Court rejects the submission and claim that proceedings involving third parties, and orders made in the cases detailed by the petitioner are a nullity in law.

17. So far as the question of regulating delivery of judgments is concerned, the ruling in *Anil Rai* has indicated the applicable guidelines. This Court is of the opinion that it should not add any guidelines of general application. The rule indicated by the Supreme Court is that a decision is meant to be complied with ordinarily. Indeed, it is up to the Chief Justice of the High Court to take steps in this regard. This Court would not wish to add anything further since it would amount to laying broad propositions with respect to the functioning of other judges. Likewise, there is nothing deleterious in the practise adopted by the Registry in

refusing to list an application moved by a litigant after judgment is reserved in the matter. The current practise of listing such applications after leave of the concerned judge is given is both reasonable and sound. This court is conscious that parties to a litigation or case are afforded opportunities at different stages, i.e. filing pleadings and documents and making their respective submissions in the hearings before court to present their viewpoints completely. Thus, once a Bench reserves a case for judgment, it is after the opportunity of hearing is granted. If any litigant wishes to present some more arguments, or reveal fresh facts, it should be only after the concerned judge or bench permits that. Any other practise would be susceptible of inordinately lengthening the hearing and disposal of the main case itself, as every application so moved without the Bench's leave can potential lead to further delay in judgment. Therefore, the prevailing practise of not listing a new application without permission of the Bench which reserves judgement does not call for any change. If in fact urgent orders are required, the party concerned can approach the judge during mentioning, who in his or her discretion, list it for appropriate orders or directions.

18. The petitioner's argument that the Court should frame rules under the Arbitration and Conciliation Act, 1996 is largely premised on his understanding that the position as regards parties to the cases filed under Sections 9 and 11 need to be regulated in the context of whether the parties are signatories to the arbitration agreement. In this context, it would be reasonable to assume that the court seized of the matter – be it under Section 11 or Section 9 – would satisfy itself on that score. To direct framing of rules on this ground alone, therefore, would be

inexpedient. At the same time, the court notes that to indicate a uniform approach with respect to matters of procedure as well as consolidate the practice directions issued in regard to matters concerning arbitration petitions and causes which are filed in court, the appropriate authority may consider the feasibility of framing rules under Section 82 of the Act as well as publishing a scheme contemplated under Section 11 (10). The Court clarifies that this is not a direction. It may be appropriately considered and such action as is deemed necessary, taken in that regard.

19. The court now proposes to deal with the argument of Mr. Khosla that when a judge or Bench hearing the cause is unable to either complete the hearing or take up the matter due to paucity of time or heavy workload, the matter should be listed on the next hearing date. As suggestions go, this facially appears to be eminently reasonable. However, the petitioner asks the court to overlook the nature of the case load which each judge has to shoulder. The number of listings of cases for the year 2011-12 (i.e. the number of times various matters were listed) was 3,87,453, and the number of working days was 211. The average number of benches (single and division bench) for this period was 28. This meant that each Bench had to deal with about 65 cases every day. This crushing workload repeated relentlessly each day – a common phenomenon in all High Courts – leaves the presiding judge or the court with little choices in regard to listing matters. During the hearing, the petitioner kept insinuating that judges frequently adjourn cases and do not seem to work. This comment even if considered as fair criticism (which it did not appear to be, having regard to the tone and manner in which it was addressed) overlooks that the judge does not

work only in court, but rather that she or he has to read matters after completing the hearing, analyze the arguments, and dictate judgements. This is over and above the daily task of having to correct and sign the day's order sheets and study the papers for the next day's hearing. Often, reserved cases require long hours of study, research and reflection, for which time is devoted during weekends and term holidays. If the petitioners' suggestion of entitling every litigant a hearing the next day if his case is not heard on the scheduled date were to be acceded to, the Bench would be swamped with an unmanageable load of cases each day, paving the way to chaos and disaster, where the hearing of the case itself would be uncertain. The present arrangement where the court fixes the next date of hearing, in case of its inability to hear it on the particular fixed date, is neither unreasonable nor does it result in unfair results, having regard to the overall circumstances, such as the case load, the judge strength at any given point of time, the time available, etc.

20. In view of the above discussion, this Court is of opinion that the directions sought for by the petitioner cannot be granted. The writ petition and applications filed with it, are, accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

January 24, 2014