

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NOS. 436, 455, 456, 457, 460,
461, 462 and 500 OF 2015**

WRIT PETITION NO. 436 OF 2015

IFIN Commodities Ltd.,
A Company represented by
its whole time Director,
Continental Chambers,
3rd Floor, Mahatma Gandhi road,
Nungambakkam Chennai,
represented herein by
C. Prassanna Lakshmi,
represented through
Power of Attorney,
Senior Legal Executive,
having its office at
No. 142, Mahatma Gandhi Road,
Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
Proprietress of 3P World,
R/o D-No 801, Mantri Pride,
Mountain Road, Jaya-Nagar,
Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
S/o M.L. Sharma,
R/o D-No 801, Mantri Pride,
Mountain Road, Jaya-Nagar,
Bangalore-11.
3. Mr. Anil Madgavkar,
33 years of age, having office at
Nizari Bhavan, 5th floor,
Menezes Braganza Road,
Panaji-Goa.

... Respondents

WRIT PETITION NO. 455 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Mr. Anand A. Madgavkar,
 65 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

WRIT PETITION NO. 456 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Ms. Nadisha Madgavkar,
 28 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

WRIT PETITION NO. 457 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Celsa Madgavkar,
 55 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

WRIT PETITION NO. 460 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Ms. Anika Madgavkar Lobo,
 32 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

WRIT PETITION NO. 461 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Ms. Nisha Madgavkar,
 33 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

WRIT PETITION NO. 462 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Mr. Akash V. Madgavkar,
 25 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

WRIT PETITION NO. 500 OF 2015

IFIN Commodities Ltd.,
 A Company represented by
 its whole time Director,
 Continental Chambers,
 3rd Floor, Mahatma Gandhi road,
 Nungambakkam Chennai,
 represented herein by
 C. Prassanna Lakshmi,
 represented through
 Power of Attorney,
 Senior Legal Executive,
 having its office at
 No. 142, Mahatma Gandhi Road,
 Nungambakkam Chennai, 600 034.

... Petitioner

Versus

1. Rashmi Sharma, Major of age,
 Proprietress of 3P World,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11 and her husband;
2. Mr. Rajesh Sharma, Major of age,
 S/o M.L. Sharma,
 R/o D-No 801, Mantri Pride,
 Mountain Road, Jaya-Nagar,
 Bangalore-11.
3. Ms. Ayesha A. Madgavkar,
 29 years of age, having office at
 Nizari Bhavan, 5th floor,
 Menezes Braganza Road,
 Panaji-Goa.

... Respondents

Mr. Jagannath J. Mulgaonkar, Advocate for the Petitioner.

Mr. Vijay Palekar, Advocate for the Respondent Nos. 1 and 2.

Mr. Ashwin D. Bhobe, Advocate for the Respondent No. 3.

CORAM:- C. V. BHADANG, J.

DATED:- 8th OCTOBER, 2015

JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Palekar, learned Counsel waives service for the respondent nos. 1 and 2 and Mr. Bhobe, learned Counsel waives service for the respondent no. 3. Heard finally with the consent of the parties.

2. All these petitions involve common and connected questions of law and fact. As such, they are being disposed of by this common judgment. For the sake of convenience the facts as involved in Writ Petition No. 436/2015 are set out herein.

3. The petitioner, IFIN Commodities Limited (the respondent no. 1 before the learned Arbitrators) is a Stock Broker and is a Member of Multi Commodity Exchange of India Limited (MCX). The respondent no. 1 is the proprietress of 3P World, while the respondent no. 2 is its authorised signatory. The respondent

nos. 1 and 2 are the intervenors before the learned Principal District Judge. The petitioner is a Company based at Chennai, while the respondent nos. 1 and 2 of 3P World are based at Bangalore. There is an agreement dated 14.10.2010 executed between the intervenor no. 2 and the petitioner about sub-brokership. The intervenors had appointed Mr. Rajesh Chheda of Finance Factory as their franchisee for Goa.

4. It appears that Mr. Rajesh Chheda had approached the respondent no. 3 (the appellant/claimant before the learned Arbitrators) and his family members indicating the business and investment opportunity with good returns. The respondent no. 3 and his family members invested various amounts through the intervenors and the petitioner in the MCX. It appears that a Client Registration Form was executed between the respondent no. 3 and the petitioner, which included the arbitration clause vide Clause No. 24 as under:

"24. Arbitration: The Client and the Member agree to refer any claims and/or dispute to arbitration as per the Rules, Bye-laws and Regulations of the Exchange as amended from time to time and that this Agreement is subject

to the exclusive jurisdiction of the courts in Mumbai only. All disputes shall be determined in terms of the Rules, Bye-laws and Regulations of the Exchanges.”

5. It appears that subsequently some dispute arose between the parties and by invoking the arbitration clause the dispute was referred to the Arbitral Tribunal at Mumbai constituted by the MCX under Rule 37, Clause 3.4(c) of the Business Rules as amended, which comprised a panel of three Arbitrators. On behalf of the respondent no. 3, a statement of claim was filed before the learned Arbitrators seeking recovery of Rs.18,55,943/- being the balance due and payable alongwith interest at the rate of 15% per annum, from 15.04.2011 till actual payment. Some other reliefs seeking penal action against the petitioner and their authorised person i.e. Mr. Rajesh Sharma of 3P World for cheating and fraud were also claimed. The learned Arbitrators by their Award dated 30.06.2012 found that the respondent no. 3 (claimant) was not able to substantiate his case and in that view of the matter, the claim came to be rejected. Feeling aggrieved, the respondent no. 3 challenged the award dated 30.06.2012 under Section 34 of the

Arbitration and Conciliation Act, 1996 (the Act of 1996, for short) before the learned Principal District Judge, North Goa, Panaji in Arbitration Case No. 53/2012. It appears that in the said petition, the respondent no. 3 herein has arrayed the present petitioner as the sole respondent.

6. The respondent nos. 1 and 2 herein being the intervenors filed Civil Miscellaneous Application No. 126/2013 before the learned Principal District Judge, North Goa, Panaji for intervention on the ground that the intervenors were acting as sub-brokers/authorised persons of the petitioner and all the transactions were executed on the instructions of the respondent no. 3. It was contended that the learned Arbitrators while dismissing the claim of respondent no. 3 had recorded a finding that the transaction/claim arose out of an independent agreement/contract between the respondent no. 3 and the intervenors, which would prejudice the interest of the intervenors. It was thus necessary to permit intervention.

7. The said application was opposed only on behalf of the present petitioner, while respondent no. 3 (claimant) gave his no

objection for impleadment. The learned Principal District Judge by an order dated 23.03.2015 has allowed the intervention, which is the subject matter of challenge in this petition.

8. It would not be necessary to set out the facts in the rest of the petitions in details. Suffice it to mention that they arise out of similar orders, permitting respondent nos. 1 and 2 to intervene in the petition pending before the learned Principal District Judge, North Goa, arising out of dismissal of their claim by the learned Arbitrators. The applicants before the learned Arbitrators are the family members of the respondent no. 3, Mr. Anil Madgavkar.

9. I have heard Mr. Mulgaonkar, the learned Counsel appearing for the petitioner, Mr. Palekar, the learned Counsel appearing for the respondent nos. 1 and 2 and Mr. Bhobe, the learned Counsel appearing for the respondent no. 3. With the assistance of the learned Counsel for the parties, I have perused record, as also the award dated 30.06.2012 passed by the learned Arbitrators and the impugned order dated 23.03.2015 passed by the learned Principal District Judge.

10. The only ground on which the impugned order is challenged is that the intervenors were neither parties to the agreement dated 14.02.2011 (Annexure-F to the petition) between the petitioner and the respondent no. 3, nor they were parties in the Arbitration proceedings. Thus, it is submitted that the intervention could not have been allowed. The learned Counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of **S.N. Prasad Vs. Monnet Finance Limited and Others**, reported in **(2011) 1 SCC 320** and **Deutsche Post Bank Home Finance Limited Vs. Taduri Sridhar and Another**, reported in **(2011) 11 SCC 375** and a judgment of this Court in the case of **Suresh J. Pimparkar Vs. Charkop Om Gayatri CHS Ltd. and Another**, reported in **2010 ALL MR (Supp.) 266**, in order to submit that a person/party who is a stranger to the agreement/contract cannot seek impleadment in the Arbitration proceedings.

11. On the contrary, it is submitted by the learned Counsel appearing for the respondents that the intervenors were admittedly acting as sub-broker/authorised person of the petitioner, which is the Members of MCX. It is submitted that 3P World was

represented by the intervenors and they were so acting as sub-broker/authorised person in terms of Item (C)(4) of the Code of Conduct of Sub Broker prescribed under Schedule II read with Regulation 15(1)(c) and Regulation 17(1)(m) of the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations 1991 (the Regulations of 1991, for short). It is submitted that there was also an agreement executed on 14.10.2010 between the petitioner and the intervenor no. 2 i.e. Mr. Rajesh Sharma, the authorised signatory of 3P World, under which the intervenors were acting as sub-broker/authorised person and the intervenors would be covered and bound by the contract to which the Principal namely, IFIN Commodities Limited was a party.

12. I have given my anxious consideration to the rival circumstances and the submissions made. From the perusal of the record, the following facts are clearly discernible:

(a) The intervenors are working as sub-broker/authorised person of the petitioner in terms of the Regulations of 1991 by the Securities and Exchange Board of India.

(b) There is an agreement said to be executed between the intervenors and the petitioner on 14.10.2010, under which the

intervenors were so acting as sub-broker/authorised person of the petitioner.

(c) The agreement dated 14.02.2011 namely, the Client Registration Form is executed between the petitioner and the respondent no. 3, in which the intervenors are shown as persons who have introduced the respondent no. 3 (clause 18).

(d) That there were certain monetary transactions executed at the instance of the respondent no. 3 and his family members through the intervenors.

13. It can thus be seen that the intervenors were acting as sub-broker/authorised person of the petitioner, which is a member of MCX. Thus, it cannot be said that the intervenors were total strangers to the agreement or the transaction. It is true that an Arbitrator appointed under the Act of 1996 unlike, a Civil Court does not have plenary jurisdiction. The jurisdiction of the Arbitrator essentially springs from and is circumscribed by the terms of the agreement between the parties. In that view of the matter, it is only the persons/entities, who/which are the parties to the contract/arbitration agreement can be arrayed as such before the

Arbitrator or any proceedings that may be instituted challenging such an award.

14. Turning the present case, the facts as set out above, would clearly show that the intervenors cannot be said to be total strangers as they being the constituents/sub-brokers/authorised person of the petitioner can be said to be bound by the terms of the contract.

15. It would be further significant to note that in the application/statement of claim filed by the respondent no. 3 (and his family members), the petitioner was shown as respondent no. 1, while Mr. Rajesh Sharma, the authorised signatory of 3P World was arrayed as respondent no. 2. It would be further significant to note that although, the award dated 30.06.2012 passed by the learned Arbitrators in the title clause mentions the name of the petitioner (as respondent) in the body of the award, learned Arbitrators makes a reference to a claim of penal action not only against the petitioner, but also against their authorised person, Mr. Rajesh Sharma of 3P World. Not only this, a perusal of the award passed by the learned Arbitrators would further show (para 67) that the

learned Arbitrators had come to the conclusion that there was a private arrangement between the claimant and the authorised representative of the 3P World, which was arrived at on 13.06.2011 and which cannot bind the petitioner herein. It was in the face of such a finding that the claim of the respondent no. 3 and others was rejected. It is necessary to mention at this stage that the award of the learned Arbitrators is subject matter of challenge before the learned Principal District Judge. It is contended on behalf of the intervenors that on the basis of the finding about there being a private arrangement between the intervenors and the respondent no. 3, exclusive liability may eventually be fastened against the intervenors. In such circumstances, it is neither necessary nor proper at this stage to express any opinion on the legality or otherwise of the finding recorded about the transaction being a private arrangement between the respondent no. 3 and the authorised representative of 3P World. The limited issue in the present petition is as to whether the impugned order allowing intervention needs interference. The learned Principal District Judge has found in para 12 of the impugned order that the intervenors were very much involved in the Arbitration proceedings and were party before the Arbitral Tribunal and as such, the order

passed in such proceedings is affecting their rights. The learned Principal District Judge has found that the intervention is necessary for deciding the application filed under Section 34 of the Act of 1996.

16. In the case of **Deutsche Post Bank Home Finance Limited** (supra), reliance was placed on para 17 of the said judgment on behalf of the petitioner, which reads thus:

"Therefore, if X enters into two contracts, one with M and another with D, each containing an arbitration clause providing for settlement of disputes arising under the respective contract, in a claim for arbitration by X against M in regard to the contract with M, X cannot implead D as a party on the ground that there is an arbitration clause in the agreement between X and D."

It can thus be seen that it was a case where one party entered into two separate contracts with two individual parties. That is not the case herein.

17. In the case of **S.N. Prasad** (supra), it has been held that the reference to the Arbitration can only be between the parties to arbitration agreement and not the non-parties. In the facts of that case it was held that the arbitration agreement between the lender, borrower and one of the guarantors cannot be deemed or construed to be arbitration agreement in respect of another guarantor, who was not a party to the arbitration agreement.

18. In the case of **Suresh J. Pimparkar** (supra), the intervenor was a subsequent purchaser, who was not a party to the agreement containing the arbitration clause. It was held that in a dispute of the third person, against the society, such person cannot be permitted to intervene or added as a party. On facts, it was found that the remedy of such a person lies elsewhere.

19. In my humble opinion, the present case is clearly distinguishable on facts. In the present case as the intervenors were acting as sub brokers of the petitioner, which was a Member of MCX and also on account of the fact that in the statement of claim, the intervenor no. 2 was arrayed as respondent no. 2 and there is a certain finding recorded by the learned Arbitrators concerning the

intervenors in the award impugned before the learned Principal District Judge and further having regard to the fact that the original claimants have no objection for such intervention, I find that no exception can be taken to the impugned order, particularly in the exercise of the extra ordinary jurisdiction of this Court under Article 227 of the constitution of India. I would hasten to add that neither any opinion is expressed nor one is called for on merits of the challenge to the award, including the finding that the transactions were arising out of a private arrangement between the original claimants and the authorised representative of 3P World. All the rival contentions on merits of the parties are expressly kept open, to be decided by the learned Principal District Judge in the application under Section 34 of the Act of 1996.

20. In the result, the Writ Petitions are dismissed. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

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