

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 518 OF 2011
IN
ARBITRATION PETITION NO. 889 OF 2010

The Sr. Superintendent of Post Office & Ors. Petitioners

VERSUS

Kanahyalal Bagadia

..... Respondent

AND

Kaushal Bagadia & Ors.

..... Opponents

Ms.S.V.Bharucha for the Applicant/Petitioners.

Mr.Kiran Jain, a/w. Ms.Neeta Solanki, i/b. Kiran Jain & CO. for the Respondents.

CORAM : R.D. DHANUKA, J.

DATED : 27th JULY, 2015

P.C.

By this notice of motion, the applicant has prayed for setting aside the order of abatement passed by this court on 9th February, 2011 and seeks amendment of the arbitration petition. Some of the relevant facts for the purpose of deciding notice of motion are as under :-

2. The respondent admittedly expired on 30th September, 2009. The arbitral proceedings were concluded on 24th March, 2009. The learned arbitrator rendered an award on 15th January, 2010. The applicant filed arbitration petition in this court on 16th April, 2010. The learned counsel appearing for the respondent states that the learned advocate who was representing the respondent had addressed a letter on 23rd April, 2010 to the learned advocate appearing for the applicant about the death of the original respondent and also disclosed the names of the legal heirs

by the said letter. By the said letter, the learned advocate requested the learned advocate representing the applicant to join the legal heirs of the respondent as party respondents and informed about their no objection. It is however the case of the applicant that no such letter was received by the learned advocate representing the applicant.

3. By letter dated 21st August, 2010 the learned advocate representing the original respondent once again informed the learned advocate representing the applicant and also to the Senior Superintendent of Post Office the names of the legal heirs of the original respondent. It is not in dispute that the said letter dated 21st August, 2010 was served upon the applicant's advocate.

4. The applicant through their letter dated 19th October, 2010 to the learned advocate representing the original respondent requested to submit a copy of the death certificate of the original respondent for further necessary action. The learned advocate representing the original respondent alongwith their letter dated 23rd November, 2010 forwarded a copy of the death certificate of the original respondent to the applicant. The applicant received the copy of the death certificate on 25th November, 2010.

5. The arbitration petition filed by the applicant appeared before this court on 9th February, 2011. Learned counsel appearing for both the parties informed the court that the original respondent had expired in whose favour the impugned award was made. Learned counsel appearing for the applicant sought time to take appropriate steps and to set aside the abatement and to revive the petition. This court by the said order dated 9th February, 2011 held that the petition stood abated and stood dismissed.

6. On 21st February, 2011 the applicant filed this notice of motion inter alia praying for setting aside the order for abatement and prayed for amendment to the arbitration petition.

7. Learned counsel appearing for the applicant invited my attention to various correspondence and also the order passed by this court. My attention is also invited to the justification sought to be given by the applicant in the affidavit in support of the notice of motion for delay in filing this notice of motion for setting aside the abatement order and for amendment. She submits that since the respondent had not informed about the date of death of the original respondent in the letter addressed to the learned advocate on 21st August, 2010, the applicant had addressed a letter to the advocate representing the original respondent to forward a copy of the death certificate. Copy of the said death certificate was forwarded to the applicant on 25th November, 2010. She submits that the applicant thereafter took legal opinion from the Ministry of Law and Justice and only after receiving the advice from the Ministry of Law and Justice decided to file this Notice of Motion.

8. Learned counsel appearing for the original respondent on the other hand invited my attention to the various correspondence annexed to the affidavit in reply and submits that since the applicant was informed about the death of the original respondent and the names of the legal heirs of the original respondent were furnished, the applicant ought to have filed appropriate application for setting aside the abatement and for impleadment of the legal heirs of the original respondent. He submits that the reasons rendered in the affidavit in support of the notice of motion are not sufficient and delay has not been properly explained. He submits that in view of the gross delay on the part of the applicant, the legal heirs

of the original respondent have already suffered a loss. He therefore submits that the notice of motion deserves to be dismissed.

9. Learned counsel appearing for the original respondent also invited my attention to Order 22 Rule 6 of the Code of Civil Procedure, 1908 and would submit that since the hearing before the learned arbitrator had been concluded and since the original respondent expired after conclusion of the hearing and before the impugned award was rendered by the learned arbitrator, the arbitral proceedings were not abated.

10. Ms.Bharucha, learned counsel appearing for the applicant in rejoinder submits that the delay has been properly explained and the provisions under Order 22 Rule 6 of the Code of Civil Procedure, 1908 would not apply in case of an arbitration proceedings.

11. It is not in dispute that the original respondent had already expired much before the arbitral award was rendered by the learned arbitrator. It is not the case of the learned counsel appearing for the original respondent that the learned arbitrator was informed about the death of the respondent. It is thus clear that the learned arbitrator had rendered an award in favour of a dead person.

12. Insofar as correspondence annexed to the affidavit in reply is concerned, the learned counsel appearing for the applicant has stated that the applicant had not received copy of the letter dated 23rd April, 2010. Be that as it may, a perusal of the letters dated 23rd April, 2010 and 21st August, 2010 clearly indicates that though the names of the legal heirs of the original respondent was communicated to the applicant, the date of the death of the original respondent was not conveyed

to the applicant. Even copy of the death certificate was also not furnished. The applicant therefore had asked for copy of the death certificate vide letter dated 19th October, 2010 which was provided by the learned advocate representing the original respondent only on 25th November, 2010.

13. The matter thereafter appeared before this court on 9th February, 2011 when the proceedings stood abated by an order passed by this court. The applicant therefore filed the present notice of motion on 21st February, 2011.

14. Though the reasons rendered in the affidavit in support that the petitioner had approached the Ministry of Law and Justice to take legal opinion as to what action should be taken next and only after obtaining advice from the Ministry of Law and Justice, the applicant decided to take out the present application is vague and without particular, the court has to take a judicial notice that when a government is a litigant, the proceedings can be filed after obtaining legal advice from the Ministry of Law and Justice and by contacting their panel advocate.

15. In my view though the reasons recorded in the affidavit in support are not fully satisfactory, interest of justice would be met with if the prayers in the notice of motion are allowed however on the condition that the applicant pays the cost of Rs.25,000/- which shall be paid to the legal heirs of the original respondent within three weeks from today. I, therefore, pass the following order :-

- (a) Notice of motion is made absolute in terms of prayer clauses (a) to (d).
- (b) Arbitration petition is restored to file.
- (c) Amendment to be carried out within four weeks from

today and amended copy of the petition shall be served on the parties allowed to be impleaded in place of the original respondent simultaneously.

(d) If all other office objections are removed, place the arbitration petition on board for admission after four weeks. It is made clear that if all the office objections are not removed within four weeks, petition to stand dismissed without further reference to court.

[R.D. DHANUKA, J.]