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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS 1131 OF 2015
IN
ARBITRATION PETITION NO.630 OF 2009

WITH
CHAMBER SUMMONS 1132 OF 2015
IN
ARBITRATION PETITION NO.633 OF 2009

WITH
CHAMBER SUMMONS 1133 OF 2015
IN
ARBITRATION PETITION NO.632 OF 2009

WITH
CHAMBER SUMMONS (LODGING) NO.1400 OF 2015
IN
ARBITRATION PETITION NO.631 OF 2009

AIDEK Tourism Services Pvt. Ltd. & Ors. ...Applicants
...Ori.Petitioners

IN THE MATTER BETWEEN :

AIDEK Tourism Services Pvt. Ltd. & Ors. ...Petitioners
V/s.
Aditya Birla Nuvo Ltd. ...Respondent

And

The Officer-in-charge,
Marine Drive Police Station ...Proposed
...Respondents

Mr.M.S. Bhandari with Ms.Pranjali Bhandarai for the Petitioners / Applicants in the Chamber Summons.

Mr.Cyrus Bharucha with Ms.Bhavna Singh and Mr.Paresh Patkar i/b Mulla & Mulla & C.B. & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 7TH OCTOBER, 2015.

P.C :-

1. By consent of parties, all the aforesaid matters were heard together and are being disposed of by the common order.

2. By these chamber summons, the applicants seek that this Court shall call from Marine Drive Police Station enquiry report and/or documents gathered during enquiry till date with respect to the complaint dated 23rd December, 2014 described in prayer clause (a) of the chamber summons.

3. Some of the relevant facts for the purpose of deciding these chamber summons are as under :

4. The applicant and the respondent had entered into various hire purchase agreements on the terms and conditions recorded therein. Under those documents, the respondent had granted various facilities to the applicants. Dispute arose between the parties. It was the case of the respondent that the applicants had committed default of their obligations under those agreements. The respondent accordingly invoked arbitration agreement and referred the dispute to arbitration. All such arbitral proceedings culminated into five separate arbitral awards by which the claims made by the respondent were allowed by the learned arbitrator. The applicants challenged all such five awards by filing separate arbitration proceedings being Arbitration Petition Nos.629 of 2009 to 633 of 2009 respectively.

5. During the pendency of those petitions, the applicants applied for amendment of those petitions, which were granted by this Court. By an order dated 3rd December, 2012, this Court allowed the said chamber summons. By an order dated 18th April, 2013, this Court passed an order of remand in all the five arbitration petitions with limited purpose for the learned arbitrator to consider the averments so made by the applicants and as denied by the respondent. This Court however, made it clear that the learned arbitrator by giving opportunity to both parties and if necessary by framing additional issues and/or points, shall make additional awards as expeditiously as possible. Pursuant to the said order passed by this Court, the learned arbitrator framed additional issues and made additional awards. The learned arbitrator rejected various contentions raised by the applicants on the allegations of fraud made by the respondent in the said supplementary awards. The applicants thereafter amended the arbitration petitions and impugned the said supplementary awards in those five arbitration petitions.

6. By an order dated 8th April, 2015, this Court has dismissed one of those five arbitration petition i.e. Arbitration Petition No.629 of 2009, which was filed by the applicants impugning one of the arbitral award. The applicants thereafter filed a Review Petition bearing No.46 of 2015 in the said Arbitration Petition No.629 of 2009. By an order dated 6th July, 2015, this Court has rejected the said Review Petition (No.46 of 2015). A perusal of the rejoinder filed by the applicants indicates that the applicants have filed an Appeal (Lodging) No.651 of 2015 against the said order dated 6th July, 2015 in Review Petition No.46 of 2015 and also the orders dated 8th April, 2015 and 17th April, 2015 and the same is pending.

7. After hearing learned counsel for the parties for some time, learned counsel for the applicants sought to rely upon few judgments. This Court granted liberty to both parties to file a compilation of the judgments which they proposed to rely upon in support of their respective submissions. The applicants filed a compilation of judgments proposing to place reliance upon 23 judgments. The respondents placed reliance on 2 judgments. I have perused the affidavits filed by both the parties and also the judgments relied upon by both parties forming part of their respective compilations.

8. It is the case of the applicants that this Court had remanded back the matter to the learned arbitrator on the ground that the applicants had learnt of an Assignment Deed dated 29th March, 2001 between Birla Global Finance Limited and Birla Global Asset Finance Company Limited, whereby retail finance division was assigned and whereby Mr.Manoj Parvatkar and Mr.Pawan Gupta were not to be employees from 31st March, 2001 of Birla Global Finance Limited. It is the case of the applicants that the respondent through their witness Mr.K.G. Ajmera tendered copy of a fabricated / forged letter dated 16th February, 2004 purported to have been addressed to ACIT, Central Circle-1, Mumbai which according to the applicants did not bear an acknowledgement nor was it referred to in the assessment order of the Birla Global Finance Limited for the assessment year 2001-2002, nor was it referred to in any subsequent correspondence. It is the case of the applicants that the said witness Mr.K.G. Ajmera had tendered a copy of the notice to produce dated 26th August, 2003 addressed by the advocates of the respondent to ACIT, Circle-1, Mumbai as factual foundation to lead secondary evidence.

9. It is the case of the applicants that Mr.Manoj Parvatkar had filed a statement of claim against the applicants before the arbitral tribunal on or before 11th July, 2001 in his capacity as Manager of Birla Global Finance Limited. According to the applicants, on or before July, 2001, Mr.Manoj Parvatkar was no longer the employee of Birla Global Finance Limited since the said Mr.Manoj Parvatkar was absorbed by Birla Global Asset Finance Co. Ltd. which is now known as Aditya Birla Finance Ltd. with effect from 30th March, 2001. It was the case of the applicants that the said Mr.Manoj Parvatkar thus had filed forged claims before the arbitral tribunal with an intention causing it to be believe that he was authorized by Birla Global Finance Ltd to execute such documents as the Manager though he was aware of the fact that he was Manager of Birla Global Finance Ltd. only till 29th March, 2001 and had no such authority with effect from 30th March, 2001.

10. It is the case of the applicants that on 15th October, 2013, the applicants received a reply in response to RTI application, that the jurisdiction of Birla Global Finance Ltd. lay with ACIT/DCIT, Circle 3(1), Mumbai and not with the Assistant Commissioner of Income Tax, Circle-1, Mumbai. It is the case of the applicants that though the applicants attempted to file an affidavit dated 17th October, 2013 to produce the same on record in the remand proceedings in support of his contentions that the letter dated 16th February, 2004 was fabricated and that notice to produce dated 26th August, 2013 was intentionally and wrongfully addressed, the applicants were not permitted to do so. It was the case of the applicants that the respondent had played fraud upon or misled the Court and/or arbitral tribunal by intentionally addressing a notice to produce a non-existent

letter filed by the respondent in the arbitration petition to a authority who did not have jurisdiction about the assessee, which fact was known to the respondent.

11. It is the case of the applicants that the applicants became aware later on that by a letter / forwarding memo dated 27th October, 2010 from the DCIT, Circle 3(1), Mumbai to ACIT, LTU, Mumbai on 28th October, 2010, assessment record of the said Birla Global Finance Ltd. from the assessment years 1988-1989 to 2006-2007 were transferred pursuant to an order dated 1st July, 2010 by CIT-3, Mumbai under section 127(2) of the Income Tax Act. It is the case of the applicants that the respondent had thus mis-led the arbitral tribunal by laying an intentionally calculated false factual foundation for leading secondary evidence pertaining to alleged forged letter dated 16th February, 2004. In paragraph 9 of the affidavit in support of the chamber summons, it is alleged that thus alleged new facts had already been pleaded in paragraph 14-A(26) of the arbitration petition pursuant to the amendment allowed by this Court vide order dated 27th August, 2014.

12. It is the case of the applicants that the applicants filed CC No.27/SW of 2014 against Mr.Manoj Parvatkar and Mr.K.G. Ajmera and the respondent before 8th Metropolitan Magistrate, Esplanade under various sections of Indian Penal Code and directed Marine Drive Police Station to enquire and submit its report at the earliest. Pursuant to the said order passed by the 8th Metropolitan Magistrate, Esplanade, Marine Drive Police Station has registered the same as No.21/I&R/2014 dated 23rd December, 2014 under various sections of Indian Penal Code and is enquiring into the same. The Marine Drive Police Station has also issued summons to the Income Tax Officers,

Managing Director of Birla Global Asset Finance Co. Ltd and Secretary General of Indian Merchant Chambers to produce various original documents by 4th August, 2015.

13. It is submitted by the applicants that since the judgment or decree has been obtained by the respondent by playing fraud on the Court and it is nullity and non-est in the eyes of law, this Court being Court of record under Article 215 of the Constitution of India, this Court shall in the interest of justice call from Marine Drive Police Station enquiry report and/or documents gathered during the enquiry till date with respect to No.21/I4R/2014 dated 23rd August, 2014.

14. It is submitted by the applicants that it is necessary to go to the root of the matter by ascertaining the genuineness of the letter dated 16th February, 2004 amongst other things as also to ascertain whether an attempt was made to play fraud upon or mis-lead this Court or the learned arbitrator intentionally. It is submitted that the applicants were unable to verify the contentions raised in the chamber summons before the learned arbitrator despite an attempt was being made that the information has known them and the applicants had accordingly pleaded the said contentions in the arbitration petition.

15. In support of the aforesaid submission, the applicants have filed compilation of judgments of various Courts, including this Court, containing 23 judgments.

16. The judgments referred to and relied upon by the applicants in the said compilation are in support of the plea that though these chamber summons are filed in the pending proceedings

under section 34 of the Arbitration Act thereby impugning the arbitral awards, these additional informations which if filed by the concerned Marine Drive Police Station, the same would demonstrate that the respondent had committed fraud upon the learned arbitrator and also upon this Court. It is the case of the applicants that this Court has ample power to call for such reports and documents that have been produced by the parties before the Marine Drive Police Station before this Court before disposing of the arbitration petition filed by the applicants. The applicants have also placed reliance upon some of the judgments in support of their submission that Mr.Rajendra Pednekar, who has filed affidavit in reply in the present proceedings) was not properly authorized by the respondent to represent them in the present proceedings. Some of the judgments are relied upon in respect of the contention that the Court has *suo moto* powers to call the report from the police or from the Income Tax Authorities under Order XIII Rule 10 of the Code of Civil Procedure.

17. The chamber summons filed the applicants herein have been resisted by the respondents by filing detailed affidavit in reply dated 24th August, 2015. It is the case of the respondent that the enquiry initiated by Marine Drive Police Station is not yet complete. The respondent has already furnished various information and the documents as sought by the Marine Drive Police Station from the respondent. It is submitted by the respondent that in any event, the findings of fact recorded by the Criminal Courts cannot have any bearing so far civil cases are concerned and *vice-a-versa*. It is submitted that the standard of proof is different in civil and criminal cases and both the cases have to decided on the basis of evidence adduced therein.

18. It is submitted by the respondent in the affidavit in reply that even prior to filing of CC No.37/SW/14 before the 8th Metropolitan Magistrate, Esplanade by the applicants, a complaint being complaint T.R. No.76/B/2013 dated 15th November, 2013 qua identical issue was filed by the applicants with Marine Drive Police Station. Pursuant to the said complaint, an enquiry was conducted by the Marine Drive Police Station. It is stated that Senior Police Inspector of Marine Drive Police Station by his letter dated 13th December, 2013 recorded that after making requisite enquiry, he had come to the conclusion that the letter dated 16th February, 2004 did not appear to be forged or fabricated. It is stated in the said letter that the applicants were informed that the matter was of a civil nature and ought to go before appropriate Court. It is submitted that the concerned police station has already come to the conclusion that the letter dated 16th February, 2004 did not appear to be forged or fabricated, the applicants filed a fresh criminal complaint before 8th Metropolitan Magistrate, Esplanade and once again reiterated the same allegations.

19. It is submitted by the respondent that both these issues i.e. (i) reliance of the respondent on the alleged forged / fabricated letter dated 16th February, 2004 and (ii) the allegations of the petitioner that the statement of claim filed by the respondent was allegedly signed / verified by a person not authorized to do so have already been adjudicated upon by the arbitral tribunal in the impugned award and also has been dealt with specifically by this Court in its order dated 8th April, 2015. It is submitted that the learned arbitrator has already rendered a finding that the said letter dated 16th February, 2004 was genuine and has held that the doubt expressed by the applicants herein qua veracity of the said letter falls no water. The learned arbitrator further held that the respondent had called upon the Income Tax Department to produce the original letter dated 16th February,

2004, which was not produced by the Income Tax Department.

20. It is submitted that this Court has already dealt with all these issues while disposing of Arbitration petition No.629 of 2009 filed by the applicants challenging similar award rendered by the same arbitrator and the findings of fact rendered by the learned arbitrator are also upheld. It is submitted that the order and judgment delivered by this Court on 8th April, 2015 and the order dismissing the review petition filed by the applicants has not been set aside by the Division Bench till date. It is submitted that the applicants thus cannot be permitted to raise those issues once again in these chamber summons with a view to delay the out come of the arbitration petition filed by the petitioner.

21. Insofar as the challenge to the authority of Mr.Manoj Parvatkar to sign and/or verify the arbitral proceedings on behalf of the respondent is concerned, it is submitted that it is held by the learned arbitrator that the applicants had not pleaded in the arbitral proceedings that Mr.Manoj Parvatkar was not authorized to sign / verify the pleadings. The only objection raised was that Mr.Manoj Parvatkar could not have signed the pleadings in the light of his transfer from Birla Global Finance Limited. The learned arbitrator has held that there was no bar nor was any wrong doing or doubt involved in Mr.Manoj Parvatkar signing the pleadings.

22. It is submitted that this Court has upheld such findings of fact recorded by the learned arbitrator in the said order and judgment dated 8th April, 2015 and more particularly in paragraphs 76 and 77. It is submitted that the review petition filed by the applicants against the said order dated 8th April, 2015 passed by this Court is also dismissed

by an order dated 6th July, 2015. It is submitted by the respondent that the learned arbitrator has also considered the effect of the agreement dated 29th March, 2001. He submits that the learned arbitrator has already rendered a finding that the said letter dated 16th February, 2004 is neither forged nor fabricated, which finding has been upheld by this Court. It is submitted that the applicants cannot be permitted to re-agitate the settled issues by virtue of these chamber summons.

23. The applicants in their re-joinder have now challenged the authority of Mr.Rajendra Pednekar, who has signed the affidavit in reply on behalf of the respondent and have raised various new issues in the affidavit in rejoinder. It is the case of the applicants that the Marine Drive Police Station had orally advised the applicants to ignore the said letter dated 13rd December, 2013 from the Marine Drive Police Station informing that there was no fabrication and forgery and also that the matter was a civil matter.

24. A perusal of the arbitration petitions filed by the applicants clearly indicate that all these allegations which are now made in support of these chamber summons were already forming part of the arbitration petitions filed by the applicants which allegations were brought on record by way of amendment. This court while permitting the applicants to amend the arbitration petitions by placing such allegations on record had remanded the matter back to the learned arbitrator. A perusal of record indicates that the learned arbitrator thereafter framed additional issues and after giving opportunities to both the parties to lead further oral evidence, has rendered various findings of fact in respect of the documents which are now subject matter of these chamber summons. The learned arbitrator has also

rendered a finding of fact that the applicants had not raised any objection that Mr.Manoj Parvatkar was not authorized to sign / verify the pleadings as canvassed by the applicants. It is held that there was neither any bar nor was any wrong doing or doubt involved in Mr.Manoj Parvatkar signing the pleadings. This Court has already upheld all such findings of fact recorded by the learned arbitrator in its order and judgment dated 8th April, 2015 which findings are not set aside by the Division Bench till date.

25. This Court has also rejected the review petition filed by the applicants for recalling of the order dated 8th April, 2015 on various grounds by passing an order dated 6th July, 2015. Even the said order dated 6th July, 2015 passed by this Court has not been stayed and/or set aside by the Division Bench.

26. A perusal of the affidavit in support of the chamber summons clearly indicates that the applicants themselves have admitted that the remand of the matter by this Court was on the basis that the petitioner learnt of the Assignment Deed dated 29th March, 2001 between Birla Global Finance Limited and Birla Global Asset Finance Co. Ltd. whereby retail finance division was assigned and whereby Mr.Major Parvatkar and Mr.Pawan Gupta were not to be the employees with effect from 30th March, 2001 of Birla Global Finance Limited. The respondent had also tendered a copy of the letter dated 16th February, 2004 addressed by ACIT, Central Circle-1, Mumbai by the respondent.

27. A perusal of the record clearly indicates that all these allegations were forming part of the record before the learned arbitrator. The allegations made by the applicants for the purpose of

calling reports and documents submitted by the parties before the Marine Drive Police Station have already been rejected by the learned arbitrator by rendering a finding of fact which findings are upheld by this Court. In my view, this Court is bound by the said order and judgment dated 8th April, 2015 to the extent it applies to the facts of these four petitions.

28. Merely because some enquiry is pending before the Marine Drive Police Station based on the complaint filed by the applicants, in my view this Court cannot direct the Marine Drive Police Station to produce relevant papers relating to the said enquiry nor the applicants have made out a case for calling such papers from the Marine Drive Police Station for the purpose of deciding these petitions filed under section 34 of the Arbitration Act. In my view even if some enquiry is proceeded with by the concerned police station, this Court cannot call for such papers and consider the evidence produced, if any, of the parties at this stage while hearing the proceedings under section 34 of the Arbitration Act.

29. This Court has to decide the matter on the basis of the evidence produced by both parties before the learned arbitrator. Since the learned arbitrator has already dealt with these allegations at length and has after considering oral evidence led by both parties and the documentary evidence, has rendered various findings of fact, in my view, no reliefs as prayed by the applicants to call for the papers and proceedings pertaining to the enquiry being conducted by the Marine Drive Police Station is warranted. In my view, civil proceedings as well as criminal proceedings are different. The civil cases are decided on the basis of pre-ponderence of evidence while in criminal cases, the entire burden lies on prosecution and proof

beyond reasonable doubt has to be given. It is not in dispute that such enquiry before the Marine Drive Police Station is even otherwise pending.

30. I have perused 23 judgments referred to and relied upon by the applicants through their learned counsel. I am of the opinion that since the issues raised by the applicants in the present chamber summons, were already raised by the applicants before the learned arbitrator and the learned arbitrator has already rendered a finding of fact on those documents and have come to the conclusion that the said documents were neither forged nor fabricated and has rejected the contention of the applicants that Mr.Manoj Parvatkar had no authority to represent the respondent or to file the proceedings on its behalf and this Court has already upheld the findings rendered by the learned arbitrator in Arbitration Petition No.629 of 2009, none of the judgments referred to and relied upon by the applicants are of any assistance of whatsoever nature to the applicants. It is clear that the applicants have filed these chamber summons with an intention to delay the out come of the arbitral proceedings which are pending in this Court since 2009. In my view, the chamber summons are totally mis-conceived and thus deserves to be rejected with exemplary costs.

31. I therefore, pass the following order :-

a). The above chamber summons are dismissed with costs quantified at Rs.10,000/- in each of the chamber summons, which shall be paid by the applicants to the respondent within one week from the date of this order.

b). Place the arbitration petitions on board for hearing and final disposal on 19th October, 2015.

(R.D. DHANUKA, J.)

"Certified to be true and correct copy of original signed order."