

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2015

(Orders reserved on 16.09.2015)

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

A.No.2708 of 2014 and A.No.274 of 2015

in

O.P.No.269 of 2014

A.No.2708 of 2014

V.Raghavan,
Partner-Dinamalar
S/o T.V.Ramasubbiyer
1st Floor, Mercury Apartments,
42-A, Pantheon Road,
Egmore,
Chennai-600 008.

.. Applicant

vs.

1. Dr.R.Venkitapathy
Partner-Dinamalar
No.G-9, Parsn Paradise,
109, G.N.Chetty Road,
T.Nagar,
Chennai - 17.

2. Dr.R.Krishnamoorthy,
Partner-Dinamalar,
No.219, Anna Salai,
Chennai - 600 002.

3. Dr.R.Lakshmipathy,
Partner-Dinamalar
No.219, Anna Salai,
Chennai - 600 002.

4. Mr.R.Sathyamurthy,
Partner-Dinamalar
No.G-9, Parsn Paradise,
109, G.N.Chetty Road,
T.Nagar,
Chennai - 17.
5. Hon'ble Mr.Justice.T.Somasundaram (Retd.)
Presiding Arbitrator
No.1/1688, 15th Street,
H Block, Anna Nagar,
Chennai - 600 040.
6. Hon'ble Mr.Justice.R.Jaysimha Babu (Retd.)
Arbitrator
612, RMV Extension,
2nd Stage, 3rd Block,
Bangalore - 560 003.
7. Hon'ble Mr.Justice.S.Subramani (Retd.)
Arbitrator
Plot No.2, Lakshmi Apartment,
No.28/481/2, Sasta Nagar,
Thiruvambadi, Tiruchur -25, Kerala ..Respondents

Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of C.P.C. to stay of further proceedings in pursuant to the interim award dated 15.03.2014 passed by the Arbitral Tribunal in regard to the firm “Dinamalar”, pending disposal of the main O.P.No.269 of 2014

For Applicant : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.S.Baskaran

For Respondents : Mr.Vijay Narayanan, Senior Counsel
for Mr.R.Parthiban for R1
Mr.T.V.Ramanujam, Senior Counsel for
Mr.S.Elambharathi for R2 and R3

Application No.274 of 2015

1. Dr.R.Venkitapathy
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Plot No.2, Lakshmi Apartment,
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Thiruvambadi,
Tiruchur -25, Kerala

..Respondents

Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of C.P.C. for vacating the interim order dated 30.04.2014 passed in Application No.2708 of 2014 in O.P.No.216 of 2014.

For Applicant : Mr.Vijay Narayanan, Senior Counsel
for Mr.R.Parthiban for R1

For Respondents : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.S.Baskaran
Mr.T.V.Ramanujam, Senior Counsel for
Mr.S.Elambharathi for R2 and R3

COMMON ORDER

Application No.2708 of 2014 is filed for grant of stay of further proceedings in pursuant to the interim award dated 15.03.2014 passed by the Arbitral Tribunal in regard to the firm “Dinamalar”, pending disposal of the main O.P.No.269 of 2014.

2. O.P.No.269 of 2014 is filed for setting aside the interim arbitration award dated 15.03.2014 passed by the learned Arbitrators. In Application No.2708 of 2014, this Court by an order dated 30.04.2014, after hearing the counsels appearing on either side, passed an order as follows:

3. Pending further hearing in this matter, the arbitral proceedings shall go on insofar as the following issues are concerned:

(i) valuation of land, building and machines of the firm;

(ii) auditors for auditing the accounts of the firm for the period after dissolution, will be issued shortly.

4. As regards the issue that “the business value of each of ten editions and of the Dinamalar firm as a whole” will be kept in abeyance until further orders of this court and will be considered by this Court on the next hearing (i.e.) 3.6.2014. The parties are directed to comply with the other directions issued in the minutes of the 86th Meeting of the Tribunal held on 28.3.2014.

3. Challenging the said order, the 1st respondent in the main O.P. sought to file an appeal before the Division Bench of this court, however, with a delay of 114 days. Seeking condonation of such delay, M.P.No.2 of 2014 in O.S.A.SR.No.82166 of 2014 was filed. The Division Bench dismissed the

application as well as the Appeal as withdrawn by its order dated 13.10.2014, however, by observing as follows:

"On hearing the learned Senior counsel for the appellant, we are not satisfied that sufficient cause is shown for condonation of delay of 114 days in filing the appeal.

2. Learned Senior Counsel, faced with this position, submits that he may not press the appeal, but there are two aspects of concern;

(a) Despite the impugned order making it clear that the prematory order will not in any manner affect the following;

(i) Valuation of land, building and machines of the firm,

(ii) auditors for auditing the accounts of the firm for the period after dissolution, will be issued shortly.

the arbitral proceedings are not proceeding further on account of the stand of some of the respondents that till the issue of interim order is decided, nothing should happen.

(b) There is an objection in law to the interim order passed by the learned Single Judge, in view of the Judgment of the Supreme Court in National Aluminium Co., Ltd., Vs. Presstel and Fabrications (P) Ltd., and another reported in (2004) 1 SCC 540).

3. On the aforesaid aspects, we are of the view that qua the first aspect, the interim order is clear , in that the arbitral tribunal is bound to proceed with the matter against which there is no interdict especially in view of the time line which had been laid down by the Honourable Supreme court for conclusion of the

Arbitration proceedings in Special Leave to Appeal (Civil) No.14417 of 2013, and the mere fact that one party objects contrary to the order passed in "the impugned order" is no ground for the arbitration not to proceed.

4. As far as the second aspect is concerned, it is open to the appellant to move the learned Single Judge in the behalf.

5. The application accordingly stands dismissed as withdrawn in terms of the aforesaid.

The appeal is dismissed as withdrawn."

4. Thus, in view of the liberty granted by the Division Bench in the above referred order for the appellant therein to move this Court, insofar as the objection raised with regard to the grant of interim order pending O.P., the first respondent filed Application No.274 of 2015 for vacating the interim order dated 30.04.2014 passed in Application No.2708 of 2014 in O.P.No.216 of 2014

5. Since the issue involved in these applications is with limited scope which does not require elaborate consideration of facts and circumstances of the whole matter, I am not going into the facts of the case in detail and reiterating the same herein as they are totally unnecessary for the present.

6. For the purpose of deciding the present applications, the following

facts, are enough to be stated.

i) A registered partnership firm was running the tamil daily newspaper “Dinamalar”. Dispute arose between the parties which culminated into filing of various suits, out of which, one culminated into filing of O.S.A.No.282 of 2006 before this Court. It is seen that by consent order made in the above O.S.A. dated 23.01.2007, the parties were referred to arbitration. Accordingly, the Arbitral Tribunal was formed consisting of three retired Judges of this Court. The Arbitral Tribunal framed 45 issues for consideration. While the Arbitral Tribunal was hearing the arguments of the respective parties in respect of those 45 issues, the 4th respondent herein filed a memo on 27.02.2012 stating that he had issued a notice for dissolution of partnership firm and therefore, such issue should also be considered by the Arbitral Tribunal. The Arbitral Tribunal passed an order dated 23.07.2012 directing the parties to file the additional claims in response to the notice of dissolution. The petitioner herein objected to the assumption of jurisdiction by the Arbitral Tribunal by contending that the said issue was not raised by the parties through their claims and no issue to that effect has been framed. Over ruling the said objection, the Arbitral Tribunal proceeded to frame 8 additional issues and directed the parties to make their submissions. The petitioner herein filed a suit before this Court in C.S.No.748 of 2012 challenging the order of Arbitral tribunal dated 23.07.2012. The said suit was rejected as not maintainable by

judgement and decree dated 31.01.2013. The appeal preferred against the same in O.S.A.No.103 of 2013 also came to be rejected on 27.02.2013. S.L.P. was preferred by the petitioner herein before the Honourable Supreme Court in S.L.P.No.14417 of 2013 wherein a consent order was passed on 12.09.2013 directing the Arbitral Tribunal first to dispose of those 45 issues originally framed and then to take up the additional issues framed on the aspect of dissolution and pass orders thereon within two months thereafter.

ii) Pursuant to the order passed by the Supreme Court, the Arbitral Tribunal, heard the parties and pronounced its award on those 45 issues on 28.11.2013. Challenging the said award, the petitioner herein filed O.P.No.122 of 2014 under Section 34 of the Arbitration and Conciliation Act, which is pending before this Court. In the said award, the Arbitral Tribunal recorded a finding that the accounts were settled between the parties. Subsequently, the Arbitral Tribunal while considering the additional issues, passed an interim award on 15.03.2014 declaring that the partnership firm 'Dinamalar' is a partnership at Will and it stands dissolved with effect from 27.02.2012, the date mentioned in the dissolution notice; that all the commonly held assets and any other assets of the Firm shall be valued by valuers/ experts to be appointed by the Tribunal; that the claimants shall have the audit of their respective Edition completed immediately in about three weeks from the date

of the said award; that the accounts after the date of dissolution shall be audited by the auditors to be appointed by the Tribunal; that the claimants shall preserve and protect all the assets of the dissolved Firm in their custody, possession or control and account for the same; that after the receipt of the Report of Valuers and Experts and of the audited accounts from 1.4.2011 to 26.2.2012, the Tribunal will hear the counsel for the parties and thereafter finally determine the mode of ascertainment and distribution of the surplus.

8. Challenging the said interim award, O.P.No.269 of 2014 is filed before this Court. Pending disposal of the above O.P., the application for stay of all further proceedings pursuant to the interim award dated 15.03.2014 was sought for in Application No.2708/2014, wherein, the learned single Judge has passed the order as stated supra. Now, the said order is sought to be vacated in Application No.274 of 2015.

9. Mr.T.R.Rajagopalan, learned senior counsel appearing for the applicant in A.No.2708/2014 submitted as follows:

When no issue was framed with regard to the dissolution notice, the Arbitral Tribunal exceeded its jurisdiction by entertaining such claim and passing the interim award. Insofar as the settlement of accounts is concerned, no issue was framed relating to the same and however, the learned

Arbitrators considered the settlement of accounts and have given findings stating that there was settlement of accounts prior to 2010-2011. Therefore, when the O.P.No.122/2014 is filed challenging the said interim award, unless and until the said O.P. is decided, the Arbitral Tribunal, cannot proceed with the passing of the final award in respect of the dissolution issue. In the interim award, the Arbitral Tribunal proceeded from the stage of original award in respect of the dissolution issue. When the original award also is under challenge in O.P.No.269 of 2014, proceeding further from the said original award and passing the interim award in respect of the dissolution issue is without jurisdiction and cannot be sustained. Pending proceedings under section 34 of the said Act, no final order can be passed by the Arbitral Tribunal as there is no scope for the same. The Arbitral Tribunal has to wait for the decision to be made in O.P.No.122 of 2014. The consent order passed in the SLP before the Honourable Supreme Court will not take away the right of the parties to file the appeal against the interim award passed by the Arbitral Tribunal. In support of his contention learned senior counsel relied on **2004(1) SCC 540 (National Aluminium Co.Ltd.vs. Pressteel & Fabrications (P) Ltd. and another)** and **2014 (4) R.A.J. 284 (Bombay) (Afcons Infrastructure Ltd., vs. The Board of Trustees of the Port of Mumbai)**

10. Per contra Mr.Vijay Narayanan, learned counsel counsel appearing

for the 1st respondent in A.No.2708 of 2014 and petitioner in A.No.274 of 2015 submitted as follows:

It is not that all further proceedings is automatically stayed once the interim award is challenged before this Court under Section 34 of the Arbitration and Conciliation Act. The scope of Section 36 is only to the effect that the execution of the award alone would be put on hold if the challenge is made under section 34 within time. What is deferred is only the enforcement of the award, not further proceedings by the Arbitral Tribunal in passing the final award. In this case, the Apex court has already fixed the time limit for the Arbitral Tribunal to pass the award in respect of the dissolution issue within two months. The petitioner being a party to the joint memo of undertaking before the Supreme Court, cannot now turn around and say that the Arbitral Tribunal is precluded from passing the final award. The stay granted by this Court, therefore, has to be vacated so as to enable the Arbitral Tribunal to pass the final award in respect of the dissolution issue. In any event, the award to be passed by the Tribunal, if challenged before this Court under Section 34 of the said Act, in time, the execution of the same would be automatically deferred. Therefore, the interest of the petitioner is not going to be affected or prejudiced in any manner.

11. Mr.T.V.Ramanujam, learned senior counsel appearing for the

respondents 2 and 3 in A.No.2708 of 2014 sailing with the first respondent in A.No.2708 of 2014, submitted that the very application for stay filed under section 151 CPC is not maintainable, especially, when the proceedings are covered by special enactment namely, The Arbitration and Conciliation Act. In view of the order passed by the Honourble Supreme Court, the question of stay of all further proceedings before the Arbitral Tribunal does not arise.

12. Heard both sides and perused the materials placed before this Court.

13. The point for consideration in this case is as to whether the further proceedings before the Arbitral Tribunal, in pursuant to the interim award dated 15.03.2014, is to be stayed.

14. In this case, the Arbitral Tribunal raised 45 issues and after hearing the parties and before pronouncing the award, one of the party namely, the 3rd respondent herein raised the issue regarding the issuance of dissolution notice. The Arbitral Tribunal directed the parties to file additional claims in response to the notice of dissolution and rejected the objection raised by the applicant/petitioner herein with regard to the assumption of jurisdiction on the dissolution issue and proceeded to frame 8 additional issues in that aspect and directed the parties to make their submissions. This was challenged by the

petitioner by filing the suit before this Court in C.S.No.742/2012 which came to be rejected as not maintainable and the same was confirmed in appeal O.S.A.No.103/2013. The petitioner filed SLP before the Apex Court in S.L.P.No.14417 of 2013, wherein the order came to be passed on 12.09.2013 reads as follows:

"Learned senior counsel appearing for the parties stated that there has been a settlement between the parties and the terms of the settlement are as follows:

1. The learned Arbitrators are requested to give an award in the matter of arbitration among the Partners of Dinamalar (firm) within a period of three months from today in respect of the 45 issues framed by the proceedings of the Arbitral Tribunal dated 18-07-2007.

2. After the passing of the aforesaid award mentioned in Para 1 (above) the same learned Arbitrators will take up the issue as to the dissolution of the firm and decide it as per procedure evolved by them within two months thereafter.

3. The learned Arbitrators may also be requested to consider a lump sum fee for the arbitration referred to in Para 2 (above).

In view of the settlement as aforesaid between the parties, we dispose of this special leave petition in terms of the settlement as recorded above."

15. A perusal of the above said order of the Apex Court would clearly indicate that the parties to the litigation have arrived at a settlement with regard to the manner in which the award has to be made and as per such terms of settlement the learned Arbitrators, apart from passing the award in respect of 45 issues first, should take up the issue as to the dissolution of the Firm and decide the same within two months after passing the award in respect of those 45 issues. Needless to say that the parties to the proceedings who have arrived at such settlement and placed the same before the Apex Court and obtained the above said order based on such terms are bound by it and cannot act against. Therefore, the petitioner herein being one of the party to the above terms of settlement cannot now turn around and say that the Arbitral Tribunal cannot decide the issue with regard to the dissolution of the Firm and pass the final award, forgetting the fact that the Apex Court has also given a time frame for passing such award. No doubt, it is contended by the learned senior

counsel appearing for the petitioner that the interim award passed by the Arbitral Tribunal has been challenged before this Court and therefore, unless and until a decision is taken in O.P.No.122 of 2014, the learned Arbitrators cannot proceed to pass the final award. In support of his submission, the learned senior counsel sought to rely on Section 36 of the Arbitration and Conciliation Act. I am unable to accept the said contention for the simple reason that what is contemplated under section 36 of the said Act is only the postponement of the enforcement of the award and not the stay of further proceedings by the Arbitral Tribunal in pursuant to an interim award. In other words, what is prohibited indirectly under section 36 of the said Act is only the enforcement of the interim award during the pendency of O.P.No.122 of 2014 and not all further proceedings, including passing of the final award by the Arbitral Tribunal. For proper appreciation, Section 36 of the Arbitration and Conciliation Act is extracted herein.

36. Enforcement- Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.

16. Except contemplating an indirect scope for deferring the enforcement of the award, the said enactment nowhere contemplates stay of

award by the Court. Therefore, I am of the considered view that pendency of the proceedings before this Court under section 34, challenging the interim award cannot stall the Arbitral Tribunal from passing the final award. Needless to say that it is always open to the petitioner to challenge the final award if the same goes against him, by filing an application under section 34, once again, before this Court. If such an application is filed in time, the enforcement of the award will be automatically deferred, pending disposal of such proceedings. When that being the statutory position, the interest of the petitioner is not going to be affected or prejudiced in any way by allowing the Tribunal to pass the final award. Deferring the enforcement of interim award does not mean preventing the Tribunal from passing the final award. Therefore, I am of the view that this Court cannot grant interim stay of all further proceedings before the Arbitral Tribunal in pursuant to the said interim award. Apart from the said fact, when the Apex Court has disposed the special leave petition in terms of the settlement wherein the parties have agreed for the Arbitral Tribunal to pass the award separately in respect of the issue of dissolution of the firm, that too, within two months from the date of passing of the award containing 45 issues, the petitioner is precluded from filing this stay application, as such act of the petitioner, undoubtedly goes contra to the stand taken by him before the Apex Court. In fact, the grounds raised by the petitioner before this Court in the stay petition were very much available

to him even before the Apex Court as an eventuality. However, the petitioner did not raise any such objection therein and on the other hand, he himself as a party to the settlement has obtained the above order. As regards the contention of the learned senior counsel for the petitioner that the order passed by the Supreme Court does not take away the right of the petitioner to file O.P. before this court challenging the interim award is concerned, I am not for a minute to say that the petitioner's right was taken away by the order passed by the Supreme Court. On the other hand, what emanates from the said order coupled with the scope of section 36 of the said Act, is that further proceedings before the Arbitral Tribunal in pursuant to the interim award, cannot be stayed.

17. In fact, as against the order passed by the learned single Judge granting interim order as extracted supra, an appeal was filed by the first respondent in O.S.A.SR.No.82166 of 2014. Though the same came to be dismissed as withdrawn, the Division Bench has granted liberty to the 1st respondent herein to move before this Court in respect of his objection in law regarding to the interim order passed. Further, it is to be seen that the order passed by the learned Judge in Application No.2708 of 2014 dated 30.04.2014 was not a final order. Therefore, I am of the view that the present application filed seeking for vacating the interim order is maintainable and sustainable.

18. In **2004(1) SCC 540 (National Aluminium Co.Ltd.vs. Pressteel & Fabrications (P) Ltd. and another)**, the Apex Court has observed that when an award is challenged under Section 34 within the stipulated time therein, it becomes unexecutable and that there is no discretion left with the Court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made to the applicant therein. Therefore, it is clear that the bar made under section 36 r/w section 34 of the said Act is only in respect of the executability of the award by any one of the parties to the proceedings. In a given case, if the Tribunal has passed only an interim award and the final award is yet to be passed, such proceedings before the very same Tribunal in passing the final award cannot be stalled merely because an application filed under section 34, challenging such interim award is pending. **2014 (4) RAG 842 (Bombay) Afcon Infrastructure Ltd. vs. The Board of Trustees of the Port of Mumbai** is relied on by the learned senior counsel for the petitioner again to contend that the interim award cannot be executed. I have already pointed out that there is a difference between the executability of the award and staying further proceedings before the Arbitral Tribunal to pass the final award in pursuant to an interim award passed already. Hence, the above decision also does not help the petitioner in any manner. Needless to say that the finality before the Arbitral proceedings is to

be arrived without any further delay in view of the specific time frame fixed by the Apex Court in the very same matter as stated supra and also on the reason that the parties are litigating the matter for a long time.

19. Considering the above stated facts and circumstances, I am of the view that the applicant/petitioner is not entitled for any interim stay as sought for in the application. Consequently, the interim order granted by this Court on 30.04.2014 is vacated. Accordingly, the Application No.2708 of 2014 is dismissed and the Application No.274 of 2015 is allowed.

22.09.2015

Index:Yes
Internet:Yes
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Note:Issue order copy on 23.09.2015

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K.RAVICHANDRABAABU.,J.

vsi

Pre-delivery order made in

A.No.2708 of 2014

and

A.No.274 of 2015

in

O.P.No.269 of 2014

22.09.2015

