

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15..10..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

O.S.A.No.217 of 2015

R.Raghavan

.. Appellant/Applicant/
Petitioner

Versus

- 1.Dr.R.Venkitapathy
- 2.Dr.R.Krishnamoorthy
- 3.Dr.R.Lakshmipathy
- 4.Mr.R.Sathyamuthy

5. Hon'ble Mr.Justice Somasundaram (Retd.,)
Presiding Arbitrator,
No.1/1688, 15th Street,
H Block, Anna Nagar,
Chennai 600 040.

6. Hon'ble Mr.Justice R.Jayasimha Babu (Retd.,)
Arbitrator,
Plot No.2, Lakshmi Apartments,
No.28/481/2, Sasta Nagar,
Thiruvambadi, Trichur - 25.
Kerala.

..Respondents/Respondents/
Respondents.

Prayer : Appeal filed under XXXVI Rule II of O.S.Rules and Clauses 15 of the Letters patent against the order and decree dated 22.09.2015 passed in Appln.,No.2708 of 2014 in O.P.No.269 of 2014, on the file of the High Court, Madras.

For Appellants : Mr.T.R.Rajagopalan Sr., counsel for
Mr.T.S.Baskaran

For Respondents : Mr.R.Vijaya Narayan Sr., Counsel for
Mr.R.Parthiban for R1 (Caveator)

Mr.Prasad Vijayakumar for R4

Mr.S.Elambharathi for RR2&R3

J U D G E M E N T

(Order of the Court was made by T.S.SIVAGNANAM, J.)

Heard Mr.T.R.Rajagopalan, learned Senior counsel assisted by Mr.T.S.Baskaran, learned counsel appearing for the appellant, Mr.R.Vijaya Narayan, learned Senior counsel assisted by Mr.R.Parthiban, learned counsel appearing for the first respondent (Caveator), Mr.Prasad Vijayakumar, learned counsel appearing for the fourth respondent and Mr.S.Elambarathi, learned counsel appearing for the respondents 2 and 3.

2. This appeal is directed against the common order dated 22.09.2015 in A.No.2708 of 2014 in A.No.274 of 2015 in O.P.No.269 of 2014. The petitioner filed the said Application in A.No.2708 of 2014, for grant of stay of further proceedings before the Arbitral Tribunal pursuant to the interim award, dated 15.03.2011, with regard to the firm (Dinamalar) pending disposal of the O.P.No.269 of 2014. By the impugned order, learned Single Judge dismissed the stay petition primarily on the ground that the interim award having been put to challenge by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as 'Act'), it become in-executable and the parties having entered into a settlement which was recorded by the Hon'ble Supreme Court are bound to proceed with the arbitration in terms of the agreement, which was recorded and there cannot be any interdict in such arbitral proceedings.

3. We may at the very outset point out that if the parties resort to filing applications which would interdict the arbitral proceedings before the Tribunal, the very purpose of referring the matter to arbitration would stand defeated. Section 5 of the Act deals with 'extent of judicial intervention', the provision state that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no judicial authority shall intervene except where so provided in Part I. Thus Section 5 brings out clearly the object of the Act, namely, that of encouraging resolution of disputes expeditiously and less expensively and when there is an arbitration agreement the Courts intervention should be minimal (see I.P.Anand Gajapathi Raju vs. P.V.G.Raju, reported in 2000 (4) SCC 539). Further the Hon'ble Supreme Court in the case of Bharat Sewa Sansthan vs. U.P., Electronic Corpn., Ltd., reported in 2007 (7) SCC 763, has pointed out that the main objectives of the Act is to make provision for an arbitral procedure which is fair, efficient and can be of meeting, the needs of the specific arbitration and to minimise the supervisory role of Courts in the arbitral process and to permit an Arbitral Tribunal to use other modes of settlement of dispute such as Mediation, Conciliation etc.

4. Bearing the above legal principle in mind, we examined the contentions raised. The prayer for stay of the arbitral proceedings before the Tribunal is predicated broadly on two grounds, firstly that the petitioner has filed an Application under Section 34 of the Act to set aside the interim award, dated 15.03.2014 and when such application is pending before this Court the Arbitral Tribunal should not proceed further to decide the additional issues, which were framed for consideration. Secondly, it is contended that the prayer for interim stay is only with regard to issue of taking the value of goodwill of the firm, which was depended on the issue of "settled accounts" and any exercise and expenditure that may be incurred for the same by the Arbitral Tribunal will be a wasteful exercise, when the petitioner has disputed the accounts.

5. When the appellant moved the learned Single Judge with a prayer for stay of the proceedings, an interim order was passed on 30.04.2014, permitting the arbitral Tribunal to proceed with certain issues. The said order was challenged by the first respondent by filing an appeal which was time barred and prayer was made for condonation of delay of 114 days in filing the appeal. The appeal was dismissed as withdrawn by order dated 13.01.2014 with certain observations. In terms of the liberty granted by the Division Bench, the first respondent filed Application No.274 of 2015 for vacating the interim order, dated 30.04.2014.

6. The learned Single Judge after taking into consideration, the submission on either side took note of the fact that before the Arbitral Tribunal 45 issues were raised and before pronouncement of the award, the third respondent raised an issue regarding the issuance of notice for dissolution of the firm. This necessitated framing of eight additional issues by the Tribunal. This action was put to challenge by the petitioner by filing C.S.No.742 of 2012, which was rejected as not maintainable and confirmed in appeal in O.S.A.No.103 of 2013. The petitioner preferred a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.No.14417 of 2013. During the pendency of the matter before the Hon'ble Supreme Court, the parties entered into a settlement and the same was recorded by the Hon'ble Supreme Court and the Special Leave Petition was disposed of in terms of the settlement. For better appreciation, the order is quoted below:-

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"

7. A bare perusal of the order passed by the Hon'ble Supreme Court makes it abundantly clear that the parties agreed to the terms as incorporated in the order. The terms agreed to are under three heads, namely, with regard to the 45 issues, the parties agreed to request the arbitral Tribunal to pass an award within a period of three months from the date of settlement of the 45 issues framed by the Arbitral Tribunal dated 18.07.2007. Secondly, the parties agreed that after the Arbitral Tribunal passes an award on the 45 issues within a period of three months, the Tribunal 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. The third aspect was regarding the fee payable for the arbitration. Thus, the parties which includes the appellant consciously agreed to the above terms placed before the Hon'ble Supreme Court, which was recorded and the appellant's appeal was disposed of in terms of the settlement. Thus, the terms of settlement binds, the appellant as well the other parties.

8. It is not in dispute that the Arbitral Tribunal has passed an award on all the 45 issues. Thus, the next thing to be done in terms of the order passed by the Hon'ble Supreme Court is for the Arbitral Tribunal to take up the issue as to the dissolution of the firm and decide it as per the procedure evolved by it within a period of two months. Thus, the petitioner cannot seek for any stay of the proceedings before the Tribunal and is estopped from doing so.

9. The appellant's further case is that the interim award is put to challenge and Arbitral Tribunal should not be permitted to proceed further in the matter, as it would be an exercise to access the goodwill of the firm. We are not inclined to accept the submission made on behalf of the appellant for more than one reason. Firstly, the challenge to the interim award in an application filed under Section 34 of the Act cannot act as an interdict for the Arbitral Tribunal from proceedings further to take up the issue as per the dissolution of the firm. Secondly even though the interim award becomes inexecutable in the light of the challenge to it, the same cannot be a

bar for the Arbitral Tribunal to decide the issue relating to the dissolution of the firm. Furthermore, the parties which includes the appellant consciously agreed to proceed in such a manner and such agreement was recorded by the Hon'ble Supreme Court.

10. Therefore, the learned Single Judge was perfectly right in rejecting the application for stay. The appellant having failed to make out any good grounds to interfere with the order, we are not inclined to entertain the appeal and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

pbn

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub-Assistant Registrar

To

1. Hon'ble Mr. Justice Somasundaram (Retd.,)
Presiding Arbitrator,
No.1/1688, 15th Street,
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Arbitrator,
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Thiruvambadi, Trichur - 25.
Kerala.

3. The Sub-Assistant Registrar,
Original Side,
High Court, Madras

+2 C.C. to MR.T.S.Baskaran, Advocate in Sr.57197

+1 C.C. to MR.R.Parthiban, Advocate in Sr.57170

Judgment in
O.S.A.No.217 of 2015

PVR(CO)

sd : 29/10/2015