

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 539 OF 2015

Shri Luis Caetano Guilherme e Melo @
Wellington D'Melo, Near Hotel Mandovi,
D.B. Marg, Panaji, Goa. Petitioner

Versus

The State of Goa, Through Chief
Secretary, Represented by State
Registrar-cum-Head of Notary Services,
Panaji, Goa. Respondent

Mr. R.G. Ramani, Advocate for the Petitioner.

Mr. S.S. Rebello, Additional Government Advocate for the
Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 21st MARCH, 2016

PRONOUNCED ON:- 1st APRIL, 2016

JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Rebello,
learned Additional Government Advocate waives service on behalf
of the respondent. Heard finally, by consent of the parties.

2. By this petition, the petitioner who was the claimant before the learned Arbitrator is taking exception to the order dated 16.03.2015, passed by the learned Principal District Judge, Panaji in Arbitration Petition No. 21/2012 (old Civil Miscellaneous Application No. 187/2009). By the impugned order, the application for amendment for addition of grounds of challenge, in the application filed by the respondent-State, has been allowed.

3. The brief facts are that the respondent is a tenant in respect of a portion admeasuring 155 square metres of a building owned by the petitioner. The parties had executed a lease deed on 01.07.1998, which shows that the said property was leased out initially for a period upto 31.03.2001, on an agreed rent of Rs.5,050/- per month. The said lease deed contains an arbitration clause. It appears that dispute and differences arose between the parties, as according to the petitioner, inspite of the petitioner exercising the option of renewal and the respondent continuing to be in the possession of the premises, the respondent had failed to take steps for reassessment of the rent. In such circumstances, the dispute was referred to a Sole Arbitrator. The case made out

in the statement of claim by the petitioner was that the Executive Engineer, PWD vide their letter dated 23.06.2005 had reassessed the rent for the period from 2001-2004 at the rate of Rs.13,080/- per month and starting from the year 2005 at Rs.15,450/- per month. The petitioner as such made a claim for an amount of Rs.9,46,690/-, against the respondent for the period from 01.04.2001 to 31.03.2005 at the rate of Rs.13,080/- and Rs.15,450/- per month for the period from 01.04.2005 onwards, after adjustment towards the interim rent received by the petitioner till February, 2005. The petitioner also sought direction for execution of fresh lease deed.

4. The respondent contested the matter. It was disputed that the option for renewal was exercised. It was contended that the petitioner continued to accept the rent as per the terms and conditions as per the existing lease without any reassessment. It was thus, denied that the rent paid by the respondent and accepted by the petitioner till 28.02.2005 was an interim rent. Insofar as renewal is concerned, it was contended that the respondent had always shown their willingness for execution of the

lease, but the petitioner never came forward to execute the same. It was contended that the rent was payable only after executing the renewal of the lease.

5. The learned Arbitrator by an award dated 16.09.2008 had directed the respondent to pay the petitioner arrears of rent amounting to Rs.9,46,690/- calculated upto March, 2008. The respondent has been further directed to pay rent at Rs.15,040/- per month from 01.04.2008 onwards alongwith interest etc.

6. Feeling aggrieved by the aforesaid award, the respondent, challenged the same in Arbitration Appeal No. 21/2012 under Section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act, for short), which is pending before the learned Principal District Judge, Panaji. It is in that appeal that an application for amendment was filed by the respondent seeking addition of further grounds of challenge as under:

"2(ix) The applicant submits that the arbitral award is in conflict with the public policy of India and on this ground alone, the arbitral award deserves to be quashed and set aside.

2(x) The applicant submits that the suit premises which was the subject matter of the arbitration proceedings was granted to the applicant pursuant to the execution of a Deed of Lease and therefore the provisions of the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, was applicable to the suit premises. Inasmuch as the learned Arbitrator failed to appreciate the applicability of the said Act to the suit premises, the enhancement of the rent without considering the said Act was not in consonance with law and therefore, the award dated 16.09.2008, is bad in law and is liable to be quashed and set aside.

2(xi) The learned Arbitrator failed to appreciate that the subject matter of the dispute involved in the arbitral proceedings was not capable of settlement by arbitration under the law for the time being in force, inasmuch as the suit premises was governed and protected under the Goa, Daman & Diu Buildings (Lease, Rent and Eviction) Control Act, 1968."

7. The petitioner opposed the application. It was contended that the amendment is barred by limitation and it is only filed with an ulterior motive to delay the proceedings. It was contended that new ground for which there was no foundation laid before the learned Arbitrator can be allowed. Thus, the said ground cannot be allowed to introduced for the first time in the arbitration petition for setting aside of the arbitral award. It was denied that the arbitral award is against public policy. It was contended that the respondent had submitted to the jurisdiction of the learned Arbitrator and the petitioner cannot now turn around to challenge the same. It was denied that the provisions of Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Rent Control Act, for short), are applicable to the suit premises. It was contended that no reasons have been shown for raising such ground belatedly and which would cause irreparable loss to the petitioner.

8. The learned Principal District Judge by the impugned order has allowed the application. Feeling aggrieved the petitioner is before this Court.

9. I have heard Mr. Ramani, the learned Counsel for the petitioner and Mr. Rebello, the learned Additional Government Advocate for the respondent.

10. It is submitted by the learned Counsel for the petitioner that the recourse to an arbitral award under Section 34 of the Arbitration Act has to be taken within a period of three months from the receipt of the arbitral award. It is submitted that the proviso to Section 34(3) of the Arbitration Act provides that the said period of three months can be extended by 30 days and not thereafter. It is thus submitted that the proposed amendment, seeking to raise additional grounds, beyond this period would be impermissible.

The learned Counsel in this regard has placed reliance on the decision of this Court in the case of **Vastu Invest & Holdings Pvt. Ltd. Vs. Gujarat Lease Financing Ltd., 2001(2) All MR 322**. It is next submitted that none of the grounds sought to be raised now, were raised before the learned Arbitrator. It is submitted that in the absence of any of such grounds, being raised before the learned Arbitrator, the same cannot be raised for the

first time in the application. The learned Counsel pointed out that the respondent had not taken any objection to the jurisdiction of the learned Arbitrator in terms of Section 16 of the Arbitration Act and thus, the said grounds cannot be allowed to be raised at this stage. It is submitted that the learned Principal District Judge failed to address himself on this aspect and proceeded to grant the amendment mainly on the ground that no prejudice would be caused to the petitioner since they will be entitled to rebut the additional grounds.

11. The learned Additional Government Advocate for the respondent has submitted that the ground of amendment being beyond the period of limitation would not be attracted in as much as the amendment would relate back to the date of filing of the original petition. Reliance in this regard is placed on the decisions of the Hon'ble Supreme Court in the case of **Venture Global Engineering Vs. Satyam Computer Services Limited and Another, AIR 2010 SC 3371** and in the case of **Siddalingamma and Another Vs. Mamtha Shenoy, AIR 2001 SC 2896**. It is submitted that as a normal rule the amendment would relate back

to the filing of the original petition and thus, the objection on the ground of limitation, is misconceived.

The learned Additional Government Advocate has also placed reliance on the decision of the Hon'ble Supreme Court in the case of **Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, AIR 1957 SC 363**, in order to submit that even in a case where the reliefs are barred by limitation, the Courts are not without jurisdiction and power to direct the amendment, if that is required in the interest of justice. It is submitted that at the highest, this has to be taken into consideration, while exercising the discretion, while allowing the amendment. It is submitted that the learned District Judge has rightly exercised the discretion as the grounds raised on the basis of the Rent Control Act are points of law. It is submitted that Section 34(2)(b) of the Arbitration Act provides that, if the "Court finds", that the subject matter of the dispute is not capable of settlement by Arbitration, under the law for the time being in force or the arbitral award is in conflict with the public policy of India, the same can be allowed to be raised. He therefore submits that no case for interference is made out.

12. I have considered the rival circumstances and the submissions made. Out of the three grounds sought to be added, the first one is in respect of the award being in conflict with the public policy of India and rest of the two grounds are based on the provisions of the Rent Control Act. It is true that the ground based on the Rent Control Act was not raised before the learned Arbitrator. The respondent had also not raised an objection as contemplated under Section 16 of the Arbitration Act. The grounds proposed to be added are relatable to Section 34(2)(b) of the Arbitration Act. In the case of **State of Maharashtra Vs. Hindustan Construction Company Limited** reported in **AIR 2010 SC 1299**, the Hon'ble Apex Court after considering the ambit of the expression "the Court finds that" as appearing in Section 34(2)(b) of the Arbitration Act has held that, where the application under Section 34 has been made within the prescribed time, leave to amend the application in peculiar circumstances of the case and in the interest of justice, can be granted. The Hon'ble Supreme Court has referred to its earlier decisions in the case of **L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., AIR 1957 SC 357** and in the case of **Pirgonda Hongonda Patil**

(supra).

13. It can thus be seen that normally, different considerations would apply while considering an amendment when the grounds of challenge sought to be added are with reference to the provisions of Section 34(2)(b) of the Arbitration Act. In the case of **L.J. Leach and Company Ltd.** (supra), the Hon'ble Apex Court held thus:

"It is no doubt, true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice."

14. The ground based on the provisions of the Rent Control Act would be essentially the question of law, which can be gone into and dealt with by the learned Principal District Judge. The petitioner would evidently get an opportunity to meet the grounds as raised. In that view of the matter, I do not find that the

discretion exercised by the learned Principal District Judge, while allowing the amendment application needs interference in the exercise of the extra ordinary jurisdiction of this Court. All the rival contentions including whether the amendment would relate back are left open to be raised and to be dealt with by the learned Principal District Judge, while deciding the main petition. It is made clear that this Court has not expressed any opinion on the justifiability or acceptability of the grounds as raised.

15. In that view of the matter, the Writ Petition is hereby dismissed, with no order as to costs. Rule is discharged with no order as to costs.

C. V. BHADANG, J.

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