

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION APPEAL NO.66 OF 2012

ALONGWITH

ARBITRATION APPEAL NO.65 OF 2012

Shri. Rajendra Lalitkumar Agarwal
Proprietor,
M/s Agarwal Stone Udyog,
S. No. 91/2, Tathavade, Tal. Mulshi,
District Pune - 411 033 Appellant

Vs.

Pimpri-Chinchwad Municipal Corporation
Thru' the Commissioner,
Pimpri, Pune – 411 018 Respondent

Ms. Gauri Godse i/by Jaydeep Deo, Advocate for the Appellant.
Mr. G.H. Keluskar, Advocate for the Respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 21st October, 2016

P.C.

1 These appeals are directed against the common judgment and order dtd. 20th September, 2012, by which the District Court, Pune dismissed the appellant's application under Section 34 of the Arbitration Act being Civil Misc. Application

No.751 of 2008 and allowed the application by the respondent being Civil Misc. Application No.92 of 2009 challenging the same arbitral award. In the arbitral proceedings, the appellant had claimed damages in the sum of Rs.5,12,28,450/- with interest @ 12% p.a. w.e.f. 1st April, 2002 contending that the respondent had obstructed the activities of the appellant under the agreement dtd. 15th September, 1998. By the award dated 6th March, 2008, the learned Arbitrator partly allowed the claim of the appellant as well as the counter-claim of the respondent. It directed the respondent to pay damages to the petitioner @ 12% p.a. on Rs.3,12,85,000/- from 1st April, 2002 till 29th August, 2003 and also for the period till removal of obstruction by the respondent in the activities of the petitioner. The direction as against the petitioner was to pay annual rent to the respondent @ Rs.1,00,000/- from 1st April, 2002 together with 2% increase for each subsequent year as contemplated under the agreement with interest @ 12% p.a. on the amount for the delayed period. The impugned order sets aside both the above directions and thus in effect sets aside the entire award.

2 The brief factual background of the appeal is that the respondent, Pimpri-Chinchwad Municipal Corporation through its Additional Commissioner entered into agreement dtd. 15th September, 1998 for construction of swimming pool on B.O.T. basis. In order to make the activity of the swimming pool financially viable for the appellant, he was permitted to build

recreational centre and sports club and to operate the same for a period of 29 years from 1st April, 1999 with the appellant. The appellant was entitled to the entire income from operating the swimming pool and sports club for the first three years i.e. upto 1st April, 2002. Thereafter he agreed to pay the respondent rent of Rs.1,00,000/- per year starting from 30th April, 2002 with 2% increase for every subsequent year. The construction of the swimming pool was completed and it became operational on 1st April, 1999. The appellant also constructed a restaurant and recreational activities like an open cafeteria, a club house, jogging track, go-carting cars and the track for go-carting etc. in the open space around the swimming pool.

3 The appellant alleges that there was excessive interference from the respondent into the running of the swimming pool and the recreational facilities. Because of the dispute between the respondent and Pimri-Chinchwad New Town Development Authority ('PCNTDA', for short) about execution of the lease agreement in favour of the respondent, PCNTDA refused to issue part / completion certificate to the appellant. This created hurdles in the working of the appellant. The other interference alleged by the appellant is that on 11th June, 1999, the Executive Engineer of the respondent informed the appellant that he should print the name of Masaheb Meenatai Thakare on the tickets issued to the persons visiting the swimming pool. Yet another incident is of a Corporator of the respondent parking his

vehicle in such a way as to prevent anybody's entry in the premises of the swimming pool. With these allegations the appellant sought to recover, by invoking arbitration, the sum of Rs.3,12,85,000/- being the investment made by him in the project and sum of Rs.1,25,00,000/- towards damages suffered due to interference with recreational and supporting activities conducted by the appellant such as go-carting, garba and cocktail parties.

4 The respondent-Corporation contested the claim contending that by its letter dtd. 15th October, 1999 it had objected to activities of go-carting alleging that the same was not permitted by the agreement. Objection was also taken to conducting activities of garba dance, holding cocktail parties in the premises of the swimming pool, and allowing orchestra leading to noise pollution. The respondent had received complaints against the appellant from the citizens and the Corporator from the concerned ward about the cocktail parties held in swimming pool premises. The next allegation was that of the appellant encroaching upon the land of the respondent. As regards the allegations of interference with the activities of the appellant, it was pointed out by the respondent that the appellant had filed R.C.S. No. 109 of 2001 against the respondent in which he obtained ex-parte interim injunction to restrain the respondent from causing any kind of obstruction in the activities of the appellant. As such there could be no merit in the allegation. By the counter-claim filed, the respondent sought to recover Rs.5,00,00,000/- being the lease

rent defaulted by the appellant.

5 The Arbitrator, on appreciation of the evidence available before him awarded damages to the appellant and directed him to pay rent as stated at para 1 above. Being aggrieved by the award, both sides preferred applications under Section 34 of the Arbitration Act to the District Court, Pune. By the order dtd. 20th September, 2012, the District Court allowed the application of the respondent and partly granted the application of the appellant, which results into setting aside the entire award.

6 The appellant had not lead evidence before the Arbitrator. The respondent had examined it's Officer to support it's claim. Consequently the various claims of the appellant and the allegations made by him against the respondent, were in fact not established. The District Court in the impugned order has taken note of the absence of evidence on the part of the appellant. It holds that there was no evidence before the Arbitrator to show that the appellant had invested a sum of Rs.3,12,85,000/- in the project. The tender submitted by the appellant quoted construction cost of the swimming pool as of Rs.65,00,000/- and the recreation premises as of Rs.30,00,000. Thus at the highest the material available on record on the investment indicated investment of Rs.95,00,000/-. Hence, the finding of the Tribunal on the extent investment claimed to have been made by the appellant was perverse.

7. The District Court next noted that in view of the interim relief in the suit filed by the appellant prohibiting any sort of obstruction in enjoyment of the swimming pool, recreation club, sports club and other activities of the appellant under the agreement, there could be no substance in the allegations of interference either by the respondent or by its Corporator. It has also taken note of fact that, it is not the allegation of the appellant that there was any breach of the interim relief at the hands of any of the officers of the respondent or a Corporator.

8. There is one more ground on which the District Court has supported its order. It holds that the notice of arbitral proceedings served upon Commissioner of the respondent was not valid. The notice ought to have been served upon the respondent. The Commissioner of the respondent and the respondent cannot be treated as one of the authority. They are distinct authorities. The notice of the arbitral proceedings being invalid the entire arbitral proceedings conducted thereafter get vitiated.

9. All the three grounds, on which the District Court finds impugned award unsustainable, are valid grounds. Also the factual basis of those grounds cannot be disputed. Consequently, there is no infirmity in the impugned order. The appeals are dismissed.

(Smt. R.P. SondurBaldota, J.)