

vai

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

ARBITRATION PETITION (LODGING) NO.349 OF 2016

WITH
NOTICE OF MOTION (LODGING) NO.793 OF 2016
IN
ARBITRATION PETITION (LODGING) NO.349 OF 2016

Ravindra G. Mehta & Anr.	...Petitioners
V/s.	
Hemant G. Mehta	...Respondent

Mr.Dinesh Purandare with Mr.Ravi Gandhi, Mr.Mahek Kamdar and Mr.Rashmin Jain i/b Kanga & Co. i/b Kanga & Co. for the Petitioners.

Dr.Birendra Saraf with Mr.R. Kadam i/b Mr.Bipin Joshi & Mr.Prayag Joshi for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 9TH MARCH, 2016.

P.C. :-

1. By this petition filed under section 37 of the Arbitration & Conciliation Act, 1996 (for short "the said Act"), the petitioners have impugned the order dated 25th February, 2016 passed by the learned arbitrator rejecting the application for clarification of the orders dated 27th October, 2015 read with 10th December, 2015.
2. The parties to the present proceedings are the partners. It

is not in dispute that the partnership firm has not been dissolved till date.

3. The respondent was the original claimant before the learned arbitrator and had filed an application under section 17 of the said Act *inter-alia* praying for interim measures. The petitioners herein (original respondents) filed an affidavit in reply before the learned arbitrator opposing those reliefs.

4. On 27th October, 2015, the learned arbitrator issued a direction that the books of accounts and the papers and records of the firm will have to be made available to the claimant by the respondents. The petitioner was permitted to take photo copies of the books of the firms at their own costs after both the parties would initial the same. It is held that the claimant could not be denied the access to the account. No further interim measures prayed by the claimant was granted at that stage.

5. The petitioners herein applied for clarification of the said order dated 27th October, 2015. By an order dated 10th December, 2015, the learned arbitrator modified his earlier order. It was made clear that the claimant shall not without the leave of the arbitral tribunal, approach any customers to solicit business for himself. It was however made clear that if any customer of M/s.Neel Controls mentioned in the accounts was already a customer of the claimant,

the direction issued by the learned arbitrator to obtain the leave of the arbitral tribunal before approaching such customers would not apply to such customer.

6. The petitioners made an application for further clarification of both the aforesaid orders before the learned arbitrator. The petitioners sought further clarification to direct the claimant to furnish the petitioners herein with a list of his customers, who were also the customers of M/s.Neel Controls along with invoices of M/s.Neel Controls and purchase orders of the customers. The said application for further clarification of the earlier two orders was resisted by the original claimant before the learned arbitrator.

7. By an order dated 25th February, 2016, the learned arbitrator rejected the application to issue further clarification to the earlier two orders on the ground that by asking for the list of customers of the claimant herein, the petitioners in effect want to pry into the affairs of the claimant and harm his business which attempt made by the petitioners herein through judicial process would be an abuse of process of law. The learned arbitrator held that the earlier orders passed by the learned arbitrator were clear and did not require any further clarification.

8. It is the case of the petitioners that pursuant to the directions given by the learned arbitrator in the earlier two orders, the

petitioners herein have already furnished such details in a sealed envelope to the learned arbitrator without furnishing a copy thereof to the claimant.

9. It is submitted by learned counsel for the petitioners that the clarification sought by the petitioners against the original claimant to furnish the list of their customers which were common according to the claimant in both the concerns would not have caused any prejudice to the claimant but such clarification was sought only with a view to obviate any further dispute between the parties before the learned arbitrator. He submits that if the claimant has any hesitation in furnishing the list of his clients, which are common, such list can be furnished to the learned arbitrator for the time being without furnishing a copy thereof to the petitioners herein.

10. Dr.Saraf, learned counsel for the original claimants opposed this petition on the ground that the orders passed by the learned arbitrator were clear and by seeking such information from the claimant about his clients, the respondent wanted to pry into the affairs of the claimant and harm his business.

11. A perusal of the order passed by the learned arbitrator on 27th October, 2015 read with order dated 10th December, 2015 clearly indicates that both the orders were clear and did not require any clarification. In any event, the learned arbitrator in the order dated 10th

December, 2015 had already clarified that the claimant shall not without the leave of the arbitral tribunal, approach any customers to solicit business for himself. The learned arbitrator had clarified that if any customer of M/s.Neel Controls mentioned in the account, was already a customer of the claimant that direction would not apply to such customers. In my view, the clarification issued in the order dated 10th December, 2015 was to protect the claimant as well as the respondent. Further clarification sought by the petitioners herein against the claimant to disclose the list of his clients which were common according to the claimant, in my view was not in the nature of any clarification.

12. In my view the learned arbitrator has rightly taken a view that if the claimant was asked to furnish a list of his customers, the petitioners in effect wanted to pry into the affairs of the claimant and to harm his business. In my view, the claimant could not have been asked to furnish the list of his customers which according to the petitioners may be common in the firm M/s.Neel Controls. The learned arbitrator thus has rightly rejected the application for clarification of the orders dated 27th October, 2015 read with 10th December, 2015.

13. In my view the petition is devoid of merits and is accordingly dismissed.

14. In view of dismissal of the arbitration petition, the notice of motion does not survive and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)