

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

**APPEAL NO.386 OF 2014 IN
ARBITRATION PETITION NO.1031 OF 2013 WITH
NOTICE OF MOTION NO.287 OF 2015 IN
APPEAL NO.386 OF 2014 WITH
APPEAL 98 OF 2016 IN
ARBITRATION PETITION NO.871 OF 2013 WITH
NOTICE OF MOTION (ST) NO.1849 OF 2014 AND
NOTICE OF MOTION (ST) NO.1850 OF 2014 IN
APPEAL NO.386 OF 2014**

Manvel Tuscano

...Appellant

Versus

DLF Limited

...Respondent

...

Mr. Chirag Balsara with Mr. Karan Bhosale i/b. Ms Neha D. Bhosale for the Appellant.

Ms Rajani Iyer, Senior Counsel with Mr. Akshay Doctor i/b. M/s. Desai and Diwanji for the Respondent.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 14th DECEMBER, 2016.

ORAL JUDGMENT (PER A.S. OKA, J.):

There is an earlier order passed by a Division Bench of this Court directing that the appeal shall be disposed of at the stage of admission.

2. These two appeals concern the arbitration proceedings in

which an award dated 25th April, 2013 was made by the learned Arbitrator. The said award was challenged in Arbitration Petition No.871 of 2013, which was filed by the Appellant in both the appeals under section 34 of the Arbitration and Conciliation Act, 1996 (for short “the said Act”). The Appeal No.98 of 2016 takes an exception to the order dated 18th June, 2014 passed by the learned Single Judge by which Arbitration Petition filed by the Appellant under section 34 of the said Act was dismissed by the learned Single Judge.

3. The order impugned in the Appeal No. 386 of 2014 is the order dated 31st July, 2014 passed by the learned Single Judge in Arbitration Petition No.1031/2013. As far as this appeal is concerned, we may note here that learned single Judge in Arbitration Petition No.1/2012 passed an order dated 10th July, 2012. Initially learned Arbitrator made an award dated 7th October, 2011. By consent of the Appellant and Respondent in the present appeal, by the aforesaid order dated 10th July, 2012 the award dated 7th October, 2011 was set aside. In the said order, an undertaking of the learned counsel for the Respondent was recorded that an amount of Rs.50,00,000/- will be deposited with the Prothonotary and Senior Master within a period of four weeks from the date of the said order dated 10th July, 2012.

4. The order dated 10th July, 2012 further directed that the Prothonotary and Senior Master shall invest the said amount in a fixed deposit of a Nationalised Bank. The parties were directed to appear before the learned Arbitrator and a request was made to the learned Arbitrator to make an award within a specified time. It was further observed that the amount of Rs.50,00,000/- deposited with the Prothonotary and Senior Master shall be disbursed after an award is made as per the direction of the Court.

5. Thereafter the aforesaid award was made on 25th April, 2013 by the learned Arbitrator after recording a finding that the present Appellant has violated the terms and conditions of memorandum of understanding dated 31st January, 2006 and 21st February, 2006. The learned Arbitrator held that the Respondent was entitled to recover an amount of Rs.91,00,000/- from the present Appellant with interest accrued thereon @ Rs.18% p.a. The counterclaim made by the present Appellant was rejected by the learned Arbitrator.

6. On the basis of the aforesaid order dated 10th July, 2012 passed in the Arbitration Petition No. 1 of 2012, Arbitration Petition

No.1031 of 2013 was filed by the Respondent seeking a direction to the Prothonotary and Senior Master to release the amount of Rs.50,00,000/- with interest accrued thereon. By the impugned order, the said Petition has been made absolute.

7. In Appeal No.98 of 2016, the learned counsel appearing for the Appellant submitted that several submissions were made before the learned Single Judge in support of the Petition filed by the Appellant under section 34 of the said Act. However, the said submissions have not been specifically recorded and dealt with. Our attention was invited to various grounds urged in the Petition under section 34 of the said Act.

8. The learned senior counsel appearing for the Respondent urged that though the submissions canvassed before the learned Single Judge may not have been meticulously reproduced, from paragraph Nos.6 and 7 of the impugned order, the said submissions can be gathered. She has submitted that though the submissions made by the Appellant as regards the rejection of the counter claim may not have been specifically recorded, the same have been dealt with in paragraph Nos.10 and 11. She invited our attention to the findings recorded in paragraph No.8 of the impugned judgment dated 18th June, 2014.

9. We have carefully considered the submissions. In Appeal No.98 of 2016, we can consider only those submissions which were canvassed by the Appellant in support of the Petition under section 34 of the said Act. We have minutely perused the impugned judgment dated 18th June, 2014. Paragraph Nos.1 to 4 of the said judgment record the factual aspects. Paragraph No.6 factually records what was the case made out by the Petitioner in the Petition under section 34 of the said Act. In paragraph No.7, there is a reference to two submissions made by the Appellant. The first submission was based on the Appellant obtaining permission for non agricultural use and procuring certain memorandum of understanding executed with certain farmers. The second contention was that the Petitioner actually handed over 49.99 Acres of land which would constitute performance. The said two submissions have been cursorily dealt with by the learned Single Judge in paragraph No.8, which runs into only seven lines. In paragraph Nos.10 and 11, the learned Single Judge has dealt with the counterclaim made by the Appellant. However, the submissions canvassed as regards the illegality of the rejection of counterclaim have not been noted or reproduced.

10. By the impugned order in Appeal No.98 of 2016, the Arbitration Petition filed by the Appellant has been dismissed. From the tenor of the impugned order, it does not appear to be a summary dismissal of the Petition under section 34 of the said Act.

11. For testing the legality and validity of the order of the learned Single Judge, it is necessary for the Appellate Court to understand as to what were the submissions canvassed before the learned Single Judge, especially when the impugned order is not of summary rejection. Except a vague reference in paragraph No.7 of the impugned judgment and order to the submissions canvassed, it is not possible to gather from the impugned order as to what were the precise submissions of the Appellant. The paragraph Nos.10 and 11 shows that there were submissions canvassed on the issue of rejection of counterclaim made by the Appellant. However, those two paragraphs do not indicate what were the nature of submissions.

12. There were several grounds urged in the Petition under section 34 of the said Act. It is apparent that all the said submissions were not canvassed before the learned Single Judge. Unless the impugned judgment and order records in brief as to what were the nature of the submissions, it is very difficult for the Appellate Court to

decide the appeal on merits one way or the other. Therefore, there is no option but to set aside the impugned order and remand the Petition under section 34 of the said Act to the learned Single Judge for fresh consideration.

13. We had made a suggestion to the learned counsel appearing for the parties that instead of remanding the matter to the learned Single Judge, if the Appellant and Respondent agree, the learned counsel appearing for the parties can be permitted to make detailed submissions on merits of the Petition under section 34 of the said Act so that this Court can deal with the grounds of challenge to the award. Though the learned senior counsel appearing for the Respondent was willing to give consent for adopting the said course, the learned counsel for the Appellant states that the Appellant is pressing for remand to the learned Single Judge. The reason may be that if such a course is adopted, the Petitioner may be deprived of his right of appeal.

14. As far as the appeal No.386 of 2014 is concerned, as recorded earlier, we are remanding the Petition under section 34 of the said Act wherein the challenge is to the award dated 25th April, 2013. Under the order dated 10th July, 2012, the present Appellant had deposited a sum of Rs.50,00,000/- in this Court. By the order dated

10th July, 2012 a direction was issued to the learned Arbitrator to make a fresh award. Thereafter, a fresh award was made. But the Petition under section 34 of the said Act filed for challenging the said fresh award will have to be reheard as indicated in earlier paragraph. Therefore, at this stage, the amount deposited by the Appellant cannot be permitted to be withdrawn by the Respondent. While passing the final order on Petition under section 34 of the said Act, an appropriate direction will have to be issued as regards the withdrawal /disbursement of the said amount. Accordingly, we pass the following order :

ORDER

In Appeal No.98 of 2016

- (i) The impugned order dated 18th June, 2014 in the Arbitration Petition No.871 of 2013 is hereby set aside and Arbitration Petition No.871 of 2013 shall stands restored to file of the learned Single Judge;
- (ii) Considering the fact that the Arbitration Petition is of the year 2013, we are sure that the learned Single Judge will give necessary priority to the hearing of the Petition;
- (iii) All contentions on merits in Arbitration Petition No.871 of 2013 are kept open;

- (iv) The appeal No.98 of 2016 is partly allowed in above terms with no order as to costs;

In Appeal No.386 of 2014

- (v) The order dated 31st July, 2014 passed in Arbitration Petition No.1031 of 2013 is hereby set aside only on the ground that the Arbitration Petition under section 34 of the said Act filed by the Appellant is yet to be finally decided;
- (vi) At the time of the final disposal of the Arbitration Petition No.871 of 2013, the learned Single Judge will pass appropriate order regarding withdrawal /disbursement of the sum of Rs.50,00,000/- deposited in this Court together with the interest accrued thereon;
- (vii) Till further orders are passed in Arbitration Petition No.871 of 2013, the amount of Rs.50,00,000/- with interest accrued thereon shall remain deposited in a Fixed Deposit with any nationalised Bank as directed in the Arbitration Petition No.1 of 2012 by order dated 10th July, 2012;
- (viii) The Appeal No.386 of 2014 is allowed to the aforesaid extent with no order as to costs.

(ix) The notices of motion do not survive and hence,
disposed of.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)