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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (T) (COMM.) 40/2016 & IA No. 6590/2016

SIGNATURE HERITAGE & INFRATECH

PRIVATE LIMITED

..... Petitioner

Through: Mr Anupam Lal Das, Mr Anirudh
Singh and Mr Sahil Mongra,
Advocates.

versus

REKHA YADAVA & ORS.

..... Respondents

Through: Mr Amit Mahajan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.08.2016

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Pass an Order terminating the mandate of the Learned Arbitrator under Section 14 (1) (a) read with Sections 12 and 13 of the Arbitration and Conciliation Act, 1996 in Case Ref. No.DAC/193/07-12.”

2. Mr Anupam Lal Das, the learned counsel appearing for the petitioner submitted that the mandate of the Sole Arbitrator had terminated in terms of Section 14 (1) (a) of the Arbitration and Conciliation Act, 1996 (hereinafter ‘the Act’) as the Arbitrator has become *de jure* unable to perform his functions. He submitted that the Arbitrator had failed to follow the directions of the Supreme Court issued on 18.04.2016 in **SLP(C) No.11736-**

11737 of 2015 :M/s Signature Heritage & Infratech Private Limited v. Rekha Yadava & Ors. inasmuch as the Sole Arbitrator had rejected the petitioner's application for examination of witnesses. He further submitted that the procedure being followed by the Arbitrator was also contrary to the provisions of Section 18 of the Act inasmuch as the petitioner had not been accorded an equal treatment as the respondents. He submitted that whereas the respondents were permitted to lead evidence, the petitioner was asked to disclose its list of witnesses and also provide reasons for examining the said witnesses. Further, the respondents were given an opportunity to object to the witnesses sought to be examined by the petitioner. Mr Das relied on the decision of the Division Bench of the Guwahati High Court in the **State of Arunachal Pradesh v. Subhash Projects and Marketing Ltd. and Anr.:** **2007 (1) Arb. LR 564 (Gau.)** in support of his contention that in cases where the Arbitrator has shown his bias and is not proceeding in accordance with law, the aggrieved party would be within its right to approach the Courts for an order terminating the Arbitrator's mandate.

3. Mr Amit Mahajan, the learned counsel appearing for the respondents countered the submissions made by Mr Das. He submitted that the petitioner had not drawn the attention of the Supreme Court to the fact that

the petitioner had filed an application for examining as many as 24 witnesses and the Arbitrator had reserved orders on the said application. He contended that the petitioner had merely contended that it desired to lead evidence and the observations made by the Supreme Court in the order dated 18.04.2016 were in that context. He further contended that the arbitral proceedings were required to be completed in a time bound manner and the Arbitrator was endeavouring to complete the arbitral proceedings within the time period specified by the Supreme Court. In the circumstances, it was expedient for the Arbitrator to ascertain the necessity of examining large number of witnesses so as to ensure that the proceedings are not unduly delayed. It is submitted that in the circumstances, no interference was called for at this stage. He also relied on the decision of the Division Bench of this Court in *Progressive Career Academy Pvt. Ltd. v. FIITJEE Ltd.*: 180 (2011) DLT 714 in support of his contention that the courts will not interfere at a pre-award stage on the grounds of alleged bias.

4. I have heard the learned counsel for the parties.

5. The disputes between the parties relate to a property situated at Mahipalpur, New Delhi. It is stated that the respondents had leased the said premises to the petitioner for the purposes of developing the same into a 120

room luxury hotel. It is the petitioner's case that the agreement was induced by fraudulent representations. In view of the disputes, the respondents invoked the arbitration clause and a former judge of this Court, Justice S.N. Kapoor (Retd.) was appointed as the Sole Arbitrator. The arbitration is being conducted under the aegis of Delhi International Arbitration Centre. The first hearing was held on 10.12.2012. The petitioner had also filed an FIR against the respondents and the petitioner states that on 02.06.2014, the parties had entered into a '*Rajinama*' for resolution of their disputes before the police authorities.

6. The order sheet dated 05.07.2014, in the arbitral proceedings, indicates that certain observations were made by the then counsel appearing for the petitioner, which led Justice S.N. Kapoor (Retd.), the Sole Arbitrator to withdraw from the proceedings. Thereafter, by an order dated 12.03.2015 passed in **OMP No. 1087/2014: Rekha Yadava v. M/s Signature Heritage & Infratech Private Limited**, this court appointed Justice Manmohan Sarin (Retd.), former Chief Justice of Jammu & Kashmir High Court, as the Sole Arbitrator. The petitioner preferred a review petition (Review Petition No. 183/2015) seeking review of the order dated 12.03.2015, which was dismissed by an order dated 23.03.2015.

7. Aggrieved by the aforesaid order dated 23.03.2015 dismissing the petitioner's review petition No. 183/2015, the petitioner preferred a Special Leave Petition (SLP No(s). 11736-11737/2015). In those proceedings, the following order was passed on 09.10.2015:-

“On 7.10.2015, the following order was passed:

“In the course of hearing certain suggestions were given to the learned counsel for the parties. They pray for a day's time to obtain instructions from their respective parties.

List on 09.10.2015. Personal presence of the parties stand dispensed with.”

In pursuance of the aforesaid order, Mr. Sibal, learned senior counsel along with Ms. Pallavi Langar, learned counsel for the respondent has given a proposal for settlement which is to the following effect :

“1. Respondents would pay Rs.1.62 crores in 3 equal installments. First, being payable on 9.2.2016.

2. That immediately on passing of the order by this Hon'ble Court, Petitioner shall hand over the possession of the property to the Respondents.

3. That the proceedings before the Ld. Arbitrator may be expedited and no party shall seek adjournment. The Ld. Arbitrator is requested to complete the proceedings expeditiously and not later than three months.

4. That the Respondents shall have the right to get the property de-sealed and use it and the Petitioner shall not

interfere with the right of the Respondent to the property and the Petitioner shall not interfere in any manner with the exercise of de-sealing of the property.

5. That in case of the Ld. Arbitrator holds in favour of the Respondents and decrees the claim of the Respondent, then the Respondents shall not be required to make any further payment to the Petitioner over and above what has been paid till that date, towards payment of Rs.1.62 crores in terms of clause 1 and parties shall be free to pursue their remedies against the award.

6. That the proceedings in F.I.R. shall stand quashed immediately and the parties shall be guilty of contempt and in willful violation of the order of the Hon'ble Court if they do not comply with any of the stipulations made herein.”

Mr. Das, learned counsel appearing for the petitioner has objection only in respect of clause 2.

We have heard learned counsel for the parties in this regard.

In course of hearing, a suggestion was given that after deposit of the first instalment, the respondent would be at liberty to file an application before the MCD for de-sealing and the petitioner shall have no objection for the same. That apart, the moveable properties which are stored in the disputed properties and admittedly belong to the petitioner shall be shifted in presence of a Commissioner to be nominated by the District Judge, Dwarka. As we are recording the settlement in respect of clauses 1 and 3 to 5, we would request the learned Arbitrator to dispose of the proceedings within a period of three months.

The petitioner would be at liberty to withdraw the entire

amount. It is hereby made clear that the first installment shall commence with effect from 9.2.2016 and the second and third installment shall be paid by 7th of each succeeding quarter.

The special leave petition is, accordingly, disposed of. There shall be no order as to costs.”

8. Thereafter, at a hearing held on 14.12.2015, the Arbitrator noted the Supreme Court's desire for completion of the arbitration proceedings within a period of three months and accordingly directed that the matter be taken up on continuous dates; he scheduled hearings on 08.01.2016, 09.01.2016 and from 12.01.2016 to 15.01.2016. The respondents' evidence was recorded on 08.01.2016 and the petitioner's evidence was scheduled to be recorded thereafter. The petitioner tendered the affidavit of its Director, Mr Mahesh Verma, by way of evidence along with several documents. In addition, the petitioner also filed an affidavit of its Manager, Mr Saurabh Gupta along with various documents including bills, vouchers, bank statements, audited balance sheets. Both the aforesaid witnesses were examined and cross-examined.

9. At that stage, the petitioner filed an application under Section 27 of the Act for production of additional 24 witnesses. In the meantime, the petitioner also filed a contempt petition before the Supreme Court **[Contempt Petition (C) No. 73-74/2016) in SLP (C) No. 11736-**

11734/2015] as well as applications for clarifications. The said petition and the applications for clarifications were taken up for hearing on 14.03.2016 and the Supreme Court passed the following order:-

“Ms. Pallavi Langar, learned counsel assisting Mr. Kapil Sibal, learned senior counsel has given a draft for Rs.54,00,000/- (Rupees fifty four lacs only). Be it noted, the total amount to be given is Rs.1,62,00,000/- (Rupees one crore sixty two lacs only). The said amount has to be paid in three equal installments, first being payable on 09.02.2016. There has been some delay. Be that as it may, installment shall be honoured in terms of the orders passed by us. As Rs.54,00,000/- (Rupees fifty four lacs only) have been paid, the proceedings pertaining to FIR No.115 of 2012 shall be kept in abeyance. We are keeping it in abeyance as we are of the opinion it can only be quashed after payment of Rs.1,62,00,000/- (Rupees one crore sixty two lacs only).

At this juncture, Mr. Das, learned counsel appearing for the petitioner submitted that as there is possibility of settlement, there may not be an arbitration. In view of the aforesaid, the arbitrator shall not proceed for a period of three weeks.

Let the matter be listed on 18.04.2016.”

10. Thereafter on 18.04.2016, the Supreme Court passed the following order :-

“Having heard learned counsel for the petitioner, we request the learned arbitrator to dispose of the arbitration by the end of September, 2016. We have extended the time as the parties intend

to adduce certain evidence before the learned arbitrator. Be it noted, on 14. 03.2016, this Court had passed an interim order in I.A. No.3-4 of 2016. The said order reads as follows :

“Ms. Pallavi Langar, learned counsel assisting Mr. Kapil Sibal, learned senior counsel has given a draft for Rs.54,00,000/- (Rupees fifty four lacs only). Be it noted, the total amount to be given is Rs.1,62,00,000/- (Rupees one crore sixty two lacs only). The said amount has to be paid in three equal installments, first being payable on 09.02. 2016. There has been some delay. Be that as it may, installment shall be honoured in terms of the orders passed by us. As Rs.54,00,000/- (Rupees fifty four lacs only) have been paid, the proceedings pertaining to FIR No.115 of 2012 shall be kept in abeyance. We are keeping it in abeyance as we are of the opinion it can only be quashed after payment of Rs.1,62,00,000/- (Rupees one crore sixty two lacs only).

At this juncture, Mr. Das, learned counsel appearing for the petitioner submitted that as there is possibility of settlement, there may not be an arbitration. In view of the aforesaid, the arbitrator shall not proceed for a period of three weeks.

Let the matter be listed on 18.04.2016.”

We have been told by Mr. Anupam Lal Das, learned counsel for the petitioner that his clients are prepared for settlement but the other side is not agreeable. In view of the aforesaid, the order of stay of the proceedings before the arbitrator is modified and it is directed that he shall continue and conclude the proceedings by end of September, 2016. The Schedule amount, as directed by us, shall be made good by the respondent within three months. Needless to say, we have vacated the stay order in respect of the arbitration proceeding and extended the time to enable the parties to adduce evidence.

Let the matter be listed on 17.10.2016. The interim order qua FIR No .115 of 2012 shall be kept in abeyance as that was the purport of the order dated 14.3.2016.

Call on the date fixed.”

11. The Arbitrator was informed about the said order and on the same day, he passed an order rejecting the petitioner's application under Section 27 of the Act to examine 24 additional witnesses. In his order, the Arbitrator has explained that evidence of the additional witnesses was not necessary as the evidence tendered by the petitioner was comprehensive.

12. In my view, the orders passed by the Supreme Court on 18.04.2016 cannot be read as a direction to the Arbitrator to allow the petitioner's application for examining the additional 24 witnesses and the contention that the Arbitrator's order dated 18.04.2016 is in wilful disobedience of the order passed by the Supreme Court on 18.04.2016, is unacceptable.

13. On a pointed query from this Court as to whether it is necessary for the petitioner to examine 24 witnesses, Mr Das fairly answered in the negative. However, he contended that the Arbitrator ought to have permitted one or two additional witnesses. Again on a pointed query as to whether any such request was made before the Arbitrator, Mr Das responded in the negative.

14. In the given facts, the only inference that can be drawn is that the petitioner is somehow attempting to frustrate the arbitration proceedings. It is apparent that the present petition has also been filed for the said purpose.

15. In my view, no interference with the arbitral proceedings are warranted. The present petition is bereft of any merits and is, accordingly, dismissed. The pending application also stands disposed of.

16. Needless to mention, the petitioner would have its remedies under Section 34 of the Act, if aggrieved by the Arbitral Award.

17. *Dasti* under the signatures of the Court Master.

VIBHU BAKHRU, J

AUGUST 16, 2016
MK/pkv