

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

% Judgment reserved on: 16th October, 2015
Judgment delivered on: 20th January, 2016

+ FAO(OS) 568/2015 & CM No.22942/2015 (stay)

LANCO INFRATECH LIMITED Appellant

Versus

PCP INTERNATIONAL LIMITED Respondent

Advocates who appeared in this case:

For the Appellant : Mr Akhil Sibal with Ms Aditi Sharma and Mr Aditya Garg,
Advocates.

For the Respondent : Mr Raunak Dhillon with Mr George Varghese, Advocates.

+ FAO(OS) 569/2015 & CM No.22947/2015 (stay)

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CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. FAO (OS) 569/2015 assails order dated 10.09.2015 in Review Petition No. 343/2015 in OMP (I) 350/2015. FAO (OS) 568/2015 assails order dated 28.09.2015 in IA No. 20116/2015 for clarification of order dated 10.09.2015 in Review Petition No. 343/2015 in OMP (I) 350/2015. Both the Review Petition and the application were filed by the Respondent herein who is the petitioner in OMP (I) 350/2015.

2. To appreciate the nature of the dispute that has led to the filing of the appeals, it would be necessary to advert to the brief facts.

3. The Respondent filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act). When the petition came up for admission on pre-notice stage, the Learned Single Judge by order dated 17.07.2015 dismissed the petition holding that this Court did not have territorial jurisdiction.

4. A review petition was filed by the Respondent. The learned Single Judge, without issuance of notice in the review petition, by order dated 06.08.2015 reviewed the order dated 17.07.2015 and held that the Court had jurisdiction. However, notice was not issued in the

section 9 petition after review as the petitioner sought time to amend the petition.

5. The appellants even before notice was issued in the Section 9 petition challenged the order dated 06.08.2015 by which the learned single judge had reviewed the order dated 17.07.2015 and held that the Court had territorial jurisdiction.

6. We, by our order dated 08.09.2015 in FAO (OS) No.501/2015, set aside the order dated 06.08.2015, solely on the ground that the review petition had been allowed without notice to the appellant and remitted the matter to the learned single judge to hear the parties in the review.

7. The Learned Single by the order dated 10.09.2015 (impugned in FAO (OS) 569/2015) held that *“if a petition is originally dismissed at the stage of admission itself without issuing notice for lack of territorial jurisdiction, the subsequent holding by the order dated 6.8.2015 that this Court has territorial jurisdiction did not finally decide the issue of territorial jurisdiction and the order dated 6.8.2015 is for the purpose of only issuing notice in this petition to the respondent by taking an exparte view qua territorial jurisdiction. The final decision on territorial jurisdiction was obviously to be taken after issuing and service of notice on the respondent which would be*

free by filing reply to take all objections to the main petition including on territorial jurisdiction.”

8. The learned single judge by the order dated 10.09.2015 held that he did not have to hear the issue of territorial jurisdiction at this stage finally and this aspect would be heard finally after respondent is issued notice and the respondent files its reply to the petition. He further clarified that holding that the Court had territorial jurisdiction by the order dated 06.08.2015 was for the limited purpose at the ex parte stage of admission for issuing notice in the petition. He further held that for issuing of a notice in the petition the respondent was not to be heard more so, when no caveat had been filed. The learned single judge renotified the review petition before the roster bench.

9. The respondent filed IA No. 20116/2015 for clarification of order dated 10.09.2015 in view of the objection raised by the appellant before the roster Bench that the Order dated 10.9.2015 could not be said to be an order allowing review petition because it was not noted the review petition was allowed.

10. The learned single judge by the order dated 28.09.2015 (impugned in FAO (OS) 568/2015) held that though the order dated 10.9.2015 did not use the expression “review being allowed” but from the content and language of the Order dated 10.9.2015 it was clear

that the review petition was disposed of with the clarification that the observation of this Court having territorial jurisdiction was limited for the purpose of issuing notice in Section 9 petition. The learned single judge held the objection taken by the appellant before the roster Bench to be grossly misconceived and unnecessary and allowed the application with costs of that day's hearing. The learned single judge also made certain personal observations about the alleged conduct of the appellant and their counsel.

11. Being aggrieved by the orders dated 10.09.2015 and 28.09.2015, the appellant has filed the present appeals.

12. Perusal of the record reveals that when the matter was listed before the learned single judge for the first time on 17.07.2015 for admission, the learned single judge was prima facie of the view that the court had no jurisdiction. The appellant (respondent in the section 9 petition) was not on caveat. Thereafter the respondent herein (petitioner in section 9 petition) filed a review petition. The review petition was disposed of on 06.08.2015 holding that the court had jurisdiction. Since the review petition was disposed of without notice to the appellant, we on 08.09.2015 remitted the matter to the learned single judge to hear the review afresh. The learned single judge thereafter on 10.09.2015 while holding that the aspect of jurisdiction would be heard finally after the appellant is issued notice and the

appellant files its reply to the petition and further directing that holding that the Court had territorial jurisdiction by the order dated 06.08.2015 was for the limited purpose at the ex parte stage of admission for issuing notice in the petition renotified the review petition before the roster bench. As the learned single judge by order dated 10.09.2015, had not recorded that the review was disposed of and renotified the same before the roster bench, the appellant had taken the objection before the roster bench. On 28.09.2015, the learned single judge has clarified his order of 10.09.2015 to the extent that though it was not formally recorded but the review had been disposed of. He imposed costs on the appellant and made certain observations of personal nature.

13. The record thus shows that the parties are shuttling between one bench and the other on a preliminary issue without the main petition being taken up on merits. To put the matter to rest we hereby set aside the observations of the learned single judge, about the issue of territorial jurisdiction, both in the order dated 17.07.2015 holding that the court does not have jurisdiction and the order dated 06.08.2015, holding that the court does have jurisdiction. The section 9 petition shall be listed before the roster bench as if it were coming up for the first time for admission at the pre notice stage. The issue of jurisdiction is left open.

14. The observations made in para 1 of the order dated 28.09.2015 about the appellant and the counsel are expunged from the record and the costs imposed by order dated 28.09.2015 are set aside.

15. The appeals are disposed of in the above terms, leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

JANUARY 20 , 2016
HJ

