JPP

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

ARBITRATION PETITION NO. 239 OF 2013

Satsahib Cotton Pressing Factory. … Petitioner.

V/s.

C.A. Galiakotwala and Co. Pvt. Ltd. ... Respondent.

Dr. Saikumar Pathrudu M. for the Petitioner.
Mr. Rohan Rajadhyaksha with Mr. Rushabh Sheth, Ms. Pooja Batra i/b. M/s. Bodhanwalla and Co. for the Respondent.

CORAM : N.M. Jamdar, J.

09 January, 2017.

Oral Order **:-**

By this Petition under Section 34 of the Arbitration and Conciliation Act, 1996, the Petitioner has challenged the award of the Arbitral Tribunal appointed under Rule 20 of the Rules of the Arbitration of Cotton Association of India. The arbitration proceedings were initiated by the Respondent by moving the Cotton Association of India as according to the Respondent the parties were governed by the Rules of the Cotton Association, having signed a purchase contract dated 27 September 2010 and 29 September 2010. The claim of the Respondent was numbers as Arbitration Reference No. 3 of 2012-13.

2. It is the case of the Respondent that a purchase contracts dated 27 September 2010 bearing SG/10-11/002 and SG/10-11/003, third purchase contract order dated 29 September 2010 bearing No.10-11/04 were executed between the parties . The Petitioner had agreed to supply a cotton, 200 bales under the first contract, 200 bales under the second contract and 400 bales under the third contract. It was the case of the Respondent that despite various reminders and personal follow up, the Petitioner did not comply with the terms of the contract. It was stated that the letters were issued on 29 November 2010, 6 December 2010, 6 May 2011 and finally the Respondent informed the Petitioner that it will be proceeding as per the Bye-law No.34-A of the Cotton Association of India to fix the invoice back rate as on 13 May 2011. Accordingly, the Respondent proceeded to invoice back the three quantities specified under the contract and sought an amount of Rs. 41,53,589/- being total of Rs.10,62,969.00 in case of Contract A, Rs.10,62,969 in case of Contract B and Rs.20,27,651/- in case of Contract C together with interest thereon at the rate of 15% p.a. from 13 May 2011 payment and/or realization.

3. On 3 May 2012, the Secretary of the Arbitral Tribunal, as per Rule 20 of the Rules informed the Petitioner of the Constitution of Arbitral Tribunal and the proceedings. The Petitioner informed by an e-mail dated 19 May 2012 that a Suit No.35 of 2012 was filed by the Petitioner in the Court of Additional Civil Judge, Junior Division, Hanumangarh, Rajasthan, challenging the contracts which was pending. The Petitioner called upon the Arbitral Tribunal not to proceed with the arbitration proceedings. The proceedings were fixed on 8 June 2012 which fact was informed to the Petitioner, which was replied to by the Petitioner by stating that a Writ Petition No. 6030 of 2012 was filed in the Rajasthan, High Court Bench at Jodhpur which was pending. The arbitral proceedings started on 8 June 2012 and were adjourned for period of three weeks to 29 June 2012 and thereafter, the learned arbitrator, after considering the material placed on record by the Respondent on which the signature of the Petitioner appeared, proceeded to pass the Award on 10 September 2012 which is impugned in this Petition.

4. The learned Counsel for the Petitioner submitted that the Petitioner M/s. Satsahib Cotton Pressing Factory is a proprietary firm and could not have been sued in the name of the firm without joining the proprietor, which was the position in the suit as well as in the other proceedings. It was submitted that the purchase orders

were signed by one Munim of the Petitioner, who had no authority to sign on behalf of the Petitioner and there was no concluded contract between the parties, which fact has not been considered by the arbitrator. It was contended that there was serious breach of the principles of natural justice, as inspite of informing the pendency of the Suit and the Writ Petition, the arbitrator proceeded, on the same day i.e. on 8 June 2012. It was contended that the Petitioner, not being a member of the Cotton Association, the Bye- laws and Rules are not applicable to the Petitioner and therefore, the arbitration proceedings could not have been conducted as per the said Rules. It was contended that the costs of Rs.85,000/- imposed are exorbitant.

5. The Petitioner did not appear before the Arbitrator and all the arguments that are advanced before this Court, are being advanced for the first time. It is not that the Petitioner was unaware of the arbitral proceedings. The Suit bearing No.35 of 2012 was filed by the Petitioner in which the Respondent appeared and filed an application under Section 8 of the Act. This application was allowed and it was held that the matter is covered by the arbitration clause. The Petitioner received a notice from the Cotton Association, therefore the Petitioner was fully aware of the arbitration proceedings. There was no impediment for the Petitioner to participate in the arbitration proceedings. It is out of choice the Petitioner did not participate in the proceedings. Having not

participated with full knowledge and having taken a calculated risk, the Petitioner cannot now turn around and complain of holding of the principles of natural justice.

6. The arbitration proceedings were not concluded in a hurry as argued. First letter is of 3 May 2012. Reply of the Petitioner is of 19 May 2012. The arbitral reference first fixed on 8 June 2012. Having moved the High Court and having come to know that the arbitration proceedings are fixed on 8 June 2012, nothing stopped the Petitioner from seeking an interim order from the High Court. In such circumstances, the Petitioner had option either to participate in the proceedings or to seek an interim order. The Petitioner chose to do neither. On 8 June 2012 the arbitral proceedings were adjourned to 29 June 2012. Therefore, the Petitioner had three weeks to apply to the Rajasthan High Court, which was not done. There is no rule that the arbitral proceedings must proceed at a particular pace and in these circumstances having filed no reply, the arbitral tribunal proceeded to pass the Award.

7. The purchase orders which have been placed on record of the Arbitrator contains an endorsement. It is not disputed that the person who had signed the purchase orders, one Mr. Banwari Lal, is in the employment of the Petitioner as a Munim. Whatever is the internal arrangement in the Petitioner's firm it was for the Petitioner

to explain. It is not that a complete stranger has signed these documents. It is not unknown for the Managers to sign the routine purchase orders. Therefore, the reliance of the Arbitrator on these purchase orders, being a contract, cannot be considered as an impossible view of the matter. Once this fact was established, the Petitioner was bound by the Bye-laws of the Cotton Association, as purchase order specifically referred to the same. In the Rules of Arbitration framed by the Cotton Association, "member" and "party" are separately defined. Rule 4 suggests that the parties can voluntarily govern themselves by the Cotton Association of India as per Rules. Therefore, the fact that the Petitioner was not a member of the Cotton Association will not permit the Petitioner to escape from the liability imposed by the Award.

8. The learned Counsel for the Respondent has drawn my attention to various reminders, which have been annexed to the affidavit-in-reply, calling upon the Petitioner to comply with the terms of the contract. The only criticism levied by the learned Counsel for the Petitioner is that these reminders do not have sufficient address and has no proof of service. It is not that the reminders do not mention the name of the Petitioner. The Petitioner would have appear before the arbitrator and pointed out that these letters were not duly served inspite of being addressed to the Petitiooner. In the absence of any such contest, the approach of

arbitrator in accepting these reminders cannot be faulted with. None of these reminders have been replied to.

9. As far as the contention of the learned Counsel for the Petitioner that the proprietary firm could not have been sued in its own name, the nature of the proceedings must be kept in mind. They are not in Civil Suit. Even in cases of Civil Suits, to which Code of Civil Procedure Code applies, Order XXX Rule 10 lays down a procedure for suing the firm in its own name. The Petitioner, the Proprietor, was fully aware that the arbitral proceedings were instituted against the firm and had a full opportunity, to defend. Therefore, no prejudice was caused to the Petitioner, even if it assumed that there was an error in not joining the proprietor by name.

10. This petition was filed in the year 2013. On 24 June 2013 it came up before the learned Single Judge. The learned Single Judge noted that the matter was placed for admission on 17 June 2013 and none had appeared and the matter was adjourned. On 24 June 2013 also none appeared and the Petition was dismissed. Thereafter, a Notice of Motion No. 1045 of 2013 was filed which remained pending and it was on 14 July 2016 subject to cost of Rs.25,000/- that the Petition was restored. On 10 August 2016 when the matter was placed for directions, none appeared for the

Petitioner. On 18 October 2016, the learned Counsel for the Petitioner was not present and the matter was adjourned by way of last chance. It was then adjourned to 29 November 2016. On 29 November 2016, none appeared for the Petitioner. Therefore, taking note of earlier orders, on 4 January 2017, the matter was placed today under the caption 'for dismissal'. The conduct of the Petitioner in this Court as well, re-enforce the grievance of the Respondent all that the Petitioner has done this to avoid contesting the matter on merit to avoid its liability.

11. In the circumstances, no case is made out by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996. Considering the conduct of the Petitioner in this Court, the imposition of the costs of Rs.85,000/- by the Arbitrator, is justified. The Arbitration Petition is dismissed.

(N.M. Jamdar, J.)