

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

+ **FAO No. 251/2017**

% **29th May, 2017**

SATISH KUMAR MANGLA Appellant

Through: Mr. Amit Gupta, Advocate.

versus

ANGEL BROKING PVT. LTD. Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 impugning the judgment of the court below dated 17.12.2016 which has allowed the benefit of Section 14 of the Limitation Act, 1963 to the respondent herein, and which company was the objector in the proceedings in the court below under Section 34 of the Arbitration and Conciliation Act. It is argued on behalf of the appellant that the respondent should not get the benefit of Section 14 of the Limitation Act with respect to the arbitration proceedings which has resulted in the award dated 19.3.2014.

2. The facts of the case are that appellant was the customer of the respondent in the F&O segment of the National Stock Exchange of India (NSE). With respect to the security transactions conducted in the trading account of the appellant, disputes arose with the respondent, and resultantly the respondent herein preferred an arbitration claim before the NSE. The present appellant, who was the respondent in the court below, had filed claim for a sum of Rs.14,67,138.95/-. The present appellant, who was respondent in the court below, filed a counter-claim in the arbitration proceedings for a sum of Rs.34,11,500/-. In these arbitration proceedings on the joint request made by both the parties and with the consent of both the parties an order dated 10.3.2010 was passed giving liberties to the parties to invoke the civil jurisdiction of the competent court and the arbitration proceedings stood disposed of accordingly.

3. As a result of the order passed in the arbitration proceedings giving liberty to approach the civil court, the present respondent therefore moved the High Court of Mumbai and in which proceedings the appellant also participated. This suit was disposed of by the High Court of Mumbai in terms of its order dated 22.6.2012 whereby the parties were directed either to continue with the previous

arbitration proceedings which were withdrawn or parties were at liberty to initiate a fresh arbitration proceedings before the NSE.

4. As a result of the order of the High Court of Mumbai dated 22.6.2012 fresh arbitration proceedings were initiated under the aegis of NSE wherein the respondent filed its claim petition for its unpaid dues. The arbitrator dismissed the arbitration proceedings as being time barred by refusing to give the benefit of the period spent before the High Court of Mumbai being the period from 21.7.2010 till 22.6.2012 and resultantly the fresh arbitration claim filed being beyond the period of three years was held to be time barred and accordingly dismissed.

5. The point of consideration before this Court, as also before the Court below, was whether the respondent herein should have got the benefit of Section 14 of the Limitation Act for the period of pendency of proceedings before the High Court of Mumbai, and which benefit if given the arbitration proceedings filed for the second time under the aegis of NSE would have been within limitation.

6. The court below has set aside the award dismissing the claim of the respondent as time barred by making the following observations in paras 13 to 18 of the impugned order, and which read as under:-

“13. Further, it is settled law that under Section 14 of the Limitation Act, the period from the date of filing suit/petition before the Court not having jurisdiction till the disposal should be excluded from the period of limitation. In the present case, the suit was filed before the Hon’ble High Court of Bombay Court and vide order dated 22.06.2012, the said suit was ordered to be disposed of for want of jurisdiction. Vide order dated 22.06.2012 passed in Suit No. 2362 of 2010 in which the petitioner and respondent were parties, the Hon’ble High Court of Bombay has held that:

11. It may be mentioned that merely because leave is applied for and granted in various suits even if the entire cause of action arose within this jurisdiction, leave does not become imperative to be granted. It has to be granted, only if without leave the suit cannot proceed. The test is that it would have to be seen whether the suit, if otherwise within the inherent jurisdiction of the Court, could have been filed in Mumbai only. The term of payment would confer such jurisdiction without leave. Hence the issue relating to the territorial jurisdiction is answered such as to hold that this Court would have territorial jurisdiction.

12. The argument that without the leave the suit cannot proceed and must be dismissed is incorrect. However, the argument that this Court has no inherent jurisdiction is correct. Consequently, the suit cannot be tried by this Court. The papers must be returned to the proper forum for filing and continuing of the dispute for adjudication. In this case the proper forum is the Arbitration of the NSE. Consequently, defendant may either continue the arbitration which was withdrawn or file a fresh arbitration petition before the NSE.

14. Thus, the total period required to be excluded is from the date of filing of the suit before the Hon’ble Bombay High Court having no jurisdiction. The counsel for petitioner has vehemently argued that the period from 21.07.2010 (date of filing of the suit before the Hon’ble High Court of Bombay) till 22.06.2012 should be excluded from the limitation period. A period, spent in pursuing the civil proceeding before the Court not having jurisdiction to entertain the same, could be excluded from limitation period only when the petitioner was pursuing the said proceeding with due diligence. The purpose of Section 14 of the Limitation Act is that the plaintiff should have pursued his remedy before the incompetent forum in good faith and with due diligence.

15. Hon’ble High Court of Delhi in case titled as Anil Bhambri Vs. North Delhi Power Limited passed in RFA No. 567/2001 has held that:

4. Surely, an impression with respect to definition of a person being or not being a consumer is a legal issue and if there is a particular opinion of a legal issue there cannot be said to be any lack of bonafides for denying the benefit of Section 14 of the Limitation Act, 1963 to the appellant/plaintiff. Once a plaintiff pursues, in bonafide manner, a claim in wrong forum which did not have jurisdiction, such a plaintiff is entitled to the benefit of exclusion of the period under Section 14 of the Limitation Act, 1963 spent in the wrong forum.

16. Further, in the present case, the petitioner spent the time from 21.07.2010 to 22.06.2012 in pursuing the case in Hon’ble High Court of Bombay on the basis of assumption that Hon’ble Bombay High court has jurisdiction in the matter. This contention of the petitioner was not accepted

by the Hon'ble Bombay High Court and the suit was disposed off. In the said order, it is further directed by Hon'ble High Court of Bombay that the papers must be returned to the proper forum for filing and continuing of the dispute for adjudication. It is further held in the said order that defendant may either continue the arbitration which was withdrawn or file a fresh arbitration petition before the NSE.

17. Further, it seems very clear that the Ld. Arbitrator was in a hurry to somehow hand out a decision in favour of the respondent. Such like Awards are clearly against the public policy which tend to brush aside a contest and a fair opportunity to the petitioner/objector. It is then very clear that without even having applied his mind to the matter at hand and without even going through the orders of Hon'ble High Court of Bombay, wherein it is specifically held that the papers must be returned to the proper forum for filing and continuing of the dispute for adjudication, the Ld. Sole arbitrator has simply brushed aside the pleas of the petitioner/objector taken in his WS and such like Award cannot be held to be good as being opposed to public policy and being contrary to the material on record and the same has to be set aside. This legal aspect is not disputed but herein the Ld. Arbitrator has failed to appreciate the liberty given by the Hon'ble High Court as stated above, hence there is no question of court as sitting in appeal but rather this court has been deprived of the reasons prevailing in mind of the Ld. Arbitrator to pass the award. In these circumstances, there is no question of any reappraisal of the evidence. The counsel for respondent failed to justify the award on the test of principles of natural justice.

18. Consequently, as it clear that the claim of the petitioner is not barred by limitation, accordingly the impugned award is hit by Section 34(2) of the Act and it is set aside. The matter is remanded back to the Ld. Sole Arbitrator alongwith his proceedings and previous record, to give the finding afresh after affording opportunities to both the parties to present their case and the Ld. Sole Arbitrator will decide the issues on the basis of material and law before him, while so considering the objections the Ld. Arbitrator shall be uninfluenced by the various observations made by this Court. Nothing stated herein shall tantamount to an expression of opinion on the merits of the case. With these directions, the petition stands disposed off. Copy of this judgment be sent to Sole Arbitrator for compliance. The record of petition under Section 34 of the Act be consigned to record room."
(underlining added)

7. In my opinion, no illegality whatsoever is committed by the court below in the aforesaid paras because it is seen that it is by virtue of a consent order that earlier arbitration proceedings were closed and the matter was filed and thereafter remained pending in the High Court of Mumbai. High Court of Mumbai while passing the

judgment dated 22.6.2012 gave two options, first of continuing the original arbitration proceedings and second of initiating a fresh claim. Admittedly, the judgment of the High Court of Mumbai dated 22.6.2012 has been challenged by the present appellant in an SLP filed in Supreme Court and there is no stay of proceedings pursuant to the judgment dated 22.6.2012 of the High Court of Mumbai. The order of the High Court of Mumbai therefore will continue to operate and resultantly once the respondent initiated fresh arbitration proceedings pursuant to the judgment of the High Court of Mumbai dated 22.6.2012, with the fact that earlier arbitration proceedings coming to an end was on account of consent of both the parties, it is clear that respondent has to be taken to have participated in the suit in the High Court of Mumbai *bonafidely*. Once, the suit which was filed by the respondent before the High Court of Mumbai was pursued with due diligence and *bonafidely*, and the High Court of Mumbai while holding it had no jurisdiction, in fact gave entitlement to the respondent either to initiate fresh proceedings or continue with the old arbitration proceedings, hence there was no illegality in the respondent initiating fresh arbitration proceedings and taking benefit of Section 14 of the Limitation Act. By the impugned order, therefore, the court below was justified in setting aside the Award dated 19.3.2014 which had

dismissed the claim petition at the initial stage as being barred by limitation and the court below has therefore rightly directed that arbitration proceedings will now proceed in accordance with law for adjudication.

8. Dismissed.

MAY 29, 2017

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VALMIKI J. MEHTA, J

