

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

+ **RFA No.695/2017**

% **3rd August, 2017**

M/S. CITICORP FINANCE (INDIA) LIMITED & ANR.

..... Appellants

Through: Ms. Suruchi Suri, Advocate
with Ms. Aasia Husan,
Advocate.

versus

MATHEN JOSEPH

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.27681/2017 (under Section 149 CPC)

1. This application is allowed and one week time is granted to the appellants to deposit the court fees. Undertaking of the appellants is recorded to deposit the court fees within one week through the counsel for the appellant who appears in the Court today. In case, Court fees are not filed within one week, the Registry will list the matter in the Court for taking appropriate actions.

C.M. stands disposed of.

C.M. No.27682/2017 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.27680/2017 (for condonation of delay)

3. For the reasons stated in the application, delay of 24 days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.695/2017 and C.M. No.27679/2017 (stay)

4. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908(CPC) is filed by the defendants in the suit with the appellant no.1 being defendant no.1 and the appellant no.2 being the defendant no.2. In fact, no appeal is required to be filed by the defendant no.2/appellant no.2 because the impugned judgment and decree dated 27.3.2017 is only against the appellant no.1/defendant no.1.

5. The facts of the case are that the respondent/plaintiff filed the subject suit for recovery of Rs 19.26 lacs with interest from the appellants/defendants pleading that the respondent/plaintiff was appointed as a sole Arbitrator to decide the cases of the appellant

no.1/defendant no.1/company and the charges of arbitration were fixed at Rs.500/- per case and an additional amount of Rs.100/- per case for maintaining the Award file. The unpaid bills with respect to which dues were claimed by the respondent/plaintiff are stated in para 10 of the plaint. The respondent/plaintiff was pleaded to have been appointed as an Arbitrator in terms of clause 30 of the loan agreement entered into by the appellant no.1/defendant no.1 with its loanees/debtors. The respondent/plaintiff pleaded in the plaint that since the dues of the respondent/plaintiff for conducting of the arbitration proceedings are not paid, hence, the subject suit was filed for recovery for the unpaid dues.

6. The appellants/defendants contested the suit. The case of the appellants/defendants was that the appellant no.2/defendant no.2 is not a necessary party, and I may note that therefore there is no judgment and decree passed against the appellant no.2/defendant no.2 in terms of the impugned judgment and decree and which has been passed only against the appellant no.1/defendant no.1. The appellant no.1/defendant no.1 claimed that it was not liable to pay the charges claimed by the respondent/plaintiff because the appellant

no.1/defendant no.1 had appointed M/s A.Md. Samiulla & Associates as their Advocates and who are given a consolidated fee including the fees which were payable to the Arbitrator being the respondent/plaintiff. It was the case of the appellant no.1/defendant no.1 that complete dues of the Arbitrator/respondent/plaintiff stood paid to M/s A.Md. Samiulla & Associates and therefore no dues were payable to the respondent/plaintiff as claimed. Appellant no.1/defendant no.1 also pleaded that the suit was bad for non joinder of the necessary party being M/s A.Md. Samiulla & Associates.

7. After pleadings were complete, the trial court framed the issues and parties led evidence, and which aspects are noted in paras 12 to 14 of the impugned judgment and which paras read as under:-

“12. From the pleadings of the parties following issues were framed on 08.05.12:

1. Whether the suit filed by plaintiff is bad for non-joinder of necessary parties being law firm M/s A. Md. Samiulla & Associates and its proprietor Mr. A. Mohd. Samiulla? OPD.
2. Whether the suit filed by the plaintiff as against defendant no.2 is bad for mis-joinder of parties? OPD
3. Whether the plaint does not disclose any cause of action against the defendants in the sense that defendants were not party to the agreement between the plaintiff and Law Firms M/s A. Md. Samiulla & Associates? OPD.
4. Whether there exist an agreement between the plaintiff and defendant no.1 for the payment of fees for the arbitration proceedings

conducted by the plaintiff for the period between 2006 and 2008? OPD.
(inadvertently typed in order sheet as OPP)

5. Whether the plaintiff was appointed as arbitrator to conduct arbitration proceedings in regard to the loan accounts of defendant no.1 on the recommendation of their counsel, M/s A. Md. Samiulla & Associates? OPD.

6. Whether the payment of arbitrator fees for all the cases conducted by the plaintiff was paid by defendant no.1 to Law Firm M/s A. Md. Samiulla & Associates as per the agreement dated 28.11.06 and renewed agreement dated 17.04.08? OPD.

7. Whether the plaintiff is entitled to recover the suit amount from defendant no.1 or any other amount for the duties performed by him as an arbitrator in regard to the cases referred for arbitration by defendant no.1? OPP.

8. Whether the plaintiff is entitled to claim interest on the amount found due against defendant no.1, if so, at what rate? OPP

9. Relief.

13. Plaintiff/Mathen Joseph appeared in witness box as PW1 and proved on record copy of agreement dt.20.10.08 as Mark A, copy of order dated 04.08.2007 passed by plaintiff as sole arbitrator as Mark B, copy of order dated 01.09.2007 passed by plaintiff as sole arbitrator as Mark C, copy of order dated 22.09.2007 passed by plaintiff as sole arbitrator as Mark D, copy of order dated 22.09.2007 passed by plaintiff as sole arbitrator as Mark E, affidavit in evidence of defendant no.1 dated 17.09.2007 filed in arbitration case as Ex.PW1/1, Award dated 10.10.07 passed by plaintiff in one of the cases as Ex.PW1/2, copy of bills dated 25.08.07, 25.08.07 31.08.07, 30.09.07, 12.10.07, 15.10.07, 31.10.07 and 15.11.07 as Mark F (colly), reply notice dated 26.05.2010 sent by defendants as Ex.PW1/3.

14. Sh. Shailesh Kumar Singh, Authorized signatory of defendant company appeared in witness box as DW1. DW1 proved on record copy of Power of Attorney executed in his favour as Ex.DW1/1, Service Agreement dated 28.11.06 as Mark D1, Service Agreement dated 17.04.2008 as Ex.DW1/3, copy of other service Agreements as Mark C (colly), No Dues Certificate/letter dated 24.11.07 as Ex.DW1/4, copies of other No Dues Certificate are Mark E (Colly) and also relied on copy of legal notice dated 26.04.2010 alongwith copy of reply dated 26.05.2010 already marked as MarkG(colly)&Ex.PW1/3.”

8. Trial court by the impugned judgment decreed the suit finding that the respondent/plaintiff was not paid his fees for

conducting of the arbitration proceedings as an Arbitrator and that the respondent/plaintiff was not a party to any agreement the appellant no.1/defendant no.1 had entered into with M/s A.Md. Samiulla & Associates, and therefore the terms of such agreement whereby any payment was made by the appellant no.1/defendant no.1 to M/s A.Md. Samiulla & Associates, has no concern with the payment of the dues which are payable to the respondent/plaintiff i.e there is no privity of contract of respondent/plaintiff to the agreement entered into by the appellant no.1/defendant no.1 with M/s A.Md. Samiulla & Associates. Trial court in this regard has held accordingly in para 24 of the impugned judgment and this para 24 reads as under:-

“24. This suit has been filed by the plaintiff for recovery of professional dues against defendant no.1. Defendant has proved on record copy of the agreement entered into between him and his lawyer’s firm M/s A Samiullah and Associates. In view of the documents exhibit Ex.DW1/3 & Mark C & D-1. I find that defendant no.1 entered into an agreement with his counsel who represented defendant no.1 in arbitration proceedings. These agreements also stipulates payment of arbitration fee. But these agreements are between the defendant no.1 and his lawyer. Plaintiff is nowhere party to these agreements and hence, there is no privity of contract between plaintiff and defendant no.1. Agreements entered into between the plaintiff and defendant no.1 cannot fasten his liability upon his lawyer for payment of dues of plaintiff. Document exhibit Ex.DW1/4 show that no dues certificate was issued to defendant no.1 by his counsel. On the basis of this document it can be said that entire amount might have been paid by defendant no.1 to his counsel but this payment by defendant no.1 to his client does not absolve the liability of the defendant no.1 towards payment of dues to plaintiff. It is admitted case of the defendant that plaintiff was appointed as sole arbitration by him. Since, plaintiff has filed this suit for recovery of dues of

professional fees etc, hence it is held that this matter involves sufficient cause of action.

Defendant no.1 in his written statement has stated that plaintiff was appointed as Arbitrator by defendant no.1 on the recommendation of M/s A. Md. Samiulla & Associates. In the replication to the written statement plaintiff has denied the alleged recommendation for want of knowledge. In his testimony DW1 has deposed that plaintiff was appointed as sole arbitrator on the recommendation of M/s A.Md. Samiulla & Associates. There is no suggestion in denial put by the plaintiff to defendant witness on the point of recommendation. Hence, it is hold that defendant no.1 has been able to prove the plaintiff was appointed as sole arbitrator on the recommendation of M/s A. Md. Samiulla & Associates. Accordingly these issues are decided.” (underlining added)

9.(i) Learned counsel for the appellant no.1/defendant no.1 argued that the suit was bad for non joinder of necessary party being M/s A.Md. Samiulla & Associates and which argument in my opinion has no legs to stand upon and rightly rejected in terms of the observations made in para 24 of the judgment given by the trial court. The agreements relied upon by the appellant no.1/defendant no.1 are between appellant no.1/defendant no.1 and its lawyers and the respondent/plaintiff is not a party to those agreements and therefore the appellant no.1/defendant no.1 cannot claim that the respondent/plaintiff is bound by those agreements. Surely if a company such as the appellant no.1/defendant no.1 enters into an agreement with certain lawyers and ask the lawyers to pay the fees of the Arbitrator, but such fees are not paid, and there is no agreement of

the Arbitrator with the lawyers that dues of the appellant no.1/defendant no.1/company will be discharged by the lawyers and that the lawyers will be liable to pay, then in my opinion the court below has committed no illegality or error in holding that the appellant no.1/defendant no.1 is not discharged because of it paying the fees to its lawyers and who allegedly did not pay the fees of the Arbitrator/respondent/plaintiff.

(ii) In my opinion, M/s A.Md. Samiulla & Associates was not a necessary party to the suit because there is a difference between a witness who will depose to prove a stand of a party and a necessary party to the case. Appellant no.1/defendant no.1 in order to succeed in its defence could have relied upon the agreements independently of M/s A.Md. Samiulla & Associates being added as a party and which was done because it is found that agreements have been proved on record as Ex.DW1/3 being the service agreement dated 17.4.2008. An earlier service agreement dated 28.11.2006 is marked as D-1 and even this earlier agreement was considered by the court below, and to both of which agreements, the respondent/plaintiff was not a party.

10.(i) Learned counsel for the appellant no.1/defendant no.1 argued that bills which are referred to in para 10 of the plaint were not handed over to the appellant no.1/defendant no.1/company and this has been admitted by the respondent/plaintiff in his cross-examination on 4.6.2013 and accordingly, it is argued that the suit ought not to have been decreed for the amount as prayed.

(ii) Though on the first blush the argument of the appellant no.1/defendant no.1 appears to be attractive because the respondent/plaintiff admitted in his cross-examination that bills were not handed over to the appellant no.1/defendant no.1/company, however, it is seen that it is not the case of the appellant no.1/defendant no.1 in its written statement in reply to para 10, that, the bills stated in para 10 of the plaint, the subject matter of the suit were never received by the appellant no.1/defendant no.1/company. I may also note that even in the affidavit by way of evidence filed on behalf of the appellant no.1/defendant no.1 it is seen as per its paras 11 and 13 that though the bills were submitted by the respondent/plaintiff to M/s A.Md. Samiulla & Associates, M/s A.Md. Samiulla & Associates had forwarded these bills to the appellant no.1/defendant

no.1 and appellant no.1/defendant no.1 denies his liability only on the ground that these amounts stand paid to M/s A.Md. Samiulla & Associates. Thus no valid argument can be raised that the appellant no.1/defendant no.1 did not have copies of the subject bill as mentioned in para 10 of the plaint.

11. There is no merit in the appeal. Dismissed.

AUGUST 03, 2017
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VALMIKI J. MEHTA, J



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