

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION ACT NO. 27 OF 2018

Ivor P. D'Mello & 2 Others	...	Appellants
Versus		
Arvinder Singh & 2 Others	...	Respondents

Shri V.A. Lawande with Ms. Ankita Kamat, Advocates for the Appellants.

Shri Aldrin Monteiro, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

Date : 21st SEPTEMBER 2018

ORAL ORDER:

By this appeal, under Section 37 of the Arbitration and Conciliation Act, 1996 (Act, for short), the appellants (respondents before the Arbitrator), are challenging the judgment and order dated 25.06.2018, passed by the learned Principal District Judge, Panaji in Arbitration Petition No. 18/2017, thereby dismissing the application under Section 34 of the Act and confirming the award dated 20.07.2017, passed by the learned Arbitrator.

2. The brief facts are that the appellants are the owners of a resort by name 'Resort Mello Rosa' at Arpora. It appears that the respondents (claimants before the Arbitrator), through the respondent no. 1 had approached the appellants with a

proposal for investment and the parties had entered into a memorandum of understanding (MOU) on 02.04.2015, when the respondents paid an amount of Rupees One Crore. Subsequently, from May 2015 to July 2015, the appellants were paid another Rupees One Crore and finally, from August 2015 to September 2015, the appellants were paid yet another Rupees One Crore to the appellants. Thus, undisputedly, the appellants were paid Rupees Three Crores by the respondents.

3. The parties entered into a partnership deed and a partnership agreement, both dated 17.07.2015. The partnership agreement contained an arbitration clause. In terms of the agreements and the partnership deed, it was agreed that the appellants shall obtain various licenses to run the resort and would start the renovation, which was to be completed by 30.09.2015 and the possession of the resort was to be handed over to the respondents on 01.10.2015. According to the respondents, the name of the resort, was to be changed to M/s Novel Goa Operators. It is a matter of record that the partnership deed was registered on 09.11.2015, in which the appellants are referred to as 'owner-partners', while the respondents are shown as 'operating partners'.

4. Unfortunately, disputes and differences arose between the parties. There are allegations and counter allegations made by the parties against each other. According to the appellants, they have spent Rupees Eleven Lakhs towards the renovation of the resort, however, the appellants failed to abide by the terms and conditions of the partnership deed as a result of which, the business of the resort could not be started as agreed from 01.10.2015. It appears that pursuant to the arbitration clause, the respondents initially appointed Advocate Bharat Bhushan Sethi as Arbitrator to adjudicate the dispute between the parties. However, subsequently, the respondents filed an application under Section 11 of the Act, before this Court, for appointment of an arbitrator and by an order dated 02.09.2016, a sole arbitrator (A.P. Lavande, J.) came to be appointed as an Arbitrator to adjudicate the dispute between the parties.

5. The respondents filed a statement of claim seeking the following reliefs:

- A. *For an award in favour of the claimants, by putting the claimants in lawful possession of the said Darisha Resorts for the term and/or period of ten years (10 years) for the purpose of carrying on the business activity as contemplated in pursuance to the deed of partnership dated 17.07.2015, partnership agreement dated 17.07.2015 and deed of partnership dated 10.10.2015;*

- B. For an award against the respondents in the nature of commencing the agreement terms as contemplated under deed of partnership dated 17.07.2015, partnership agreement dated 17.07.2015 and deed of partnership dated 10.10.2015 for a period of 10 years from the date of possession being handed over to the claimants herein for the purpose for carrying on business activity;*
- C. In an alternative for an award of refund of security deposit of Rs.3,00,00,000/- (Three Crores only) along with an additional amount of Rs.3,00,00,000/- (Three Crores only) as compensation for termination before the fixed term of 10 years of the present partnership in dispute as agreed upon in the Part XIV of the said partnership agreement dated 17.07.2015;*
- D. For an award of interest in favour of the claimant awarding interest at the rate of 18% per annum on Rs.3,00,00,000/- (Three Crores only) commencing from 01.10.2015 to till the realisation of the amounts;*
- E. In an alternative an interim award in the nature of this Hon'ble Tribunal taking over the possession of the said Darisha Resorts and putting a seal on the illegal business activity as carried on by the respondents herein while violating the agreement terms;*
- F. For an award in the nature of compensation/reimbursements of to the extent of 11,00,000/- (Eleven Lakhs) on the renovation and allied activities of the said resort incurred by the claimants;*
- G. For any such interim award(s) as prayed for in the application for interim reliefs filed u/s 17 of the Arbitration and Conciliation Act, 1996 as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case;*

H. For costs;

I. Any award in the facts and circumstances of the case not specifically pleaded for.

6. The appellants resisted the claim inter alia on the ground that the possession of the resort was never agreed to be handed over. The appellants contended that they obtained all the licenses to run the resort and that the name of the resort was not to be changed to M/s Novel Goa Operators from 01.10.2015, as alleged. However, M/s Novel Goa Operators was to be the name of the partnership firm. It was denied that the appellants have committed breach of the partnership agreement and the partnership deed. It was contended that since the respondents were not acting in the interest of the partnership to to secure the optimum occupancy in the resort, the appellants started making bookings in the resort. It was denied that the respondents have spent Rupees Eleven Lakhs as alleged, for renovation of the resort.

7. The learned Arbitrator by an award dated 20.07.2017 has partly granted prayer clauses A and B, by which, the appellants are directed to allow the respondents to take part in the conduct of the business of the firm M/s Novel Goa Operators. The rest of the substantive prayers have been rejected.

8. Feeling aggrieved, the appellants approached the learned District Judge, under Section 34 of the Act being Arbitration Petition No. 18/2017, which has been dismissed on 25.06.2018. Hence, this appeal.

9. I have heard Shri Lawande, the learned Counsel for the appellants and Shri Monteiro, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record.

10. Shri Lawande, the learned Counsel for the appellants has raised a solitary contention. It is submitted that the claim, as made by the respondents, in their recovery notice dated 07.05.2016 is not in consonance with the claim made before the Arbitrator. It is thus submitted that the claim as made before the Arbitrator was not competent. While elaborating the argument, it was contended that in the notice the respondents had claimed only an amount of Rupees Six Crores (Rs.3 Crores being the refundable security and another Rs.3 Crores being the penalty amount). It is thus submitted that the respondents could not have made a claim before the Arbitrator about the handing over of the resort to the respondents and the Arbitrator was in error in directing the appellants to allow the respondents, to take part

in the conduct of the business of the firm.

11. On behalf of the appellants, reliance is placed on the decision of the Supreme Court in the case of **Amar Nath Dogra Vs. Union of India, AIR 1963 SC 424**. It is submitted that the partnership is not yet dissolved and as such, the respondents could not have sought refund of the amount of Rupees Three Crores. It is submitted that the learned District Judge has failed to consider the decision in the case of **Amar Nath Dogra** (supra) and was also in error in holding that the partnership stood terminated. Except this, there are no other contentions raised.

12. Shri Monteiro, the learned Counsel for the respondents has supported the impugned judgment. It is submitted that the Arbitrator has rightly considered the claim of the respondents and has granted a limited relief of directing the appellants to permit the respondents to take part in the conduct of the business of the firm. It is submitted that once, the partnership is subsisting, the appellants could not keep the respondents (who are admittedly the operating partners of the firm) out of the business of the firm. It is submitted that the learned District Judge has considered the ground about the claim

made in the notice, in the context of the claim made before the Arbitrator and has rightly found that this is not a case where the Arbitrator has granted, altogether a different relief.

13. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. The execution of the MOU dated 02.04.2015, a partnership deed dated 17.07.2015 and further execution of another partnership agreement dated 17.07.2015, is not in dispute. Under the terms of these agreements, the appellants are shown as the owner- partners, while the respondents are shown as the operating partners. Admittedly, the respondents have paid an amount of Rupees Three Crores to the appellants. As per the partnership deed, the respondents have 66% share as against 34% share of the appellants in the partnership business. As per the terms agreed, the renovation of the resort was to be completed by 30.09.2015 and the business of the resort under the name and style as M/s Novel Goa Operators was to commence from 01.10.2015. The learned Arbitrator has found that the partnership subsists. That is also the case of the appellants and thus, the respondents could not have been kept out of the partnership business, particularly, when the partnership was subsisting and the respondents have

paid an amount of Rupees Three Crores.

14. Now coming to the ground as raised on behalf of the appellants. A bare perusal of para 28 of the judgment of the learned District Judge would show that the contention about there being a discrepancy about the claim made in the legal notice, as against the claim made before the Arbitrator, has been considered by the learned District Judge. Ultimately in para 33 of the judgment, the learned District Judge has found and to my mind rightly so, that this is not a case where the learned Arbitrator has granted altogether a different relief, than what is claimed. Thus, the contention that the learned District Judge has not considered this ground, cannot be accepted. Reliance placed on the decision in the case of **Amar Nath Dogra** (supra), to my mind is misplaced. The case of **Amar Nath Dogra** (supra) turned on its own facts. The learned Arbitrator, in view of the fact that the partnership is subsisting, has refused to grant the claim for refund and all that is granted is a direction to the appellants to permit the respondents to take part in the conduction of the business of M/s Novel Goa Operators. It is true that there is an observation by the learned District Judge in para 31 that the partnership stood terminated. However, in the earlier part of para 31, the learned District Judge has observed

that the partnership is not terminated. Thus, a stray observation that the partnership stood terminated, would not be sufficient to justify interference, particularly, in the light of the limited interference available under Section 37 of the Act.

The appeal is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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