

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1124 OF 2018

Sanjay Knit Pvt. Ltd.,]
A Company registered under the]
Companies Act, 1956,]
having its Registered Office at 101/102,]
Century Arcade, Narangi Baug Road,]
Pune - 411 001.] Petitioner

Versus

Pune Mahanagar Parivahan Mahamandal]
Limited, Pune,]
PMT Building, Shankarsheth Road,]
Swargate, Pune - 411 037.] Respondent

Mr. P.S. Dani, Senior Advocate, a/w. Mr. Yakshay Chheda and
Ms. Devanshi Sethi, i/by M/s. ALMT Legal, for the Petitioner.

Mr. Rohit Sakhadeo for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 6TH FEBRUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Dani, learned Senior Counsel for the Petitioner, and Mr. Sakhadeo, learned counsel for the Respondent.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 30th December 2017 passed by District Judge-1, Pune, below “Exhibit-5” in Civil Miscellaneous Application No.986 of 2017.

3. The application at “Exhibit-5” was filed by the Petitioner herein for granting temporary injunction in terms of prayer clauses (b) and (c); that of staying the Award dated 7th October 2017 and to allow him to display the advertisements, as per the contract, till 31st December 2018, in view of the Agreement dated 1st January 1994. The said application was filed in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

4. Petitioner herein is a 'Private Limited Company' and is engaged in the advertisement business. As per the 'Agreement' executed on 1st January 1994, Petitioner was awarded the contract to construct and erect 70 or more bus-shelters for “National Games, 1994” and was granted exclusive rights to display the advertisements on all the bus-shelters, in consideration of the erection of the bus-shelters of the Respondent. The period of 'Agreement' was, initially, of 15 years and which was to be extended by 10 years. Accordingly, the extension of 10 years was also granted. Thereafter, in view of the complaints received by

the Respondent that the bus-shelters erected in “Y” type were not commuter and pedestrian friendly, Respondent asked the Petitioner to change and modify “Y” type bus-shelters by constructing new illuminated type bus-shelters. By the letter dated 20th May 2004, the Petitioner has accepted to remove all 70 “Y” type bus-shelters at his expenses and to erect 70 bus-shelters of illuminated type. According to the Respondent, the Petitioner also agreed to pay increased 300% rental for remaining period of the 'Agreement'.

5. It was the case of the Petitioner that, accordingly, Petitioner has constructed 70 illuminated bus-shelters at its costs and has incurred huge expenditure of Rs.1,25,00,000/-, in addition to Rs.55,00,000/- spent for construction of “Y” type bus-shelters. According to the Petitioner, the Respondent, thereafter, issued various notices to the Petitioner for recovery of the rent/royalty at the increased rate. Hence, the Petitioner approached the learned Arbitrator, by invoking arbitration clause, on 19th June 2014. The said arbitration proceedings came to be decided on 7th October 2017, whereby the learned Arbitrator has passed the following Award :-

“(A) The claim of the Claimant is hereby rejected.

“(B) The Claimant is hereby directed that, it shall stop using the advertisement space w.e.f. 31.12.2017 termination date of the agreement and pay the dues of Rs.5,88,56,000/- to the Respondent within 15 days

from the date of this award after deduction of rent paid as per the earlier date.

(C) It is also directed that the Claimant shall pay interest at the rate of 15% per annum on the above mentioned amount from the date of the award to realization of said amount.

(D) No order as to costs.

(E) The intimation of this Award be given to both the parties.”

6. Being aggrieved by this Award, the Petitioner approached the District Court, under Section 34 of the Arbitration and Conciliation Act, challenging the said Award. Along with the said application, Petitioner has moved another application at “Exhibit-5” seeking following prayers :-

“(b) The operation of Award dated 07/10/2017 may kindly be stayed till decision of the appeal/application.

(c) The Appellant may be allowed to display the advertisement till 31/12/2018, as per the Agreement dated 1/1/1994 and Respondent, its officers or any other person claiming through, may kindly be restrained by an appropriate order of injunction from removing the advertisement till 31/12/2018.

(d) Ad-interim injunction in terms of prayers (b) and (c) may kindly be passed.”

7. Thus, a specific request was made to grant the stay to the operation of the Award and further to grant temporary injunction in

terms of prayer clauses (b) and (c). The prayer clause (b) pertains to *“stay to the operation of the Award till decision of the application, under Section 34 of the Arbitration and Conciliation Act”*, and prayer clause (c) pertains to *“allowing the Petitioner to display the advertisement, as per the 'Agreement', till the period of 'Agreement' dated 31st December 2018”*.

8. This application came to be resisted by the Respondent and the District Court, vide its impugned order, rejected the entire application.

9. The grievance of the Petitioner in this Writ Petition is two fold; that the District Court has not at all considered the prayer clause (a), seeking stay to the operation of the Award, and hence, to that extent, the impugned order of the District Court needs to be set aside.

10. As regards the second prayer clause, it is submitted that, the District Court has not at all considered that there is no evidence to show that the letter dated 18th August 2009, issued by the Respondent raising the rates of royalty, was received by the Petitioner. It is urged that, the District Court has unnecessarily held the Petitioner responsible for delay in invoking the arbitration clause, which Respondent itself could have also invoked. Hence, according to learned counsel for the Petitioner, as regards this prayer of interim injunction, the District Court has also committed an error in rejecting the same.

11. Now taking up, first, the prayer of temporary injunction, it can be seen that a specific letter was sent by the Respondent to the petitioner on 18th August 2009 itself, enhancing the rate of royalty. Now, as per the case of the Petitioner, he has not received the said letter. If it was so, then, as rightly observed by the District Court, Petitioner could have raised that dispute immediately. He would not have waited for a period of five years and allowed the construction to go further. In view of the reasons given by the District Court for rejecting this prayer on the material, which was placed before it, no fault can be found in the impugned order to that effect. Moreover, as rightly observed by the District Court, whether such letter was received by the Petitioner or not, being a matter of evidence at this stage, it would not be possible to hold that, the said letter was not received by the Petitioner. Accordingly, the District Court has rightly held, on the basis of the material produced before it, that the Petitioner has received the said letter and if he has not received the said letter, then, he can definitely raise that issue and get compensation at the time of final hearing of the application, under Section 34 of the Arbitration and Conciliation Act. The District Court, accordingly, has rejected the prayer for temporary injunction, allowing the Petitioner to display the advertisements till 31st December 2018.

12. It may be true that, as per the order passed on 6th May 2016, the stay was granted to the Award dated 16th April 2016 passed by the

learned Arbitrator and, therefore, the submission of learned counsel for the Petitioner is that, as only one year remained for conclusion of the contract, the District Court should have extended the said contract and allowed the Petitioner to display the advertisement. However, after the District Court has rejected the Petitioner's application for interim injunction, there is subsequent development in the said matter. On 31st January 2018, Respondent has issued a tender notice, calling proposals from the reputed agencies for assigning Advertisement Rights on bus-shelters in Pune metropolitan region and this tender includes even the bus-shelters in respect of which the Petitioner was granted contract. The date of the tender opening is kept on 12th February 2018. Thus, now the tender process is already floated and in operation. In such situation, in the light of this subsequent event also, the impugned order passed by the District Court of rejecting the Petitioner's prayer for interim injunction, permitting him to display the advertisements till 31st December 2018, cannot be disturbed and hence, to that extent, this Writ Petition needs to be dismissed.

13. However, so far as prayer clause (a) is concerned, according to which the Petitioner has sought stay to the operation of the Award dated 7th October 2017, the District Court has not at all considered the said prayer. The impugned order passed by the District Court is conspicuously silent in respect of this prayer clause. As rightly pointed

out by learned counsel for the Petitioner, this prayer clause pertains to clause (B) of the Award, under which the Petitioner was directed to pay the dues of Rs.5,88,56,000/- to the Respondent within 15 days from the date of the Award, after deduction of rent paid as per earlier rate, with interest @ 15% p.a. As the District Court has not at all adverted to this prayer clause and simplicitor rejected the application and that the entire order being silent on this aspect, it has become necessary to direct the District Court to consider this prayer afresh and to that extent, the application filed by the Petitioner at “Exhibit-5” is required to be revived. However, it is absolutely made clear that, so far as the temporary injunction sought in terms of prayer clause (c), i.e. allowing Petitioner to display advertisements till 31st December 2018, that issue is already decided and this Court has confirmed the finding on that prayer.

14. In view thereof, the Writ Petition is allowed partly.

15. The District Court is directed to re-consider the prayer made by the Petitioner in prayer clauses (b) of the application at “Exhibit-5”, pertaining to staying the operation of the Award dated 7th October 2017. However, as regards Petitioner's prayer for allowing him to display the advertisements till 31st December 2018, the finding of the District Court is confirmed and no interference is warranted therein.

16. On the request of learned counsel for the Respondent, the liberty is granted to the Respondent to file a short reply-affidavit as far as the prayer of stay to the operation of Award is concerned, and the District Court to decide this limited prayer, which is not considered earlier, within five weeks from the date of receipt of a copy of this order.

17. Respondent will be filing such reply-affidavit within a period of three weeks from the date of receipt of a copy of this order and two weeks thereafter, the District Court to decide the matter.

18. Rule is made absolute in the above terms.

19. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]