

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.158 OF 2016

Nagda Textiles Pvt.Ltd	...	Petitioner
V/s.		
M/s Abhisekh Enterprises	...	Respondents

Mr. Girish G. Togani, for the Petitioner.
Mr. Lalit V. Jain, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioner and respondents.

2] By this Revision Application filed under Section 115 of Code of Civil Procedure, the petitioner is challenging the order dated 4.1.2016, passed by the District Judge-10, Thane, below Exh.27 in Special Execution Application No.252 of 2010 in Arbitration Application No.91 of 2007.

3] Application at Exh.27 was filed by the present petitioner, who is the Judgment Debtor in the said Execution Proceeding under Order XXI Rule 101 of the Code of Civil Procedure, raising contention that Arbitrator has no jurisdiction to entertain the dispute as

according to petitioner there was no such arbitration agreement between the respondent Decree Holder and the present petitioner. Secondly it was contended that the claim of the Decree Holder was barred by law of limitation.

4] Respondent resisted this application vide Exh. 29 denying all the allegations and further contending that the petitioner despite being given sufficient opportunity has remained absent before the Arbitrator and as such exparte award is passed on 3rd December, 2007. If the petitioner was having knowledge of award passed, the only remedy was to file Arbitration petition before High Court as per the provisions of Section 34 of the Arbitration Act. Now this application is filed with an intention to protract to make payment as awarded by the Arbitrator and hence the said application needs to be rejected.

5] The Executing Court, however, after considering the contention raised by the petitioner that Arbitrator has no jurisdiction to entertain the dispute as there was no Arbitration agreement between the Decree Holder and present Petitioner, framed issue as to, “Whether the award passed by the Arbitrator is nullity?

6] Thereafter, opportunity was also given to the petitioner to lead his evidence and accordingly the petitioner has entered into witness box and led the evidence and also referred several documents. He has also examined one witness and then filed evidence closing pursis. Respondent Decree Holder did not lead any evidence.

7] On the basis of submissions advanced before it, the Executing Court was pleased to hold that there was no substance in the contention raised by the petitioner that he was not party to the Arbitration agreement and accordingly rejected his application.

8] While challenging the impugned order passed by the Executing court, the submission of learned counsel for the petitioner is that if the Arbitrator has no jurisdiction to entertain the dispute then any award passed by him is nullity and the petitioner can very well raise that challenge to the award in Execution Proceeding. It is submitted that the petitioner purchased goods from Kumar Polycot Mills Ltd and not from present respondent Decree Holder. Therefore, whatever agreement which is filed by the Decree Holder and relied by the Executing Court in the form of invoice cannot be of any help to confer jurisdiction on the Arbitrator to decide dispute. In support of his submission, learned counsel for the petitioner has relied upon

invoices which are also considered by the trial Court and which are produced from Exh.49 onwards to show that the invoices are issued in the name of Kumar Polycots Mills Ltd.. In such situation, according to learned counsel for the petitioner, the Executing Court has committed error in holding that there was Arbitration agreement between petitioner and Decree Holder and hence Arbitrator has jurisdiction to decide the dispute.

9] However, as rightly submitted by the learned counsel for the respondent Decree Holder that the invoices from Exh.49 onwards clearly go to show that alongwith Kumar Polycot Mills Ltd., the name Abhishet Enterprises is also appearing and there is clear cut mention that the payment should be made to Abhishek Enterprises. The petitioner himself has admitted in his cross-examination that on each invoice there is endorsement of terms and conditions regarding the arbitration. The invoices Exh.49 to 61, clearly go to show that terms and conditions mentioned on each invoice was, "Goods sold under the Rules and Regulations of M/s Bombay Yarn Merchants Association and Exchange Ltd. Any dispute arising will be referred to the Arbitration of their Association". The petitioner has admitted the receipt of these invoices and also condition mentioned therein.

10] In such situation the Executing Court has rightly held that admission on the part of petitioner coupled with these invoices is more than sufficient to hold that there was Arbitration agreement between the petitioner and respondents and in terms of arbitration agreement, matter was referred to the Arbitrator i.e. Bombay Yarn Merchants Association and Exchange Ltd., Therefore, it becomes difficult to accept that the Arbitrator has no jurisdiction and award passed by the Arbitrator is nullity. That can be the only ground on which execution of the arbitration award can be challenged and as petitioner has failed to prove said ground, the trial Court has rightly rejected his application.

11] The Revision, therefore, holds no merits and hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]