

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

WRIT PETITION NO.3753 OF 2015

Natural Sugar and Allied Industries Ltd. .. Petitioner

V/s.

Jagdamba Sahakari Sakhar Karkhana Ltd.
And Ors. ... Respondents

Mr.Laxman S. Deshmukh for the petitioner

Mr.Ravindra Pachundkar for the respondent no.1

Ms.Neha Bhite 'B' Panel Counsel for the respondent no.2

Mr.Prosper D'souza i/b Mr.Rajendra Anbhule for the respondent nos.4
to 9

CORAM: K.K. TATED, J.
DATED : MAY 2, 2018

PC. :

1 Heard.

2 Though other Respondents are duly served, no one appeared on
behalf of them when the matter was called out.

3 This court by order dated 11.01.2018 directed to place the
matter for final hearing. Hence, matter is taken on board for final
hearing.

4 By this Writ Petition under Article 227 of the Constitution of India, Petitioner is challenging the order dated 10.02.2015 passed by District Judge-11, Pune below Exhibit-31, 62, 69 and 65 in Arbitration Claim M.A.No. 269 of 2010 allowing Respondent's Application for joining them as parties in a matter under section 34 of the Arbitration and Conciliation Act, 1996 filed by Petitioner challenging the award dated 20.01.2010.

5 In the present proceedings, Petitioner entered into lease agreement dated 03.05.2006 with Respondent no.1 Jagdamba Sahakari Sakhar Karkhana Ltd. As per Clause 36 of the said agreement, matter was referred to Arbitrator i.e. Respondent no.2, The Commissioner for Sugar, Maharashtra State. The Arbitrator after hearing all the parties including the third party passed award dated 20.01.2010. The same was challenged by the Petitioner by their Application dated 26.03.2010 under section 34 of the said Act. In that Application, they joined Jagdamba Sahakari Sakhar Karkhana Ltd. And Arbitrator, Commissioner for Sugar State of Maharashtra as party Respondent. In that Application, the Respondent filed their Application dated 06.08.2010 for including them as party Respondent as interested person. That was allowed by the Trial Court by impugned order dated 10.02.2015. Hence, the present Writ Petition.

6 The learned counsel for the Petitioner submits that the impugned order passed by Trial Court dated 10.02.2015 is against justice, equity and good conscience. He submits that bare reading of the lease agreement dated 03.05.2006 shows that only Petitioner and

Respondent nos.1 are the parties to the said agreement. He submits that as per Arbitration and Conciliation Act, 1996 arbitration can proceed only between the parties to the agreement. He relies on section 2(b) and section 7 of the said Act to that effect. He further submits that even Application under section 34 of the said Act can be filed by the parties to the agreement. He submits that admittedly, in the present proceedings, the other Respondents except Respondent no.1 were not parties to the said agreement dated 03.05.2006. Hence, impugned order dated 10.02.2015 passed by Trial Court is required to be set aside. In support of this contention, he relies on judgment of Apex Court in the matter of **Sandeep Kumar v. Master Ritesh, 2006 AIR SCW 5735**. He relies on paragraph 8 of the said judgment which reads thus:

“8. It may be true that Plaintiffs-Appellants had been representing a group, but admittedly all the parties to the suit were not parties to the arbitration agreement. If some of the Defendants were not parties to the arbitration agreement, the question of invoking the arbitration clause as against those Defendants would not arise. As noticed hereinbefore, in the earlier round of litigation, Appellants categorically stated that the suit would be confined only as against those who were not parties to the arbitration agreement.”

7 The learned counsel for the Petitioner also relies on the judgment of the Apex Court in the matter of **S.N.Prasad, Hitek Industries (Bihar) Limited. vs. Monnet Finance Limited and Others, (2011) 1 SCC 320**. He submits that in this judgment, the Apex Court held that there can be reference to the Arbitration only if there is an arbitration

agreement between the parties. He relies on paragraph 8 of this authority which reads thus:

“8. Thus there can be reference to arbitration only if there is an arbitration agreement between the parties. The Act makes it clear that an Arbitrator can be appointed under the Act at the instance of a party to an arbitration agreement only in respect of disputes with another party to the arbitration agreement. If there is a dispute between a party to an arbitration agreement, with other parties to the arbitration agreement as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can be only with respect to the parties to the arbitration agreement and not the non-parties.”

8 On the basis of these submissions and the judgment, the learned counsel for the Petitioner submits that impugned order dated 10.02.2015 passed by Trial Court is required to be set aside. He submits that if said order is not set aside, irreparable loss and injury will be caused to the Petitioner.

9 On the other hand, the learned counsel for the Respondent no.3 vehemently opposed the present Writ Petition. He submits that Petitioner suppressed the material facts and documents at the time of filing the petition. Across the bar he tendered compilation of documents containing letter dated 03.11.2009 and 04.11.2009 written by Respondent no.2 to Respondent no.3, proceeding before Respondent no.2 dated 04.11.2009. He submits that this additional compilation of document clearly shows that third party appeared before the Commissioner. The Commissioner entertained their submissions and called upon them from time to time to make their submissions. After

considering their submissions, the learned Arbitrator passed award dated 20.01.2010 which is partly in his favour also.

10 The learned counsel for the Respondent no.3 further submits that Petitioner never objected their appearance and participation in the proceedings before Respondent no.2. He submits that by suppressing these facts they filed Application under section 34 of the said Act dated 26.03.2008, joining Respondent nos.1 and 2 only as party. As soon as they learnt about these facts they immediately filed Application dated 06.08.2010 for joining them as party because of their interest. He submits that at the time of passing impugned order dated 10.02.2015 by the Trial Court, Trial Court has considered all these facts and correspondence between Respondent nos.2 and 3 and also judgment of this court in the matter of ***Atul Resorts & Hospitality India Pvt. Ltd. vs. Lucky Developers & Ors.*** 2013(1) All MR 362 and allowed their Application. He relies on paragraph 13 and 22 of this authority which reads thus:

“13. The Respondents (the Lucky Developers) received a commencement certificate on 24 March 2006 from SRA for the project which was extended further on 27 April 2006 and 14 September 2009 for further height/floors. The commencement certificate dated 28 July 2010 in favour of the Respondents shows that from time to time, for various reasons, there were various changes/developments and fact remains that the project is not yet developed as agreed. This Court, as recorded, by taking note of subsequent development including of Deed of Admission/Retirement of Partnership dated 1 April 2011, change in the constitution of the firm. Therefore, the liabilities, as well as, obligations have also been changed, partially. Those partners and firms have been joined as Respondents.”

“22. The contract, though terminated, the arbitration clause does survive. All the parties, concerned or otherwise, interested in the agreement and the transactions and the project, may consent for settlement of dispute, through the arbitration. The liberty is granted to the parties to join and/or to apply for proper adjudication of the issues/disputes in accordance with law in the interest of justice and to avoid further delay in the development project.”

11 On the basis of these facts and the authority, the learned counsel for the Respondent no.3 submits that there is no substance in the present Writ Petition and same is required to be rejected with costs.

12 It is to be noted that in the present proceedings, Petitioner relied on lease agreement dated 03.05.2006 and particularly clause 36 for referring the matter to the Arbitrator. On the same day, 03.05.2006 there was one more agreement between the Petitioner, Respondent no.1 and Respondent no.3 i.e. third party in respect of the same cause of action. Apart from that, the learned Commissioner for Sugar (Arbitrator) from time to time issued notices to the Respondent no.3 and heard their arguments as well as taken into consideration Application made by them at the time of passing the award dated 20.01.2010. At that time, Petitioner never objected Respondent no.3 third party's appearance before the Arbitrator. Only at the time of filing Application under section 34 of the said Act, they failed and neglected to join third party as Respondent. Hence, third party made their Application for joining them as party and that was allowed by the Trial Court.

13 It is to be noted that the authority cited by the Petitioner in the matter of ***Sandeep Kumar v. Master Ritesh***(Supra) is not applicable in the facts and circumstances of the present case. In that case, the Suit was filed by third party and thereafter, they made Application for deleting some of the parties those who preferred arbitration proceeding.

14 In similar way the authority cited by the Petitioner in the matter of ***S.N.Prasad, Hitek Industries (Bihar) Limited. vs. Monnet Finance Limited and Others*** (Supra) is not applicable because in that case the Court held that Guarantor of loan not party to loan agreements containing arbitration clause cannot be made party to a reference, whereas in the case in hand the award was passed by the Arbitrator on 20.1.2010 after hearing both the parties. It is to be noted that our High Court in the matter of ***Atul Resorts & Hospitality India Pvt. Ltd. vs. Lucky Developers & Ors.*** (Supra) specifically held that if third party's interest affects then they have right to make appropriate Application and intervene in the arbitration proceeding.

15 Considering these facts and the authority as above, I do not find any substance in the present Writ Petition. Hence, Writ Petition stands rejected. No order as to costs.

16 At this stage, the learned counsel for the Petitioner seeks continuation of ad-interim relief granted by this court.

17 Considering the facts and circumstances of the present case, I do not find any reason to continue the same. Hence, request is rejected.

(K.K. TATED, J.)