

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.801 OF 2013

Hindustan Construction Company Ltd.	...	Petitioner
Versus		
M/s Kumaaran Demolishers ('KD')		
And Another	...	Respondents

Mr. Karl Tamboly a/w Ms. Diksha Shetty I/b Harish Joshi & Co. for the Petitioner.

Mr. Dilip Rai I/b Mr. Rakesh Kumar Singh for the Respondents.

CORAM : S.C.GUPTE, J.

DATE : 26 NOVEMBER 2018

P. C. :

. This petition challenges an award passed by a Sole Arbitrator in a reference. The reference was in respect of disputes between the parties arising out of a contract for hire of equipment between the parties.

2 By a work order dated 7 February 2006, the Petitioner herein, who was the respondent to the arbitration reference, hired an Excavator at a tendered cost of Rs.48,60,000/- from the Respondents (original Claimants in the reference). The date of commencement of the hire contract was 9 January 2006. The contract was till expiration of a period of nine months, excluding the monsoon period, which was agreed to be from May 16 to September 14 of the year. It was *inter alia* the case of the Respondents herein that contrary to the contract between the parties, which had a

lock-in period of nine months excluding the monsoon period between May 16 to September 14 of the year, the Petitioner did not engage the Respondents' excavator or pay hire charges for the period from April 2006 onwards. The case of the Petitioner before the learned arbitrator was that the Petitioner, by its letter dated 29 April 2006, had terminated the hire contract and that in pursuance of such termination, the Respondents had demobilized and taken away the equipment. In answer, it was submitted by the Respondents that there had been no legal or valid termination of the contract and that the Petitioner's own documents showed that the excavator was infact used by the Petitioner even after the alleged letter of termination dated 29 April 2006. The learned arbitrator held that the contract was for a fixed period and could not have been terminated before such fixed period and, at any rate, there was no termination effected by the Petitioner.

3 Learned Counsel for the Petitioner submits that the award is clearly contrary to evidence as well as the terms of the contract. The learned arbitrator, after considering the documentary evidence led by the parties, came to the conclusion that the purported termination of 29 April 2006 was no termination of work order/contract, observing *inter alia* that the Petitioner's own letters (Exhibits C-12 and C-13) showed that the excavator was infact used by the Petitioner for material shifting after 29 April 2006. Infact the second of these communications, namely, the letter dated 17 May 2006, calls upon the Respondent to demobilize the excavator for the monsoon season. This, under no circumstances, can be treated as termination of contract. The learned arbitrator's conclusion that there was no merit in the Petitioner's case that work order/contract was terminated

on 29 April 2006, thus, is clearly a possible view supported by evidence. There is no irrelevant material considered or relevant material disregarded by the learned arbitrator for arriving at this conclusion. So also, the learned arbitrator's conclusion that the contract was for a fixed period of nine months excluding monsoon days is also a pre-eminently plausible view based on interpretation of the contract between the parties. The learned arbitrator accordingly held that there was a fixed period hire contract between the parties and that inspite of such contract, the equipment was not engaged and hire charges were not paid by the Petitioner to the Respondents. This, as we have noted above, is clearly a permissible or possible view, which is supported by evidence on record and in keeping with the terms of the contract between the parties.

4 The learned arbitrator also came to a conclusion that after the monsoon season, the Respondents were ready and willing to remobilize the equipment with effect from 15 September 2006, but that the Petitioner did not allow them to do so. Learned Counsel for the Petitioner submits that this conclusion is not supported by any evidence on record. Learned Counsel cannot point out any ground of challenge in his petition suggesting any such case; there is no averment in the petition that the conclusion of the arbitrator in this behalf is not supported by any evidence. Learned Counsel thereupon seeks to amend his petition to include this ground. It is impermissible at this stage to allow the petition to be amended and an altogether new ground of challenge, which is a factual matter, added in the petition.

5 In the premises, there is no merit in the arbitration petition. Neither does one find contravention of public policy of India nor any patent illegality appearing on the face of the award within the meaning of sub-section (2) clause (b)(ii) and sub-section (2A) of Section 34 of the Arbitration and Conciliation Act, 1996. The arbitration petition is, accordingly, dismissed.

6 Learned Counsel for the Petitioner requests for stay of the impugned award. After the matter is comprehensively heard and decided by this court by dismissing the petition, there is no question of granting any stay of the impugned award. The application is rejected.

(S.C. GUPTE, J.)