

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 17TH DAY OF APRIL 2018

THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.A. No.844 of 2017
and
A.No.5260 of 2017

Mr.R.Varaaki,
No.2/3, Suthananda Bharathi Street,
Ganapathipuram, East Tambaram,
Chennai-600 059.

... Applicant/Applicant

-Versus-

1. M/s.Dugar Finance & Investment Limited,
rep. by Managing Director,
Dugar Towers, 7th Floor,
No.34(123) Marshalls Road,
Egmore, Chennai-600 008.

2. Mr.Sankara Narayanan,
No.31, Bajanai Koil Street,
Ganapathipuram, East Tambaram,
Chennai-600 059.

3. Mr.Y.K.Rajagopal, B.Sc., B.L.,
Sole Arbitrator,
Chamber at No.55, Law Chambers,
High Court Buildings,
Chennai-600 104
Office at Old No.6, New No.11,
Francis Joseph Street,
Chennai-600 001.

... Respondents/Respondents

O.A. No.844 of 2017:

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 3rd respondent from the proceeding with the Arbitration Notice dated 06.03.2017 in Arbitration Case No.R/D.F&I Ltd./4 of 2017 as against the Applicant by virtue of his Arbitration Notice dated 06.03.2017, pending disposal of the above Arb. O.P.

A.No.5260 of 2017:

This Application praying that this Hon'ble Court be pleased to terminate the 3rd Respondent from acting as an Arbitrator in Arbitration Case No.R/D.F& ILTD/4 of 2017 by virtue of his arbitration notice dated 06.03.2017 as against the petitioner

These applications coming on this day before this court for hearing, the court made the following order:

O.A.No.844 of 2017 has been filed seeking to grant an order of interim injunction restraining the third respondent from proceeding with Arbitration Notice dated 06.03.2017 in Arbitration Case No.R/D.F & Iltd/4 of 2017, pending disposal of the above Arbitration Original Petition.

2. A.No.5260 of 2017 has been filed to terminate the third respondent from acting as Arbitrator in Arbitration Case No.R/D.F & Iltd/4 of 2017.

3. In both applications, the relief sought for are more or less challenging the appointment of the Arbitrator. The reasons given in the affidavit are as follows:

'B.The Manager, Legal Department of the 1st respondent by his letter dated 11.04.2017 has instructed the Director of the 1st respondent to appoint a Sole Arbitrator to deal with the above said case following which the 1st respondent by his letter dated 12.04.2017 has appointed the 3rd respondent. However, as early as by a letter dated 06.03.2017, the 3rd respondent prior to his appointment as Sole Arbitrator to deal with the above said case, has issued a

notice to the petitioner calling upon him to attend the hearing on 29.04.2017, assuming himself that he has been appointed as Arbitrator to deal with the above said case which is against the principles of the Arbitration and Conciliation Act 1996 and thereby ignored the process of law.'

4. It is stated that the Arbitrator, who has been arrayed as third respondent, had issued a notice on 06.03.2017. It is also stated that subsequent to the same, the applicant has received a letter dated 12.04.2017 from the office of the first respondent indicating that the third respondent had been appointed as Arbitrator to deal with the case. The applicant has alleged that there is collusion between the first respondent and the third respondent.

5. Heard both sides.

6. At the outset, it is relevant to note that Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 (in short, the Act) states when the mandate of an Arbitrator can be terminated, as per which, only after the named Arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, the mandate of the Arbitrator shall be terminated considering him to be ineligible. The Act does not contain any provision, where, the Court can remove an Arbitrator during the pendency of arbitration proceedings.

7. Section 14 of the Act deals with the failure or

impossibility of the Arbitrator to act on account of other circumstances, such as unable to perform his functions on account of death, resignation or other reasons. Section 15 of the Act also lays down the procedure to be followed up on termination of the mandate to the Arbitrator, in the circumstances, referred to in Sections 13 and 14 and the substitution of the Arbitrator is not contemplated except the procedure given in that provision.

8. Section 12 of the Act provides that a party to arbitral proceedings may apply to the Court to remove an Arbitrator, where circumstances give rise to justifiable doubts as to the Arbitrator's impartiality. As per Article 22 of the Agreement, an Arbitrator to be nominated by the Managing Director of the lender. Admittedly, the Arbitrator is appointed by the first respondent company. Hence, the applicant cannot have any objection.

9. One factor alone might not give rise to an apparent bias, but several factors might cumulatively give rise to such a finding. This Court is only laying its emphasis on the importance of Arbitrator's being seen to be open and honest in disclosing actual and/or apparent conflicts of interest. Only if there is any doubt as to their objectivity or independence, this might give rise to a challenge to the Tribunal's decision or application to remove them.

10. This petition has been filed under Section 9 of

the Act, which is not at all maintainable. Even a challenge to the constitution of the Arbitral Tribunal can be raised and decided by the Arbitral Tribunal. If such preliminary objection is unsuccessful, it can be challenged only while challenging the award. Therefore, the challenge to the Arbitral Tribunal is held to be against the spirit of the Act. Nevertheless, if a party, who has a grievance against the Arbitrator on account of bias or prejudice, is not remediless. It has to only wait till the award is passed and challenge the same.

11. In view of the above discussions, these applications are dismissed as devoid of merits.

Sd/.P.S.N.J

17.04.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/27.07.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.