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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment pronounced on: July 20, 2018

+ **FAO(OS) (COMM) 146/2018 & CM APPL. 28193-94/2018, 28270/2018**

C A RAMESH BABU Appellant

Through : Mr. Sudhir Nandrajog, Sr. Adv.
with Mr. Joseph Aristotle S. and
Ms. Priya Aristotle, Advocates.

versus

M/S REEBOK INDIA COMPANY Respondents

Through : Mr. Prashanto Sen, Sr. Advocate
with Mr. Niraj Singh, Mr. Alok
Srivastav, Mr. Kaustubh Singh and
Mr. Parth Kochatta, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

A. K. CHAWLA, J

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 in short 'the Act' challenges the judgment of a learned Single Judge, which rejected the Petition preferred by the appellant (hereafter "Balaji") under Section 34 of the Act impugning the award dated 31.12.2017 of an Arbitral Tribunal.

2. The facts relevant to the appeal are that under a Franchise Agreement dated 17.8.2006 in short 'the Franchise Agreement', Balaji was appointed a retailer of the sports apparel, footwear, apparel, bags, sportswear accessories or any other related product bearing 'Reebok' trademarks. As a Franchise, Balaji was to operate a retail outlet at the premises bearing no.68/150/04, 9th Main Road, 3rd Block, J.R. Nagar, Bangalore under the name and style M/s Balaji Enterprises. During the subsistence of such arrangement, it appears, Reebok sought to discontinue the existing business arrangement by the end of the year 2012 and offered a new business module to Balaji, which did not persist for long. The parties therefore signed a settlement agreement dated 27.02.2013 in short 'the settlement agreement' under which, Balaji agreed to make payment of a negotiated amount of ₹1,18,73,851/- (Rupees One Crore Eighteen Lakh Seventy Three Thousand Eight Hundred and Fifty One only) to Reebok towards full and final settlement of all the claims of Reebok and issued six cheques dated March 10, 2013; April 10, 2013; May 10, 2013; June 10, 2013; July 10, 2013; and, August 10, 2013 for ₹15 lakhs each. Reebok complained that Balaji had failed to honour the commitments under the settlement agreement and this compelled it to file a suit being CS(Comm) 245/2016 seeking a decree for a sum of ₹2,06,60,230.74 along with *pendente lite* and future interest, which comprised principal amount of ₹1,18,73,851/-, as was agreed upon under 'the settlement agreement'. During the pendency of such suit, Balaji filed an application under Section 8 of the Act, which was initially objected to by Reebok but consented to later. Upon agreement by the parties, the disputes subject

matter of the suit as well as other disputes arising out of or in relation to the Franchise Agreement as also the settlement agreement, were referred to sole arbitration of Justice V.B. Gupta (Retd.).

3. On such reference, the Arbitrator conducted arbitration proceedings entertaining Balaji's claim and Reebok's counter claim. Issues were framed *inter alia* whether the claim of Balaji was barred by the Limitation Act. Parties led their evidence to prove their respective pleas. Giving findings on the issues framed, the learned Arbitrator passed an award of ₹1,18,73,851 with interest in favour of Reebok and against Balaji. Reebok's counter claim was dismissed. Aggrieved, Balaji filed objections under Section 34 of the Act. That were dismissed by the impugned judgment.

4. Balaji impugns the impugned order dated 11.04.2018 passed by the learned single judge on the grounds (i) settlement agreement was executed by Balaji under threat, coercion and duress, without any free consent and consideration and therefore, the said settlement agreement dated 27.02.2013 was not enforceable and that, Balaji had rescinded it vide an immediate email sent to Reebok, to which Reebok did not respond; (ii) settlement agreement was neither stamped nor registered and was not even attested by any witnesses; (iii) no witness, who could testify about the authenticity of the settlement agreement, was examined before the Arbitrator; (iv) the tribunal failed to note that the attorney of Reebok, who deposed as CW1, was not aware of the transactions between the parties and was not even aware of the circumstances for the execution of the settlement agreement and therefore, his deposition was

inconsequential; (v) learned Arbitrator did not appreciate the evidence before it in the right perspective; (vi) learned Single Judge failed to appreciate that vide letter dated 03.04.2012, Reebok had admitted that the total outstanding liability as on 31.03.2012 was ₹50,37,160 only; (vii) learned Single Judge failed to appreciate that the award was perverse and not founded on cogent evidence; (viii) Balaji had not issued the post dated cheque for ₹28,73,851/-, which was a condition to set the settlement agreement in motion; (ix) learned Single Judge failed to appreciate that Reebok was liable to pay to Balaji a sum of ₹47,95,890/- on account of loss of rent @ ₹25,000/- from 01.04.2013 to 30.04.2016; ₹3,70,000/- towards security charges @ 10,000/- from 01.04.2013 to 30.04.2016; ₹19,36,368/- towards stock liquidation; ₹4,45,191/- towards rejected stocks; and, ₹11,19,331 towards interest on stock liquidation and rejected stocks from 01.10.2013 to 10.05.2016 @ 18% per annum; (x) the claim of Reebok was barred by limitation, as the suit was not filed within three years from the date of cause of action; and, (xi) learned Arbitrator had failed to adopt a fair, reasonable and judicial approach and the award was against the public policy of India.

5. Mr. Nandrajog, learned Senior Counsel for Balaji contended that the settlement agreement was void and unenforceable in law and the suit instituted by Reebok, during the course of which the reference was made to the learned Arbitrator, was itself barred by limitation. It was also contended that the settlement agreement was *void ab-initio* inasmuch as it was not executed by the appellant of his own free will. In his submissions, even otherwise, the impugned award was against the

public policy of India inasmuch as, it was it was not founded on any cogent evidence substantiating the claim.

6. As regards the aspect of the settlement agreement being void as alleged or otherwise, both the tribunal and the learned Single Judge have returned concurrent findings of its due execution. Both the learned Arbitrator and the learned Single Judge evaluated the evidence led before the tribunal, advertent to Balaji's conflicting and shifting positions to wriggle out of the settlement agreement. In the said context, it would suffice to take note of the observations made by the learned Single Judge in the impugned judgment, which are as follows :

"9. The Arbitral Tribunal examined the stand of the petitioner and found that the petitioner had taken inconsistent stands. On one hand, the petitioner had pleaded that his signatures were taken "fraudulently and dishonestly on the blank papers without giving or assuring the details of the said agreement". It was also pleaded that the Settlement Agreement was without any consideration. In another paragraph (paragraph 20 of the impugned award), the petitioner had, inter alia, pleaded that the Settlement Agreement "was not executed by the respondent" [petitioner herein]. The Arbitral Tribunal also noted that in variance to the aforesaid stand, the petitioner sent an email dated 07.03.2013 to Rebook, inter alia, making several allegations. The relevant extract of the said email, as quoted by the Arbitral Tribunal, is set out below:-

"(i) I submit that in the said meeting you confused me by showing certain statements.

(ii) Didn't give me an opportunity to show my records to substantiate my claim.

(iii) Your persons never gave me an opportunity of looking into the same.....

(iv) I submit that I have not executed the alleged MOU. I have not read the contents of the MOU.

(v) Persons who were present in the meeting threatened me to sign the MOU in the last moment by taking advantage, without looking into the contents of the MOU and without understanding it, I signed and put a seal on MOU”.

10. In his cross-examination, the petitioner had stated that he had signed on certain blank papers on 27.02.2013. He thereafter sought to explain the same by stating that by blank papers, he meant that some of the papers were blank. In view of the above, the Arbitral Tribunal observed that the petitioner had been changing the versions and thus, disbelieved the petitioner's case. Accordingly, the Arbitral Tribunal rejected the petitioner's claim that the Settlement Agreement was a sham Agreement and was invalid. The relevant extract of the decision of the Arbitral Tribunal is set out below:

49. It is well settled, that “falsehood has no legs to stand”. The respondent herein, is blowing hot and cold at the same time. He has been changing his version with regard to the Settlement Agreement dated 27.2.2013, at the drop of hat.

(i) His first plea that he was forced to sign on blank papers, stand demolished by his own cross-examination, in which he admits that some of the papers were blank.

(ii) Respondent's second plea, that he was not given an opportunity to read and understand the Settlement Agreement also falls to ground by his own e-mail dated 7.3.2013 stating, that “I submit that in the said meeting you confused me by showing certain statements:. This shows that respondent had seen certain documents.

(iii) Thirdly, in above e-mail respondent has stated, that without understanding he signed and put a seal on MOU. This goes on to show, that respondent had come prepared for the settlement and that is why, he had also brought the seal of

his Company, otherwise there was no occasion for respondent to have brought the seal.

(iv) Fourthly, nowhere in the objections respondent took this plea, that in the meeting persons present threatened him to sign the documents, whereas while sending e-mail. dated 7.3.2013, the respondent had introduced a new version of "threatening him"

(v) Lastly, it would be important to note that respondent is not an illiterate person. In its cross examination, respondent has stated that;

"I have done diploma in pharmacy about 30 years back. I am in the business of sports apparels, sport shoes etc. since 2003. When I start any commercial activity with any of the company. I enter into an Agreement."

50. Thus, respondent is an educated person and experienced businessman. It can't be expected from him, that he would sign certain papers without reading and understanding the content thereof. The cumulative effect of the above pleadings, documents and evidence produced on record, conclusively goes on to show, that after respondent decided to terminate the new business arrangement, the claimant readily agreed. It is well established practice in commercial trade, that when both parties are willing to close down the business, then it automatically follows that statement of accounts are to be drawn and dissolution deed or settlement deed (by whatever name it may be called) is to be prepared and accounts are to be settled."

11. This Court finds no infirmity with the aforesaid findings."

7. On the face of the material on record before the learned Arbitrator, the concurrent findings arrived at by the learned Arbitrator

and the learned Single Judge, cannot be said to be erroneous or perverse by any stretch of imagination, much less patently. Suffice to say, while there is no dispute as regards the commercial transactions amongst the parties and to which the settlement agreement related to, the genuineness of the seal of the firm and the signatures on behalf of Balaji on the settlement agreement was never in question. The contention raised to the contrary is therefore, rejected.

8. On the submission with regard to the question of limitation, in this court's opinion, it is unmerited. For reference to arbitration Balaji itself had made an application. This application in its para 5 averred as follows:

"That the Plaintiff and the Defendant entered into an agreement dated 17.08.2006 which with effect from 1st June, 2006 in respect of running a retail outlet of the Plaintiff Company at the premises bearing No. 68/150/4, 9th Main Road, 3rd Block, Jayanagar, Bangalore - 560 011. Under the said agreement the defendant was permitted to operate a retail outlet to do the business of the plaintiff products. The clause No. 12 of the said agreement consists of Arbitration clause, for the immediate reference the said clause is extracted hereunder:

"In the event of any dispute or difference between the parties hereto, whether arising during the currency or after the completion or abandonment of this Agreement, or after the determination thereof (whether for breach or for any other reason) in regard to any matter or thing of whatsoever nature arising out of this agreement or in connection therewith, then either party shall give to the other notice in writing of such dispute or difference and the same shall be settled by arbitration in Delhi,

India in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or substitution thereof. Subject to the foregoing, the parties submit to the exclusive jurisdiction of courts at Delhi". A copy of the agreement is annexed herewith and marked as ANNEXURE A-1."

9. It is thus evident that Balaji sought invocation of the arbitration clause in relation to the claims/counterclaims arising out of the Franchise Agreement dated 17.08.2006 and responding to it, Reebok had instituted the suit for recovery of its dues, which was founded on the settlement agreement dated 27.02.2013. The making of the application under Section 8 of the Act by itself acknowledges the fact that an arbitration agreement to resolve the disputes and the differences amongst the parties was duly acknowledged by Balaji, and that, no final settlement had yet taken place, which could be said to be determinative of the full and final satisfaction of the claims of the parties under the Franchise Agreement dated 17.08.2006 or the ensuing settlement agreement dated 27.02.2013. This also finds support from the fact that Balaji also asserted its claims towards rent, security charges and stock liquidation etc. at least till 30.04.2016. Though the suit was founded on the settlement agreement, which does not incorporate an arbitration clause, it cannot be said that the institution of the suit had the effect of final determination of all the disputes and differences amongst the parties. Institution of the suit, even if barred by time, has the effect of barring the remedy of suit and does not extinguish the right, to which it relates. On this legal aspect, adverting to Section 3 of the Limitation

Act and the other related provisions, Supreme Court in *Punjab National Bank & Ors. vs. Surendra Prasad Sinha*, AIR 1992 SC 1815 has observed as under:

5. The rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act 36 of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. For example under Section 27 of the Act a suit for possession of any property becoming barred by limitation, the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though the right to enforce the debt by judicial process is barred under Section 3 read with the relevant article in the schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What Section 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody....."

10. It is therefore apparent that the Limitation Act with regard to maintaining an action before a Court or other authority, where the provisions of the Limitation Act are attracted, only bars the remedy of

enforcement of a right if not brought within the prescribed time, without extinguishing the right, on which it is founded. Bar of limitation by no means implies that the claim gets dead. A statutorily barred debt does not lose its identity of a debt itself nor does it become unlawful. In our considered view therefore, if, a time barred debt can be settled by the creditor in any other mode even after the time prescribed for an action under the Limitation Act, we do not see any impediment in the parties arriving at an agreement to resolve it through an alternative mode. Such agreement arrived at amongst Balaji and Reebok, could not be therefore, characterized as barred by the Limitation Act or any other statutory provisions of law. This agreement, in our considered view, only infused a fresh cause of action.

11. In this regard therefore, it is useful to recall that it is Balaji, which had filed an application under Section 8 of the Act and later, agreed before the Court to resolve their disputes and differences with Reebok through arbitration and in pursuance thereof only, the Court made reference to the learned sole Arbitrator. In our considered view therefore, the hurdle of limitation/prescription, assuming, it was so, did not survive.

12. In the given scenario, when the right of Reebok for the recovery of dues did not extinguish and in relation to which, Balaji had arrived at an agreement for referral of such disputes and differences to arbitration before the Court, the agreement so arrived at, in our considered view, has the effect of giving a fresh cause of action to the respective claims of the parties. Noticeably, in its Memorandum of Appeal before this

Court also, Balaji asserted its claims towards loss of rent, security charges etc. till 30.04.2016 and in view thereof as well, it can be said that the agreement arrived at amongst the parties before the Court for the referral of their disputes and differences to arbitration as on 14.09.2016, was within time. The question of limitation is always a mixed question of fact and law and given the factual matrix of the case in hand, we do not find any perversity in the impugned award or the order passed by the learned Single Judge. The other salient aspect is that of preferring of arbitration proceedings was pursuant to Balaji's invocation of Section 8 of the Arbitration Act. However, Reebok had filed the suit within the time prescribed; the demand for payment (by Reebok to Balaji) had not been complied. Therefore, when Reebok approached the court, it initiated the demand, as it were; in these circumstances, the court has to conclude that the filing of the suit constituted the demand for arbitration, in terms of Section 21 of the Act.

13. For the foregoing reasons, the appeal is dismissed. No order as to cost. All pending applications stand disposed of.

A. K. CHAWLA, J

S. RAVINDRA BHAT, J

JULY 20, 2018

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