

IN THE HIGH COURT OF BOMBAY AT GOA**TRANSFER APPLICATION NO.5 OF 2019**

Alcon Resort Holdings Pvt. Ltd. Applicant

V/s

Sterling & Wilson Pvt. Ltd. Respondent

Shri S.G. Desai, Senior Advocate with Shri Pavithran A.V.,
Advocate for the Applicant.

Shri Nitin Sardesai, Senior Advocate with Shri A.D. Bhobe,
Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date: - 16th December 2019

ORAL ORDER:

The petitioner has suffered an arbitral award dated 25.11.2017. Aggrieved, it applied under Section 34 of the Arbitration and Conciliation Act, 1996, to the Principal District Court, South Goa, in App. No.7/2018. Pending the Section 34 proceedings, the successful respondent has laid execution for having the award enforced. It is also before the same District Court.

2. In the execution application, the respondent wanted the petitioner to disclose its assets to the Court. The petitioner did

that. Then, the petitioner applied under Section 47 of CPC, requiring the District Court to rule on whether the Arbitrator rendered the award travelling beyond the remit of the reference. Then, the District Court has held that the question raised in that application relates to the issues raised in the Section 34 application. So it wanted to decide that issue along with the application under Section 34 of the Act.

3. Soon thereafter, on 8th August 2019, in the proceedings under Section 34 of the Act, a learned Senior Counsel advanced his arguments, in part. Then, the matter was adjourned to 27.08.2019. In the meanwhile, the learned Senior Counsel became busy in a part-heard matter before this Court. That matter, a criminal appeal, stood adjourned periodically as part-heard. Sensing that he could not attend the District Court on 27th August 2019, the learned Senior Counsel wanted the counsel on record to seek an adjournment before the District Court. The adjournment was granted.

4. But on the next day, that is on 28th August, the District Court passed an order not only attaching the petitioner's properties but also requiring the parties to appear on 31st August

for fixing a date for sale proclamation. On 31st August, when the matter was taken up for hearing, the learned Senior Counsel pointed out the lapse on the District Court's part.

5. The lapse is said to be twofold: first, there was no listing of the matter on 28th August, but it was taken up without notice to the petitioner. Second, there could not be any proclamation of sale or even fixing of date for that purpose before the Court decided all the issues the petitioner raised.

6. Under these circumstances, the District Court—I reckon, fairly—has acknowledged its lapse. It has realised that its order, dt.28.08.2019 was incongruous; it has felt that the order placed before the learned District Judge by oversight. So it has promptly recalled the order.

7. But by then, there arose a crisis of confidence. The petitioner applied to the Principal District Judge to recuse himself from the cases (that is, the proceedings under Section 34 of the Act and the Execution Petition) and to transfer them to another court. On the District Judge's refusal to recuse himself, the petitioner has filed this petition.

8. The learned Senior Counsel for the petitioner has

elaborately argued on the procedural nitty gritty and also the petitioner's right to fair hearing. He has also elaborated on how the petitioner has come to entertain an apprehension that it may not get justice before the learned District Judge.

9. On the other hand, equally assertively, the learned Senior Counsel for the respondent has submitted that there is no material on record to cast aspersions on the District Judge's integrity. According to him, if at all there was any order on 28.08.2019, the District Court has fairly acknowledged that it was by oversight. At any rate, the learned Senior Counsel submits that as the order was not at the respondent's behest, it ought to have been by oversight, given the numerous cases pending before the District Court.

10. At this juncture, I expressed my disinclination to transfer the case as it would cast a cloud on the District Judge's integrity. Instead, I have suggested to both the learned Senior Counsel to raise above parties' interest and suggest a method that avoids embarrassment to the District Court and prejudice to either party. To their credit, both the learned Senior Counsel have displayed statesman-like spirit and agreed to follow the

Court's view on the issue. The learned Senior Counsel for the petitioner has even consulted the party present in the Court.

11. Then, I have suggested that the District Judge will hear the parties comprehensively in the appeal as well as, if legally permissible, on the issue the petitioner raised under Section 47 of CPC in the Execution Petition. Till then, the execution will be put on hold, with the attachment of the petitioner's property remaining undisturbed. Both the learned Senior Counsel have agreed to this proposal.

12. Under these circumstances, without adverting to the merits of the matter, I dispose of this Writ Petition with the following directions:

- (i) The learned District Court, South Goa, Margao, will hear the petitioner and the respondent in the Execution Petition, as well as in the Application under Section 34 of the Act and rule on all the issues. Only thereafter, based on the outcome, will the parties proceed with the execution.
- (ii) The District Judge—as I may be stressing the obvious and as I am confident—will adjudicate the disputes before him uninfluenced by the fact that one of the parties earlier wanted his recusal.
- (iii) If either party seeks an adjournment, it cannot be

claimed as of right; it entirely depends on the District Court's discretion.

The Writ Petition, thus, stands disposed of.

DAMA SESHADRI NAIDU, J.

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