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

CHAMBER SUMMONS NO. 1279 OF 2018
IN
COMMERCIAL ARBITRATION PETITION NO. 186 OF 2016

Ogene Systems (I) Pvt.Ltd. ...Petitioner/Applicant
vs
Sara Chemicals & Consultants ...Respondent

Mr.Shyam Kapadia with Niket Jani I/b. Dhruve Liladhar & Co. for Petitioner.
Mr.Rahul Narichania, Senior Advocate I/b. India Law LLP for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 30 APRIL 2019

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons seeks amendment of a commercial arbitration petition challenging an award. The facts of the case are rather peculiar. After the original arbitration petition was admitted, a notice of motion was taken out by the Respondent to the chamber summons (original respondent) seeking an order of remission for rectification under Section 33(1) of the Arbitration and Conciliation Act, 1996 (“Act”). When the matter went back to the arbitral tribunal, the correction award was made, but it was signed only by one arbitrator. In the premises, the Respondent made another application during the pendency of the arbitration petition for remitting the matter back to the arbitral tribunal for signatures of the two other arbitrators on the tribunal. After the matter, thus, went back again to the tribunal, the two other arbitrators did sign the

correction award and that is how the matter has now come back to the court for hearing. In the premises, the present chamber summons has been taken out basically to set out the aforesaid intervening facts, which led to the two remissions before the arbitral tribunal, as noted above. No doubt, the schedule of amendment also seeks to add one additional ground of challenge. But then this new ground arises only after the last order was passed by the arbitral tribunal, namely, after the second remission under Section 34(4) of the Act. The amendment is on account of what happened during the pendency of the arbitration petition and is necessary for adjudication of the real controversy between the parties and deserves to be allowed.

3 Learned Counsel for the Respondent opposes the amendment, and in particular, addition of the new ground of challenge, on the ground of the time bar contained in Section 34(3) of the Act. It is submitted that no new ground of challenge can be brought in after the expiry of the maximum permissible period for challenging an award provided in Section 34(3). The Supreme Court, in the case of **State of Maharashtra vs. Hindustan Construction Company Limited**[1]**,** has considered whether every amendment in a challenge petition filed under Section 34 of the Act tantamounts to a fresh application in all situations and circumstances so as to attract the bar of Section 34(3). The court referred to, in this context, its decisions in **L.J. Leach & Co.Ltd. vs. Jardine Skinner & Co.**[2] and **Pirgonda Hongonda Patil vs. Kalgonda Shidgonda Patil**[3]**.** The court noted that under the law stated in these cases, the courts, as a rule, decline

1 **(2010) 4 SCC 518**
2 **AIR 1957 SC 357 : 1957 SCR 438**
3 **AIR 1957 SC 363 : 1957 SCR 595**

to allow amendments, if a fresh claim on the proposed amendments would be barred by limitation on the date of the application but that is a factor for consideration in exercise of the court's discretion on whether or not to grant leave to amend; it does not affect the power of the court to order such amendment, if it is required in the interest of justice. The court held that there was no reason why the same rule should not be applied when the court is called upon to consider the application for amendment of grounds in an application for setting aside an arbitral award or an appeal under Section 37 of the Act. The expression "independent ground" considered by our court in **Vastu Invest & Holdings (P) Ltd. vs. Gujarat Lease Financing Ltd.**[4] as impermissible for being entertained after limitation meant, according to the Supreme Court, a ground amounting to a fresh application for setting aside an arbitral award. The Supreme Court held that the dictum in **Vastu Invest & Holdings (P) Ltd.** was not intended to lay down any absolute rule that in no case, amendment in an application for setting aside an arbitral award can be made after expiry of the period of limitation provided therein. This then is the yardstick to assess whether a ground ought to be treated as "independent ground" and whether the court should exercise its discretion in allowing the amendment.

4 In the present case, the additional ground sought to be introduced arises only upon the last order was passed after the second remission under Section 34(4) of the Act. The original order passed on that application was undated. Despite the Petitioner's request, the final order, with the date endorsed on it, was made available to, and received by, the

4 **(2001) 2 Arb LR 315 (Bom)**

Applicant only on 28 August 2018. The challenge to that part of the award could have been made only after 28 August 2018. The present chamber summons filed on 17 October 2018 is, thus, within time.

5 Accordingly, the chamber summons is made absolute in terms of prayer clause (a). Amendment to be carried out within two weeks.

(S.C. GUPTE, J.)