

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO. 23 OF 2018
IN
ARBITRATION PETITION NO. 736 OF 2017

Store One Retail India Ltd.
(Now known as Soril Infra
Resources Ltd.)

A Company registered under the
provisions of the Companies Act, 1956
and having its registered office at M-62
& 63, 1st Floor, Connaught Place, New
Delhi – 110 001.

.. Applicant.

Versus

I.T.C. Limited

A Company governed by the provisions
of the Companies Act, 2013 and having
its registered office at 37, Virginia
House, Jawaharlal Nehru Road,
Kolkata, West Bengal – 400 071
Through one of its Divisions namely
Agri Business Division

.. Respondent

...

Mr. Anil D'souza for the applicant/petitioner.

Mr. Mutahar Khan I/b. R.Gupta for respondent.

CORAM: R.D. DHANUKA, J.

DATED : 15th JULY, 2019

ORAL JUDGMENT :-

By this Review Petition, the petitioner (petitioner in Arbitration Petitioner No.736 of 2017) seeks review of the order dated 31/01/2018 passed by this Court thereby dismissing the Arbitration Petition filed by the petitioner on various grounds.

2. The Review Petition is filed on the ground that though several grounds were raised in the Arbitration Petition filed by the Review Petitioner, this Court did not consider all the grounds and dismissed the petition only on three grounds discussed in paragraph 1 to 5 of the order dated 31/01/2018 passed by this Court.

3. Mr.D'souza, Learned Counsel for the petitioner invited my attention to grounds (A) to (E) of the Arbitration Petition No.736/2017 and submits that though these grounds specifically raised in the petition and were urged before this Court while arguing the Arbitration Petition, this Court has not considered these grounds in the order. Learned Counsel strongly placed reliance on Section 34(2)(b) of the Arbitration and Conciliation Act 1996 and would submit that it is duty of the Court to find out whether the subject matter of dispute is capable of settlement by Arbitration under the

law for the time being in force or the Arbitral Award is in conflict with the public policy of India or not. He submits that even if the petitioner had not urged the grounds (A) to (E) raised in the Arbitration Petition, since this Court has not complied with its duty to find out whether the subject matter of dispute was of settlement by Arbitration under the law for the time being force or not or whether the Arbitral Awards is in conflict with the public policy of India or not, order passed by this Court can be reviewed under Order XLVII Rule 1 of Civil Procedure Code.

4. The Learned Counsel for the review petitioner has invited my attention to the judgment of Supreme Court in case of **Naved Yar Khan V/s.Haroon Yusuf and Anr. in Civil Appeal No.4981 of 2006 decided on 04/12/2007**, and more particularly paragraphs 11 and 14 and would submit that if the point, if any, not mentioned in the judgment of the Court, the presumption is that, that point was never pressed before the Learned Judge and it was given up, such presumption is rebuttable. In case, the petitioner contends that he had pressed any point but has not been dealt with in the impugned judgment, it is open to him to file an application before the same Learned Judge who delivered the impugned

judgment and if he satisfies the Judge that some other points were in fact pressed, but were not dealt with in the impugned judgment, it is open to the concerned Judge to pass appropriate orders including an order of review.

5. Learned Counsel for the respondent, on the other hand, submits that he, himself has argued the matter on behalf of the respondent before this Court when this Court dismissed the Arbitration Petition filed by the petitioner on 31/01/2018. He further submits that whatever submissions were advanced by the Learned Counsel for the petitioner then, appearing before this Court, have been already considered by this Court. He submits that the Review Petition now filed after expiry of 262 days raising a contention that some more grounds were raised in the petition and/or though urged by the petitioner have not been considered, shall not be entertained by this Court. Learned Counsel for the respondent submits that even otherwise, the Review Petition filed by the petitioner is not maintainable in view of the Arbitration and Conciliation Act, 1996 being a self contained Code without having any provision of review therein.

6. Without going into the issue whether Review Petition is maintainable or not, since I have heard both the parties on merits, I do not propose to dismiss the Review Petition on the ground of maintainability.

7. A perusal of the order dated 31/01/2008 passed by this Court clearly indicates that this Court has considered the arguments advanced by the petitioner through its Counsel Mr.Ashok Singh on 31/01/2008. No application for Speaking to the Minutes of order Dated 31/01/2008 came to be filed by the petitioner at any point of time till today. Even in the Review Petition lodged by the petitioner after expiry of 262 days, the grounds raised in paragraphs (A), (B) and (E) do not indicate that grounds (A) to (E) in Arbitration Petition were though allegedly urged before this Court, are not considered in the order.

8. A perusal of judgment of the Hon'ble Supreme Court in case of Naved Yar Khan V/s. Haroon Yusuf and Anr. (supra) relied by the Learned Counsel for the Review Petitioner clearly shows that there is a presumption in law that the Judge deals with all the points which have been pressed before him. It often happens that in a

petition or appeal several points are taken in the memorandum of the petition or appeal, but at the time of arguments only some of these points are pressed. Naturally a Judge will deal only with the points which are pressed in the arguments and it will be presumed that the appellant gave up the other points, otherwise, he would have dealt with them also. In the same Judgment, it is also held by the Supreme Court that “in case the petitioner contends that he had pressed that point also which has not been dealt with in the impugned judgment, it is open to him to file an application before the same Judge who delivered the impugned judgment”.

9. In this case, neither any application for Speaking to the Minutes is filed by the applicant in Review Petition nor the Learned Advocate who appeared before this Court, filed any affidavit alleging that though he had argued other points, the same have not been considered by this Court at the earliest. Merely because of change of Advocate, this Court cannot permit the Review Petitioner to urge additional grounds at this stage.

10. Insofar as the submissions of Mr.D'souza, Learned Counsel for the petitioner that it is the duty of the Court to find out whether subject matter of the dispute is capable of settlement by

Arbitration under the law for the time being force or that the Arbitral Awards is in conflict with the public policy of India is concerned, there is no merit in this submission of the Learned Counsel for the petitioner. The Court can consider the submissions, provided such submissions are urged before the Court and are raised in the grounds of challenge in the Arbitration Petition. In my view, the Review Petition is totally misconceived and mischievous and deserves to be rejected.

11. Court has no *sou-motu* powers to set aside any part of the Arbitral Award under any part of Section 34 including Section 34(2)(b) pressed in service by the review petitioner. Review Petition is accordingly, dismissed with cost of Rs.50,000/- (Rupees Fifty Thousand Only), which shall be paid by the review petitioner to the respondent within one week from today.

(R.D. DHANUKA, J.)