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

Date of Decision: 20th November, 2019

\+ **CM (M) 583/2019 & CM APPLs. 17079/2019, 33122/2019, 42379/2019 & 42380/2019**

M/S CITICORP FINANCE (INDIA) LIMITED & ANR. ..... Petitioners

Through: Mr. Rohit K. Aggarwal, Advocate. (M:9811201515)

versus

MATHAN JOSEPH ..... Respondent

Through: Dr. Amit George, Mr. Rishabh Dheer, Mr. Amol Acharya, Mr. Rayadurgam Bharat and Mr. Piyo Harold Jaimon, Advocates. (M:9910524364)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The question in this case is in respect of the fee of the Respondent/Plaintiff - Mr. Mathan Joseph *(hereinafter, "Plaintiff")*, who filed a suit for recovery of Rs. 46,60,500/- against the Petitioners/Defendants *(hereinafter, "Defendants")* on the ground that while he has acted as the arbitrator in respect of the Defendants' matters, his fee has not been paid.

2. The ld. Trial Court, vide judgment dated 25th July, 2018, had disposed of the suit in the following terms:

> *"18. Plaintiff claims to have forwarded the bills of these 8000 arbitral proceedings to the defendant No.1 though, the firm K. Gangadharan & Co. which assertion was denied by the defendants. It is true that plaintiff has also not been able to prove that he had submitted these bills to K. Gangadharan & Co. for*

onward transmission to defendant No.1. To this end, plaintiff was required to summon a witness from the said law firm. There is no document on record which could prove that plaintiffs bills for acting as an Arbitrator were handed over to the law firm. There is no written acknowledgement issued by the law firm affirming the receipt of bills submitted by the plaintiff. The bills raised by the plaintiff and which have been filed on record give no details of the arbitrations conducted or in what manner has the suit amount of Rs.46,60,500/- been computed. Further, perusal of Mark-E reveals that entire fee of the arbitration was to be paid by the claimant (defendant No.1 herein) only in certain specific circumstances. Those circumstances need to be highlighted in the Bills. Thus though it is held that defendants have failed to 'pay the fee of the plaintiff for acting as an arbitrator, in such circumstances as highlighted, the claim of the plaintiff cannot be decreed without verification. Consequently, the plaintiff is directed to submit all his bills in respect of the arbitration proceedings wherein he presided over as an arbitrator to the defendants who shall then verify the same and make the payment to the plaintiff. It is made clear that verification by the defendants will only be to the extent that arbitration proceedings were actually conducted i.e. whether ex parte or contested by the respondent and that the Arbitrator had presided over the same. Needless to say that the plaintiff will have to attach along with the Bills, copies of such orders vide which he had fixed his fee for presiding over as an arbitrator. This issue is disposed off accordingly.

RELIEF

19. In view of the above discussion, the suit of the plaintiff stands disposed off with directions to the plaintiff to submit all his bills in respect of the arbitration proceedings wherein he presided over as *an arbitrator to the defendant who shall then verify the same and make the payment of arbitrator's fee to the plaintiff. It is made clear that verification by the defendants will only be to the extent that arbitration proceedings were actually conducted, whether proceedings were conducted exparte or were contested by the respondents and that the Arbitrator had presided over the same."*

3. As per the above order, the Plaintiff was to submit the list of matters he presided over, along with the bills etc., which were to be verified by the Defendants. The ld. Trial Court, however, did not specify a time-period for the verification and making of payment. It appears that the issue, as to the verification of cases where the Plaintiff had acted as an arbitrator, and the payment thereof, have remained unresolved between the parties. The Plaintiff then filed Ex. Pet. No 53/2019, in which the impugned orders dated 30th March, 2019 and 2nd April, 2019 have been passed, by which the Executing Court has directed the Defendants to deposit an FDR for the suit amount. The orders read as under:

Order dated 30th March, 2019

"Ld. Counsel for the judgment debtor seeks more time on the ground that the verification could not be done, as it is not possible without participation of the decree holder.

Ld. Counsel for the decree holder on the other hand, submits that the same is a delay tactic.

No objections have been filed till date.

The stand taken by the judgment debtor cannot be accepted in as much as these documents were available all throughout the trial, and even after the passing of the decree.

The judgment debtor is directed to deposit the amount in the form of FDR.

Let FDR be placed in respect of the decreetal amount,

within 15 days from today.
Needless to say that the judgment debtor would have rights to file objections, as per law.
List on 10.05.2019 at 2 p.m.
A copy of the order be given dasti Ld. Counsel for the judgment debtor, as requested."

Order dated 2nd April, 2019

"File is taken up on oral request of Ld. Counsel for the judgment debtor.
Ld. Counsel for the judgment debtor submits that it is not specified in the order dated 30.03.2019, as to whether in whose name the FDR is to be prepared.
Let the FDR be prepared in the name of the Court within 15 days i.e. in terms of order dated 30.03.2019.
List on 10.05.2019 at 2 p.m, the date already fixed. A copy of the order be given dasti to Ld. Counsel for the judgment debtor, as requested."

4. The above orders are under challenge. The manner in which the Defendants, which is a well-established financial institution has treated the Plaintiff, who acted as an arbitrator in several matters for the Defendants, is completely appalling. Even today, ld. Counsel for the Defendants submits that his client has no objection in making payments, if the statement of cases, copies of awards and copies of bills are provided. These are conditions that appear to this court to be completely unreasonable. The Plaintiff is a 70-year-old man who was working as part of a law firm, and who had acted as an arbitrator in several matters for the Defendants. He is almost retired and is only hoping to receive the amounts due from the Defendants. The findings in the final judgment dated 25th July, 2018, are as under:

i. In paragraph 3 of the judgment, the ld. Trial Court has observed that the facts regarding the appointment of the Plaintiff as an arbitrator in the arbitration proceedings initiated by the Defendants are undisputed.

ii. In respect of the first issue, as to whether the suit is bad for non-joinder of Mr. K. Gangadharan of *K. Gangadharan & Co.*, the law firm engaged by the Defendants for its legal work, the ld. Trial Court, while holding that Mr. K. Gangadharan is not a necessary party to the suit, observed as under:-

> *"12. … It is relevant to highlight that presence of the Advocate was relevant only to prove the assertion of the defendants that arbitrator's fee was a part of the professional fee which was agreed to be paid to the law firm. This could have been done by bringing in the said Advocate as a defendant witness. However, not only did the defendant did not cite any witness from the Firm K. Gangadhar & Co. as a DW but not even a single document was filed even to show payment of professional fee charges to the said law firm. <u>In the understanding of the Court, the defendants purposely refrained from filing any proof of payment of professional fee to the law firm since the same would have proved to be damaging to the defense pleaded by them. In view of the above discussion. Advocate K. Gangadhar cannot be held to be a necessary party in the present suit</u>. ..."*

iii. In respect of the second issue, as to whether the Defendants' had entered into an agreement with Mr. K. Gangadharan for payment of fee at the rate of R.350/- per case, including arbitrator's fee, and the effect thereof, the ld. Trial Court, has held as follows: -

> *"13. The onus to prove this issue was put on the plaintiff when infact, it should have been on the defendants since this agreement forms the fundamental defense to the suit claim. Defendants exhibited the services agreement dt. 28.11.2006 as DW1/2. ... Infact, 2 service agreements have been filed on record but only 1 has been exhibited. ... In the first service*

agreement, the consolidated fee agreed between the defendant and Law Firm K. Gangadharan & Co. was Rs. 500 per arbitration proceedings which included Arbitrator's fee. In the second agreement, the fee for arbitration matters was reduced to Rs. 350. <u>Even assuming the said document to have been proved without the need to summon any witness from the law firm, it is of no effect simply because the plaintiff is not in any manner connected with the said agreements</u>.

...

15. One document which dents the defense set up is when we peruse Mark-E which is record of one of the arbitration proceedings conducted by the plaintiff in which the defendant No.1 was a claimant. A careful reading of these proceedings reveals that in the presence of one of the lawyers of the law firm K. Gangadharan & Co., the Arbitrator (i.e. plaintiff) fixed his fee as Rs. 350 after specifically recording that since his fees has not been fixed, he has the authority to fix it on his own. ***Had there actually been any understanding, even oral, between the law firm K. Gangadharan & Co. and the Plaintiff that his fee for acting as an Arbitrator shall be paid by the 'law firm' from the professional fee to be charged from the defendants, the lawyer representing the defendant No.1 would have raised an objection or atleast brought it to the notice of the Arbitrator that he is not required to fix his fee since the same already stands fixed vide an agreement between the defendant No.1 and the law firm.***

16. ... <u>There is no privity of contract between the defendant No.1 and the plaintiff with regard to the legal services agreement Ex. DW 1/2</u>. Even though defendant No.1 might have agreed to pay the arbitrator fee to the law firm, plaintiff cannot be bound by such an agreement between the defendant No.1 and a third party. Consequently, even assuming ***defendant No.1 entered into an agreement with Mr. K. Gangadharan for payment of professional fee at the rate of Rs. 350/- per case including arbitrator's fee, the same cannot be binding on the plaintiff nor can it, in any way, wipe out the liability of the defendants to pay the Arbitrator's fee.***

iv. In respect of the third issue, as to the amount, if any, the

Plaintiff is entitled to, the ld. Trial Court, due to discrepancies in the number of awards stated to have been passed by the Plaintiff and in the absence of a written acknowledgment by the law-firm of the receipt of bills submitted by the Plaintiff, held as under: -

> *"18. ... Thus though it is held that defendants have failed to pay the fee of the plaintiff for acting as an arbitrator, in such circumstances as highlighted, the claim of the plaintiff cannot be decreed without verification. Consequently, the plaintiff is directed to submit all his bills in respect of the arbitration proceedings wherein he presided over as an arbitrator to the defendants who shall then verify the same and make the payment to the plaintiff. It is made clear that verification by the defendants will only be to the extent that arbitration proceedings were actually conducted, i.e. whether ex parte or contested by the respondent and that the Arbitrator had presided over the same; Needless to say that the plaintiff will have to attach alongwith the Bills, copies of such orders vide which he had fixed his fee for presiding over as an arbitrator. This issue is disposed off accordingly."*

5. The above judgment has not been challenged by the Defendants. However, the Defendants are simply not showing bona fides and paying the Plaintiff's legitimate dues.

6. A specific query was put to the ld. counsel for the Defendants, as to why the details of the cases where the Plaintiff acted as an arbitrator are not available with the Defendants, which is a corporate entity, to which the Court is told that the details are not available. This is quite unfathomable, inasmuch as it is the contention of the Plaintiff that the Defendants have, in fact, enforced various awards passed by the Plaintiff. Irrespective of whether the Defendants have, indeed, enforced the awards passed by the Plaintiff or not, there can be no justification for holding back the fees due to the

Plaintiff. To cast a heavy onus of providing so many details to the Defendants, when it can clearly verify the same from its own records, would defeat the decree passed in favour of the Plaintiff. The entire intention clearly appears to be to harass the Plaintiff and nothing more.

7. The amount claimed by the Plaintiff in the suit is Rs. 46,60,500/-. The number of cases in which the Plaintiff claims to have acted as an arbitrator for the Defendants, are a whopping 8,000 in number. All the pleas raised by the Defendants were rejected by the final judgment dated 25th July, 2018. However, since complete details of the cases in which the Plaintiff acted as an arbitrator for the Defendants, were not given by the Plaintiff, the judgment was passed in the terms extracted above.

8. The fact that the judgment has been passed in the above-mentioned manner, does not mean that the same can be set at naught. Some methodology needs to be adopted to execute and give effect to the same. The Executing Court deemed it appropriate to direct the deposit of an FDR. However, considering the facts and circumstances, as also the age of the Plaintiff, in order to expedite payment to the Plaintiff, the following directions are issued:

a) The Plaintiff to supply a list of cases in which he had acted as an Arbitrator, along with the date of the awards, if available, to the ld. counsel for the Defendants within one week.

b) ***Justice (Retd.) R. V. Easwar (M: 9560899997)***, ld. Judge (Retd.) of this Court, is appointed as the Court Commissioner, to review the list of cases and determine the amount payable to the Plaintiff, after hearing the authorized representative/legal manager of the Defendants. The fee of the Court Commissioner is fixed at Rs.3

lakhs, which shall be paid in lumpsum by the Defendants. Rs. 1.5 lakhs shall be paid on the date of first hearing and Rs. 1.5 lakhs shall be paid once the Court Commissioner concludes the proceedings/interaction and fixes a date for giving of his report.

c) The parties are directed to appear before the Court Commissioner on 6th December, 2019. The Court Commissioner shall endeavour to dispose of the matter within a period of two months from the date of first hearing.

d) The Defendants shall cooperate with the Court Commissioner in providing the data, if the same is not available with the Plaintiff.

9. Considering the fact that the Plaintiff has acted as an arbitrator for the Defendants, it is expected that the proceedings before the Court Commissioner will be conducted in a *bonafide* manner. The legitimate dues of the Plaintiff, as determined by the Court Commissioner, shall be paid by the Defendants to the Plaintiff, within a period of one month from the date of the Court Commissioner's report, which shall be filed before the Executing Court. If the payment, as directed herein, is not made, the Executing Court shall pass appropriate orders, in accordance with law.

10. Parties are permitted to approach this Court, if any further directions are required. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 20, 2019/*dk*
(Corrected and released on 2nd December, 2019)