

Digitally
signed by
Trupti
Bhamne
Date:
2021.02.15
22:10:19
+0530

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

APPEAL NO. 67 OF 2019

Geojit Financial Services Limited)
having its registered office at)
34/ 659- P, Civil Lane Road,)
Padivattom, Kochi 682 024) ...Appellant

Versus

Sandeep Gurav)
A 004, New Star Apartment CHS Ltd.)
Behind GCC Club, Mira Bhayander Road)
Mira Road, Thane) ...Respondent

.....

Mr.Anoshak Daver a/w. Mr. Gaurav Jangle, Mr.Digant Bhatt and Ms.
Juhi Shah i/b. M/s. I.V. Merchant for the Appellant.
Mr.Aliabbas Delhiwala a/w. Mr. Gouresh C. Mogre for the
Respondent.

**CORAM : R.D. DHANUKA &
V.G.BISHT, JJ.**

DATE : 12th February, 2021

ORAL JUDGMENT (PER : R.D.DHANUKA, J.)

1. Admit. The learned Counsel for the respondent waives service.

2. By this Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the said Act"), the appellant (original petitioner) has impugned the order dated 31st August, 2017 passed by a learned Single Judge of this Court in Arbitration Petition No. 161 of 2017 filed under Section 34 of the said Act and also disposing of the Chamber Summons No. 448 of 2017 filed by the

appellant inter alia praying for amendment of the Arbitration Petition.

3. By consent of the parties, the Appeal is heard finally at the admission stage.

4. A signed copy of the award was received by the appellant on 13th July, 2016 whereby rejecting the counter claim filed by the appellant. On 8th August, 2016, the appellant made an application purportedly under Section 33 of the said Act for correction of the award dated 8th July, 2016 and for an additional award on various grounds. On 26th August, 2016, the Appellate Tribunal rejected the said application under Section 33 of the said Act filed by the appellant. On 29th August, 2016, the appellant received a copy of the said order dated 26th August, 2016.

5. On 15th November, 2016, the appellant filed a Notice of Motion bearing lodging No. 3244 of 2016 inter alia praying for condonation of delay in filing the Arbitration Petition. On 10th February, 2017, the learned Single Judge of this Court allowed the appellant to withdraw the said Notice of Motion on the ground that the Petition was not in time. On 26th August, 2017, the appellant filed Chamber Summons bearing lodging No. 448 of 2017 seeking liberty to amend the

Arbitration Petition by incorporating additional facts and grounds. On 31st August, 2017, the learned Single Judge dismissed the said Arbitration Petition and also the Chamber Summons filed by the appellant on the ground that the application filed by the appellant on 8th August, 2016 was in the nature of the Review Petition and thus was not contemplated under Section 33 of the said Act. The learned Single Judge held that the Arbitration Petition was clearly barred by limitation prescribed under Section 34 (3) read with proviso thereto of the said Act. The said order of the learned Single Judge is impugned by the appellant in this Appeal filed under Section 37 of the said Act.

6. Mr. Daver, learned Counsel for the appellant, submits that the application filed by his client on 8th August, 2016 was within the time prescribed under Section 33 (1) of the said Act. The said application was disposed of by the Appellate Bench on 26th August, 2016. The appellant was entitled to file Arbitration Petition under Section 34 of the said Act within a period of three months from the date of disposal of the said application filed by the appellant under Section 33 (1) of the said Act.

7. Learned Counsel for the appellant invited our attention to the application filed by his client before the Appellate Bench of the Arbitral Tribunal and also the order passed by the Appellate Bench thereon and would submit that the said application was not in the nature of any Review Application and thus the period of limitation for filing the Petition under Section 34 of the said Act would commence from the date of disposal of the application filed by under Section 33 (1) of the said Act. The Petition thus filed by the appellant under Section 34 (1) of the said Act was within the time prescribed under Section 34 (3) of the said Act.

8. The learned Counsel for the respondent, on the other hand , strongly placed reliance on the judgment of the Supreme Court in the case of **State of Arunachal Pradesh Versus Damini Construction Co.**¹ and the judgment delivered by one of us (Shri R.D. Dhanuka, J.) in the case of **Dr. Writer's Food Products Pvt. Ltd v. Cosmos Co-operative Bank Limited**² in support of his submission that the application filed by the appellant purportedly under Section 33 of the said Act was for seeking review of the Arbitral award rendered by the Appellate Bench on 13th July, 2016

1 (2007) 10 SCC 742

2 2019 SCC OnLine Bom 2140

and was not within the parameters of Section 33 (1) of the said Act. The learned Single Judge thus was right in dismissing the Arbitration Petition filed by the appellant on the ground of the Arbitration Petition being barred by limitation prescribed under Section 34 (3) of the said Act.

9. A perusal of the application dated 8th August, 2016 filed by the appellant before the Appellate Bench of the Arbitral Tribunal indicates that the appellant relied upon various documents which were submitted, according to the appellant before the Arbitral Panel of the Exchange but not considered. It was contended in the said application that the Arbitral Panel had considered the wrong document for computing the counter claim of the respondent. The reliance was also placed on the ledger statement showing the debit balance of Rs. 15,58,198.84 in the respondent's account.

10. It was contended in the said application that the product wise consolidated ledger with fund transfer entries had been issued to the respondent herein on quarterly basis and the ledger clearly shows the net debit in NSE F&O segment. The respondent had allegedly not raised any dispute on fund transfer entries and debit in F& O segment.

11. It was further contended that the respondent herein had read, understood and acknowledged those documents. Under the rules and regulations of SEBI circular dated 3rd December, 2009, the respondent was under an obligation to point out the discrepancy/ dispute arising from the said statement of account within seven working days from the date of receipt thereof which was not done by respondent herein.

12. In the second last paragraph of the said application, the appellant accordingly prayed that the Arbitral Tribunal may consider the request of the appellant herein to correct the award and pass additional award on merits allowing the counter claim of the appellant herein by upholding the original award of the sole arbitrator.

13. A perusal of the order passed by Appellate Bench of the Arbitral Tribunal indicates that the Appellate Bench rejected the said application on the ground that the appellant herein was trying to persuade the Arbitral Tribunal to review the order passed by them by putting forth his argument once again. The Arbitral Tribunal did not have authority to review its own award. It is held by Arbitral

Tribunal that the reasoned order did not require any rectification and accordingly rejected the said application purportedly filed under Section 33 (1) of the said Act.

14. The learned Single Judge has rightly held that the said application filed by the appellant was in the nature of review and thus, the appellant would not get fresh period of limitation from the date of disposal of the application under Section 33 by the Arbitral Tribunal.

15. The Hon'ble Supreme Court in the case of **State of Arunachal Pradesh** (*supra*) has dealt with identical issue and has held that the application seeking review under Section 33 was not maintainable.

16. The Hon'ble Supreme Court considered that the application filed by the appellant was by way of seeking review of the award on merits and therefore, since the said application itself was wholly misconceived, such application would not come within the scope of Section 33. When the application does not come within the purview of Section 33, the application was totally misconceived. This Court adverted to the said judgments of Hon'ble Supreme Court in the

case of **State of Arunachal Pradesh** (*supra*) and in the case of **Dr. Writer's Food Products Pvt. Ltd.** (*supra*) and has rejected the Arbitration Petition filed under Section 34 on the ground of limitation.

17. A perusal of the application dated 8th August, 2016 filed by the appellant clearly indicates that the appellant placed reliance on various documents and advanced various arguments on merits in the said application for seeking relief of an additional amount on merits.

18. Under Section 33 (1) of the said Act, any party to the proceedings is entitled to make an application for correction and interpretation of the award or for an additional amount within 30 days from the receipt of the Arbitral Award, unless another period of time has been agreed upon the parties to correct the computation errors or clerical or typographical errors or any other errors of a similar nature occurring in the award. If both the parties agree, a party, with notice to the other party, may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award.

19. It is not in dispute that the appellant had filed an application within 30 days from the date of receipt of the copy of the award from the Appellate Bench of the Arbitral Tribunal. The question which arose for consideration of the learned Single Judge and also before this Court was whether the said application dated 8th August, 2016 filed by the appellant was within the parameters of Section 33 (1) of the said Act.

20. In our view, since the said application filed by the appellant was seeking review of the impugned award rendered by the Appellate Bench of the Arbitral Tribunal on merits, it was not within the parameters of Section 33 (1) of the said Act. Such application under Section 33 (1) could be made only in the event on there being any computation of errors or clerical or typographical errors or any other errors of a similar nature occurring in the award. The application under Section 33 could be also maintained if both the parties would have agreed for making an additional arbitral award as to the claims presented in the arbitral proceedings but limited in the arbitral award. The application filed by the appellant was not for correction of any such error specifically prescribed in Section 33 (1) or for an additional award under Section 33 (4) by agreement of both the parties.

21. In our view, limitation prescribed under Section 34 (3) of the said Act prescribing a period of three months from the date on which a signed copy of the award was received, would apply to the facts of this case. Since the application filed by the appellant was not within the parameters of Section 33, the period of limitation would not commence from the date of disposal of the said application purportedly filed by the appellant under Section 33 but would commence from the date of service of signed copy of the award from the Arbitral Tribunal on 13th July, 2016.

22. Since the Petition was not filed by the appellant within a period of three months from the date of service of signed copy of the award dated 13th July, 2016, the learned Single Judge was right in rejecting the Arbitration Petition and consequently the Chamber Summons on the ground that the Arbitration Petition itself was barred by limitation under Section 34 (3) of the said Act.

23. The principles laid down by the Hon'ble Supreme Court in the case of **State of Arunachal Pradesh** (*supra*) is applicable to the facts of this case. We are respectfully bound by this judgment. We are not inclined to take a different view than the view taken by

learned Single Judge of this Court in the case of **Dr. Writer's Food Products Pvt. Ltd** (*supra*).

24. The Appeal is totally devoid of merits and is accordingly dismissed.

(V.G.BISHT, J.)

(R.D.DHANUKA, J.)