

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 506 OF 2022

Vijay V. Chowgule

... Petitioner

Versus

1. Umaji Chowgule & Ors.

...Respondents

Mr. Parag Rao, Advocate with *Mr. Akhil Parrikar, Advocate for the Petitioner.*

Mr. Mutaqa Doctor, Senior Advocate with *Mr. Pulkit Bandodkar, Advocate for the Respondent no.1.*

Mr. Shivan Desai, Advocate with *Mr. V. Bhandankar, Advocate for Respondent no. 23.*

CORAM: G. S. KULKARNI, J.

DATED: 18th October, 2022

P.C.

1. I have heard Mr. Rao, learned Counsel for the Petitioner, Mr. Mustafa Doctor, Senior Advocate for the respondent no.1 and Mr. Desai for the respondent no.23.

2. The challenge in this petition is to an interim order dated 28 September, 2022, passed by the Commercial Court, whereby an interim application filed by respondent no.1 in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, (for short

'the ACA), praying for interim stay of the arbitral proceedings, has been allowed. By virtue of such order, the arbitral proceedings would now remain stayed.

3. Some background is required to be noted. Respondent no. 30 had moved an application under Section 31(6) read with Section 18 of the ACA before the arbitral tribunal. In such application, the respondent no.30, *inter alia*, had prayed for an interim award in the following terms :

“A. Hon'ble Tribunal passes a preliminary finding in the nature of an Interim Award nullifying and holding that the Statement of Claim, consequent pleadings in the nature of Statement of Defence and Counter Claims, Interim Applications under section 17 of the Act and the consequent pleadings therein filed on behalf of the Applicant in representative capacity by the 1st Respondent are non-est in law;

B. Hon'ble Tribunal permit the Applicant herein to file its Statement of Claim;

C. Any other order or orders as this Hon'ble Tribunal may deem fit and thus render justice;”

4. Such application came to be adjudicated by the arbitral tribunal and after hearing all the parties by a majority award dated 6 June, 2022, the said application of respondent no.30 under Section

31(6) read with Section 18 filed by the respondent no.30, came to be rejected. Such rejection was challenged by respondent no.30 in proceedings under Section 34 of the said ACA before the Commercial Court in Arbitration Application no. 3 of 2022.

5. It has so transpired that respondent no.30 subsequently has taken a position before the Commercial Court to withdraw the proceedings filed by her under Section 34 of the ACA. Respondent no.30, on 20 August, 2022, filed an application before the Commercial Court to withdraw the said proceedings. By an order dated 20 August, 2022, the said application was allowed and respondent no. 30 was permitted to withdraw the Section 34 proceedings.

6. It, however, appears that in the arbitral award dated 6 June 2022 passed by the arbitral tribunal on the said application as filed by respondent no.30, certain observations were made by the arbitral tribunal and to be precise, the observations in paragraph 27, read with paragraphs 31 and 32 of the interim award which according to respondent no.1, were prejudicially affecting the case of respondent no.1 in the arbitral proceedings. The said observations read thus :

“27.This being the position, it cannot be said that the groups are party within the meaning of Section 2(h) of the Act. The real parties are the persons who comprise the two groups. It was therefore, fully permissible to the Respondent No. 1 to file the Claim Petition for himself and for the benefit of other members of Group B. The Claim Petition cannot be said to be non-est on such a ground.

31. In the circumstances, there is no denial of natural justice to the Applicant, and there is no occasion to invoke Section 18 of the Act which requires the Tribunal to give each party a full opportunity to present its case. In the instant case the Applicant has been joined as a Respondent in the Claim Petition, and in case anything is done to the prejudice of her interest, it will be opens to her to make necessary representation to the Tribunal.

32. As rightly pointed out by the Counsel for Group B this is a family settlement, and as stated by Supreme Court in Kale & Ors. (Supra), while interpreting a family settlement the Courts have to lean in favour of the settlement. Technical grounds are to be overlooked and rule of estoppel is to be pressed in to save the settlement. In the instant case, the Statement of claim cannot be declared as non-est on the non-existing ground of non-representation, or alleged representation without authorization.

7. Being aggrieved by such observations, respondent no.1 also filed his independent proceedings under section 34 of the Act, before the Commercial Court being ARBA (Commercial) Suit no. 4/2022/A. The said proceedings are still at large before the Commercial Court.

In such proceedings, respondent no.1 filed an interim application praying for stay of the arbitral proceedings till the adjudication of Section 34 proceedings. It is on such application, the impugned order has been passed by the Commercial Court ordering a stay on the arbitral proceedings.

8. It is on the above backdrop, I have heard the learned Counsel for the parties. It clearly appears that the observations as made in paragraph 27 of the interim arbitral award dated 6 June, 2022 and which are being objected by respondent no.1, are observations which are made in the proceedings of an application as filed by respondent no.30, under Section 31(6) read with Section 18 of the ACA, praying for an interim award. Respondent no. 30 as noted above, has taken a position that she would not intend to prosecute proceedings filed by her under Section 34 as instituted by her assailing the said interim arbitral award. Accordingly she moved an application before the Commercial Court for withdrawal of such proceedings which came to be granted by an order passed by the Commercial Court dated 20 August, 2022. Respondent no. 30 has also filed an affidavit before the arbitral tribunal confirming the withdrawal of the said proceedings. The arbitral proceedings are pending before the arbitral tribunal. Thus, the observations as made in the interim award are required to

be held relevant only for the purposes of the application as filed on behalf of respondent no. 30. In view of the subsequent developments, respondent no. 30 does not have a grievance on the interim arbitral award and in fact her cause to file such application under Section 30(1)(6) read with section 18 itself has ceased to survive, as informed to the Court. It would be thus required to be observed, that such observations as made in paragraph 27 of the interim arbitral award have become inconsequential, insofar as respondent no.1 is concerned. In these circumstances, it would not be in the interest of the parties that the arbitral proceedings remain stayed.

9. It would be thus appropriate that the arbitral tribunal proceeds to adjudicate the disputes between the parties, without being influenced by the observations as made in paragraph 27, 31 and 32.

10. All contentions of the parties are required to be kept open, including the contention of respondent no.1, in regard to the parties to the arbitral proceedings in the event such contention is required to be raised as and when the occasion so arises. All contentions of the parties in that regard are expressly kept open.

11. In view of the above observations, the impugned order passed by the Commercial Court would also be required to be set aside. It is accordingly set aside.

12. The Section 34 proceeding filed by respondent no.1, which are pending before the Commercial Court, would also not survive. Mr. Doctor, learned Senior Counsel, on instructions, would seek leave to withdraw the said proceedings. They are allowed to be withdrawn in view of the present order being passed on these proceedings.

13. Ordered accordingly.

14. Petition is disposed of in the above terms. No costs.

15. All contentions of the parties on merits of the arbitral proceedings are expressly kept open.

G. S. KULKARNI, J