

Prashant Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.442 OF 2021**

Chintaman Pandurang Raul ..Petitioner
Vs.
Abhyudaya Co-op. Bank Ltd. & Ors. ..Respondents

Mr. Pradeep Thorat with Mr. Prabhanjan Gujar for Petitioner.
Mr. Madhur Rai with Mr. Sachin Kanse i/b. PRS Legal for Respondents.

**CORAM : G.S. KULKARNI, J.
DATE : MARCH 11, 2022.**

P.C.:

1. Heard learned Counsel for the parties.
2. An arbitral award dated 19 July 2021 passed by the learned Sole Arbitrator, appointed under the provisions of Section 84 of the Multi-State Co-operative Societies Act, 2002, by the Commissioner for Co-operation and Registrar, Co-operative Societies, Maharashtra State, Pune, is challenged in the present petition filed under Section 34 of the Arbitration and Conciliation Act (for short '**the Act**').
3. The basic contention as urged by Mr. Thorat, learned Counsel for the petitioner in assailing the impugned award is to the effect that the impugned award is rendered in breach of the principles of natural justice. He has drawn the Court's attention to the roznama of the proceedings before the arbitral tribunal, the relevant extract being from 30 June 2021. From a perusal of the roznama, it appears that the

petitioner had sufficient notice of the proceeding upto 2 July 2021 and thereafter, although the proceedings were adjourned to particular dates, there was no specific notice. When the proceedings were adjourned to 9 July 2021, no notice of such adjourned date was issued to the petitioner or his advocate. It is noteworthy that on 9 July 2021 and on the subsequent adjourned dates the respondents had placed on record documents as also led its evidence. The petitioner's grievance is that neither these documents were served on the petitioner nor the petitioner was intimated of the adjourned date of hearing. Mr.Thorat has pointed out that the arbitral proceedings were taken up by the tribunal on 16 July 2021, 17 July 2021 and thereafter on 19 July 2021 when the award was pronounced. It is submitted that for none of these adjourned dates neither any intimation or any notice for the arbitral proceedings to be taken up, was issued to the petitioner.

4. It is Mr.Thorat's contention that the award in these circumstances, is clearly rendered illegal in view of the clear provision of Section 18 of the Act which provides that a party to the arbitral tribunal is required to be given full opportunity to present his case. It is submitted that also the provisions of Section 24(3) of the Act speak about all statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, as also any expert report or evidentiary document on which the arbitral

tribunal may rely in making its decision, shall be communicated to the parties. Further his submission is that the provisions of sub-section (2) of Section 24 are clearly attracted which categorically provide that the parties shall be given sufficient advance notice "of any" hearing and of any meeting of the arbitral tribunal, for the purposes of inspection of documents, goods or other property. It is his submission that in respect of the documents which were placed on record by the respondent, no intimation whatsoever was given to the petitioner, by the arbitral tribunal or the respondent. Accordingly, Mr.Thorat has submitted that the arbitral tribunal has acted in complete non-compliance of sub-section (2) and (3) of Section 24 of the Act. Hence, it is his submission that the award is rendered *ex facie* illegal and is required to be stayed and/or set aside.

5. On the other hand, learned Counsel for the respondents has stated that the petitioner had sufficient notice of the arbitral proceedings which was clear from the roznama dated 29 January 2021 as also 30 June 2021, which shows that the petitioner was represented and had participated, right from the tribunal commencing the arbitral proceedings on 18 September 2020. It is his submission that there is no obligation on the tribunal to issue a specific notice of every adjourned date of hearing, and it was the duty of the petitioner to be diligent to pursue and participate in the proceedings.

6. Having heard learned Counsel for the parties and having perused the roznama as also the impugned award, in my prima facie opinion, although it appears that the petitioner had sufficient notice of the arbitral proceedings having commenced, as also, the petitioner had initially participated by appointing an advocate, however, it appears that there are serious procedural irregularities in the conduct of the proceedings which would go to the root of the matter. This inasmuch as there appears to be *ex facie* non compliance of the provisions of sub-section (3) of Section 24 of the Act which would cast an obligation on the arbitral tribunal to conduct the proceedings in a manner they are fair and that no procedural prejudice is caused to any party to the arbitral proceedings. This included a statutory duty on the tribunal that the documents which are placed on record by the respondents were served on the petitioner who was the opponent in the arbitral proceedings, and invite response from the respondent on any such documents. It appears that although there was default on the part of the Advocate for the petitioner in not appearing on 2 July 2021, however the procedural fairness required the arbitral tribunal and more particularly, considering that the petitioner is a senior citizen of 82 years, the petitioner should have been put to notice when the petitioner's advocate had not appeared. The petitioner in this situation could not have been left to the mercy of his advocate. At least a notice ought to have been issued by

the tribunal to the petitioner, when the proceedings were adjourned to 9 July 2021. It thus clear that there was a patent breach of principles of natural justice, as no effective participation of the petitioner was ensured by the arbitral tribunal in the arbitral proceedings. In my opinion, the petitioner has thus made out a strong prima facie case for stay of the impugned arbitral award.

7. At this stage, learned Counsel for the respondent fairly states that his clients would not have any objection for the arbitral award to be set aside and the arbitral proceedings to be commenced, from the stage they had reached as on 2 July 2021. It is agreed by the respondent that the arbitral tribunal can re-enter the arbitral reference and undertake a fresh adjudication of the disputes. Mr.Thorat would also agree for such course of action. In my opinion, in these circumstances, the suggestion as made on behalf of the parties is fair. In view of such consensus, the petition would not require any further adjudication. It is accordingly disposed of by the following order:-

ORDER

- (I) By consent of the parties, the impugned arbitral award is quashed and set aside.
- (II) It is agreed between the parties that the arbitral tribunal shall resume the arbitration afresh and adjudicate the disputes between the parties.
- (III) It is also agreed between the parties that the arbitral tribunal would resume the proceedings from the stage the proceedings stood as

on 2 July 2021.

(IV) All contentions of the parties on merits are expressly kept open.

(V) Learned Counsel for the parties agree that henceforth a intimation of the proceedings before the arbitral tribunal shall be issued and accepted by the Advocates for the parties.

(VI) Disposed of in the above terms, as consented by the parties. No costs.

[G.S. KULKARNI, J.]