



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.5923 of 2023

AVELET REMEDIES PVT. LTD., NAGPUR THR. DIRECTOR, MR. TUSHAR FADNAVIS
AND ANOTHER

VS

M/S PADMAJA ASSOCIATES, NAGPUR THR. PARTNERS, MR. ABHIJEET C. DEODHAR
AND ADITYA WATAK

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri H.V. Thakur, Advocate for the Petitioner/s
Shri P.A. Abhyankar, Advocate for the respondent-sole

CORAM : ANIL S. KILOR, J.
DATED : 18.12.2023

1. Heard.
2. In this petition, the petitioners have approached by filing a writ petition under Articles 226 and 227 of the Constitution of India, thereby, raising a challenge to the order below Exh.C-1 dated 30.07.2023 passed by the learned sole Arbitrator, allowing the application filed by the respondent in pursuance to the order of this Court dated 20.01.2023, permitting the respondent to approach the Arbitrator for restoration of the proceedings.
3. In the present matter, because of certain disputes between the petitioners and the respondent, this Court vide order dated 21.11.2014 appointed the sole Arbitrator.
4. However, having found that the claimants have not filed its statement of claim, nor appeared after couple of meetings and even not deposited anything towards arbitration fees, the sole Arbitrator found that the parties are no more interested in

contesting the arbitration proceedings and accordingly, terminated the arbitration proceedings.

5. The respondent, feeling aggrieved by the same, approached this Court by filing Misc. Civil Application No.390 of 2022 which was disposed of on 20.01.2023 by permitting the respondent to approach to the Arbitrator with a prayer for restoration of the arbitration proceedings, as it was the case of the respondent that the termination of the proceeding, was under Section 25(a) of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”).

6. However, the petitioners were granted liberty to raise an objection for restoration, in view of their case that termination was not under Section 25(a) but it was under Section 32 of the Arbitration Act.

7. Accordingly the respondent approached the sole Arbitrator and after hearing both the parties and also after considering the above referred point raised by the petitioners, allowed the application by holding that the arbitration proceedings was terminated under Section 25 and not under Section 32 of the Arbitration Act. Hence, this writ petition.

8. I have heard the learned counsel for the respective parties

9. The learned counsel for the petitioners has drawn attention to the provisions, namely Sections 25 and 32 of the Arbitration Act and it is submitted that Section 25 would attract only in case the time is fixed to file statement of claim under section 23(a) of the Arbitration Act and since no such date was fixed or time

period was granted to the respondent, the termination of the arbitration proceedings would be only under section 32(2)(c) the Arbitration Act.

10. It is further argued that after seven years the restoration of the arbitration proceedings would cause great prejudice to the petitioners and it is impossible for the petitioners to contest the proceedings for reasons pointed out to the sole Arbitrator and recorded in paragraph 25 of the impugned order. He therefore submits that the impugned order is erroneous and liable to be quashed and set aside. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Lalitkumar V. Sanghavi v. Dharamdas V. Sanghavi*¹.

11. On the other hand, the learned counsel for the respondent submits that the impugned order passed by the sole Arbitrator, is just and proper. It is submitted that, the Arbitrator has passed the order after recording the reasons in detail and after holding that the order of termination of proceedings was under Section 25 and not under Section 32 of the Arbitration Act. He therefore submits that no interference is warranted in this case. In support of his submission, he has placed reliance on the judgment of the Hon'ble Supreme Court of India, in the case of *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*²

12. The learned counsel for the respondent has also raised an objection to the maintainability of the present writ petition, in

1 (2014) 7 SCC 255

2 (2018) 11 SCC 470

view of the judgment of the Hon'ble Supreme Court of India in the case of *SBP & CO. v. Patel Engineering Ltd.*³

13. In light of the rival contentions of the parties, I have perused the record and the impugned order.

14. From the record, it is evident that the sole Arbitrator was appointed on 21.11.2014 by this Court in Misc. Civil Application No.972 of 2013 and on 07.03.2022 he terminated the arbitration proceedings by recording the reasons as under:

“... Accordingly I have issued notice to all the parties, however, the claimants have not filed its claim statement nor appeared after couple of meetings. The parties have not even deposited anything towards arbitration fees. Therefore the arbitration proceedings is halted since then.

2. None of the parties thereafter has appeared before me and therefore I do not find that the parties are anymore interested in contesting the aforementioned arbitration proceedings. I am therefore terminating the opposite arbitration proceedings.

3. The parties are therefore informed that the arbitration proceeding pending before me stand terminated.”

15. From the reasons recorded by the Arbitrator for termination, it is evident that the Arbitrator observed that the claimants have not filed its statement of claim, nor appeared after couple of meetings. In addition to this reason, he also observed that the parties have not deposited anything towards arbitration fees and therefore, the arbitration proceeding was halted.

3 (2005) 8 SCC 618

16. In the impugned order, the Arbitrator has categorically observed that first notice was issued by the Arbitrator on 19.02.2015 and the respondent/claimant appeared on 09.12.2015. It is further observed that the petitioners did not appear despite receipt of notice to appear before the Arbitrator. The Arbitrator further observed that no explanation was sought by him from the respondent for not filing the statement of claim and without issuing such notice, the arbitration proceedings was terminated.

17. In the above referred backdrop, the question is, whether the termination of the arbitration proceedings was under Section 25 or under Section 32 of the Arbitration Act ?

18. For this purpose, it would be appropriate at this stage to refer to Sections 25(a) and 32(2) of the Arbitration Act, which read thus:

“25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

32. Termination of proceedings.—(1) ...

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.”

19. As far as Section 32(2) of the Arbitration Act is concerned, considering the fact of the present case, admittedly, the present matter would not fall under Section 32(2)(a) and (b) of the Arbitration Act and therefore, the question is, whether the termination was under Section 25 or under Section 32(2)(c) of the Arbitration Act.

20. The Hon'ble Supreme Court of India, in the case of *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.* (supra), has held as under:

“20. In the present case, proceedings were terminated vide Order dated 12.12.2011 under Section 25(a). After termination of proceedings, application to recall the said order was filed by claimant on 20.01.2012, which was rejected by arbitral tribunal on the ground that it has no jurisdiction to re-commence the arbitration proceedings. Section 25 contemplates a situation that when the claimant fails to communicate his statement of claim within the time as envisaged by Section 23, the arbitral tribunal has to terminate the proceedings. This section thus contemplates a situation where arbitration proceeding has not been started. The most important words contained in Section 25 are “where without showing sufficient cause – the claimant fails to communicate his statement of claim”. Under Section 23(1), the claimant is to state the facts supporting his claim within the period of time agreed upon by the parties or determined by the arbitral tribunal. The question of termination of proceedings thus arises only after the time agreed upon between the parties or determined by the arbitral tribunal comes to an end. When the time as contemplated under Section 23(1) expires and no sufficient cause is shown by the claimant the arbitral tribunal shall

terminate the proceedings. The question of showing sufficient cause will arise only when the claimant is asked to show cause as to why he failed to submit his claim within the time as envisaged under Section 23(1) or the claimant, on his own, before the order is passed under Section 25(a) to terminate the proceedings comes before the arbitral tribunal showing sufficient cause for not being able to submit his claim within the time. In both the circumstances, i.e. when a show-cause notice is issued to the claimant as observed above or claimant of his own shows cause for non-filing the claim within the time the arbitral tribunal shall take a call on terminating the proceedings. It is easy to comprehend that in the event, the claimant shows a sufficient cause, the arbitral tribunal can accept the statement of claim even after expiry of the time as envisaged under Section 23(1) or grant further time to the claimant to file a claim. Thus, on sufficient cause being shown by a claimant even though time has expired under Section 23(1), it is not obligatory for the arbitral tribunal to terminate the proceedings. The conjunction of the wording “where without showing sufficient cause” and “the claimant fails to communicate his statement of claim” would indicate that it is a duty of the arbitral tribunal to inform the claimant that he has failed to communicate his claim on the date fixed for that and requires him to show-cause why the arbitral proceedings should not be terminated ? Opportunity to show sufficient cause for his failure to communicate his claim statement can only be given after he has actually failed to do so. Whether in a case where claimant failed to file a statement of claim and has failed also to show-cause before an order of termination of proceedings is passed, claimant is entitled to show-cause subsequent to the termination is the question which has fallen for consideration.

21. When the arbitral tribunal without sufficient cause being shown by the claimant to file the claim statement can terminate the proceedings, subsequent to termination of proceedings, if the sufficient cause is shown, we see no impediment in the power of the arbitral tribunal to accept the show-cause and permit the claimant to file the claim. The Scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23(1) has expired. Thus, even after passing the

order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the arbitral tribunal by accepting the show-cause and there is no lack of the jurisdiction in the arbitral tribunal to recall the earlier order on sufficient cause being shown.

22. Section 32 contains a heading “Termination of Proceedings”. Sub-section (1) provides that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section(2). Sub-section(2) enumerates the circumstances when the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. The situation as contemplated under Section 32(2)(a) and 32(2)(b) are not attracted in the facts of this case. Whether termination of proceedings in the present case can be treated to be covered by Section 32(2)(c) is the question to be considered. Clause(c) contemplates two grounds for termination, i.e. (i) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or (ii) impossible. The eventuality as contemplated under Section 32 shall arise only when the claim is not terminated under Section 25(a) and proceeds further. The word “unnecessary” or “impossible” as used in clause (3) of Section 32(2) cannot be said to be covering a situation where proceedings are terminated in default of the claimant. The word “unnecessary” or “impossible” has been used in different contexts than to one of default as contemplated under Section 25(a). Sub-section (3) of Section 32 further provides that the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings subject to Section 33 and sub-section (4) of Section 34. Section 33 is the power of the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature or to give an interpretation of a specific point or part of the award. Section 34(4) reserves the power of the Court to adjourn the proceedings in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. On the termination of proceedings under Sections 32(2) and 33(1), Section 33(3) further contemplates termination of the mandate of the arbitral tribunal, whereas the aforesaid words are missing in Section

25. When the legislature has used the phrase “the mandate of the arbitral tribunal shall terminate” in Section 32(3), non-use of such phrase in Section 25(a) has to be treated with a purpose and object. The purpose and object can only be that if the claimant shows sufficient cause, the proceedings can be re-commenced.”

21. It is evident from the above referred observations that where the claimant fails to communicate his statement of claim, it is a duty of the arbitral tribunal to inform the claimant that he has failed to communicate his claim and requires him to show-cause why the arbitral proceedings should not be terminated. It is further held that an opportunity to show sufficient cause for his failure to communicate his statement of claim can only be given after he has actually failed to do so. Where claimant fails to file a statement of claim and has failed also to show-cause before an order of termination of proceedings is passed, the claimant is entitled to show-cause subsequent to the termination.

22. In the matter at hand, though it appears that no fixed date was given for filing statement of claim by the claimant, but the order of termination of arbitral proceedings shows that on the date of passing of order of termination of arbitral proceeding, the arbitrator was under impression that such time to file statement of claim was granted to the claimant and he failed to submit his statement of claim within time. In the said backdrop, the Arbitrator was duty bound to issue show cause calling explanation from the claimant for not filing the statement of claim. The Arbitrator ought to have done this before termination of arbitral proceeding which he admittedly failed to do so.

23. In the judgment cited by the learned counsel for the petitioners in the case of *Lalitkumar V. Sanghavi* (supra), the reason to terminate the arbitration proceeding was not that the statement of claim was not filed by the claimant and therefore, the said case is distinguishable and is of no help to the petitioners.

24. The learned counsel for the respondent has placed reliance on the judgment of the Hon'ble Supreme Court of India, in the case of *SBP & CO. Vs. Patel Engineering Ltd. and another*⁴, has held thus:

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. u/s 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting u/s 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal u/s 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the

4 (2005) 8 SCC 620

Constitution of India. Such an intervention by the High Courts is not permissible.

46. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them u/s 37 of the Act even at an earlier stage.”

25. Thus, considering the above referred observations, reiterating the limited jurisdiction of the High Court to interfere with the orders passed by the Arbitrator during the course of the arbitration proceeding, on this ground also I do not want to interfere with the impugned order.

26. As far as grounds raised by the petitioners as regards impossibility on the part of the petitioners to participate in the arbitration proceedings after the period of about more than seven years, the petitioners are at liberty to raise such point before the Arbitrator during the arbitration proceedings, to which the Arbitrator may consider without getting influenced by the observations made in the impugned order. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]