

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/206/2015
IA NO: GA/2/2022

KAKA PROJECTS PVT LTD
VS
CITRINE MERCHANT PVT LTD AND ORS.

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 12th August, 2024

Appearance:

Mr. Shounak Mitra, Adv.
Mr. Sourav Jain, Adv.
...for the petitioner.

Ms. Sananda Ganguli, Adv.
Mr. S. Mukhopadhyay, Adv.
...for the respondent no.1.

Ms. Zeeshan Haque, Adv.
Mr. P. Sinha, Adv.
Mr. K.K. Pandey, Adv.
...for the respondent no.4.

The Court : GA/2/2022 is taken up first for hearing.

The innocuous prayer made in the application is to record that the respondent no.3 has died during the pendency of the present proceeding. Since the respondent no.3 was impleaded in the capacity of a trustee, there is no scope of applicability of Order XXII Rules 4 – 9 of the Code of Civil Procedure or the principles underlying the said provisions.

Hence, the application being GA/2/2022 is allowed, thereby expunging the name of the respondent no.3.

The learned advocate-on-record for the petitioner shall carry out the necessary consequential corrections in the cause title of the application under Section 34 of the Arbitration & Conciliation Act, 1996 during the course of the day.

At this juncture, learned counsel appearing for the respondent no.1 submits that the respondent no.1 has, in the meantime, undergone an amalgamation and the altered name of the respondent no.1 is required to be reflected in the cause title. Since the respondent no.1 is represented in its current form before the Court through counsel and itself makes such submission, there cannot be any impediment in doing so.

Accordingly, the learned advocate for the respondent no.1 is requested to supply the altered name of the respondent no.1 to his counterpart appearing for the petitioner here and now. Upon such name and particulars being furnished, the necessary corrections shall be carried out, also during the course of the day, to the cause-title of the application under Section 34 by the learned advocate-on-record for the petitioner.

AP/206/2015 is being taken up for hearing.

The brief background of the present challenge is that on a dispute having arisen between the petitioner no. 1 and the respondent no.1 on the one hand, who were joint developers of the subject property, with the respondents/landlords on the other, the matter was referred to arbitration. There has been a history of two recusals by Arbitrators in the present case, the third Arbitrator having been appointed in the meantime under Section 29-A of the 1996 Act.

When the present petitioner discovered during the arbitral proceedings that the petitioner was kept out of the loop in some of the proceedings,

particularly in an application under Section 11 of the 1996 Act, the petitioner choose to pray before the Arbitrator for being separately represented through counsel. However, upon such prayer being made, the learned Arbitrator expressed the extreme opinion that since the reference pertained to a dispute in a particular form, the prayer of the petitioner, if allowed, would go contrary to the appointment of the Arbitrator itself. Primarily on such premise, an interim award (although in the form of an order) was passed, turning down the prayer of the petitioner.

The present challenge has been preferred under Section 34 of the 1996 Act against said interim award, which has conclusive effect insofar as the petitioner's prayer is concerned.

Upon hearing learned counsel for the parties, I find that there is no substantive objection from the respondents to the present challenge. That apart, the impugned interim award is patently illegal and thus comes within the ambit of Section 34(2-A) of the 1996 Act, inasmuch as the prayer of the petitioner before the Arbitrator was limited to seeking a separate representation by different set of counsel. The petitioner, conspicuously, did not ask for liberty to file a different statement of claim and/or initiate a different proceeding. If the prayer of the petitioner was allowed, the effect would be that the same statement of claim would be sustained. That apart, the subject-matter of the reference would remain the same as well.

Thus, the mere prayer of the petitioner to seek separate representation through counsel, while retaining the present statement of claim as it is, could not have tantamounted to a different reference beyond the purview of the Arbitrator's charter. Accordingly, the impugned interim award being palpably

perverse and patently illegal, is liable to be set aside under Section 34 of the 1996 Act.

Accordingly, AP/206/2015 is allowed, thereby setting aside the impugned interim award of the Arbitrator dated December 19, 2014 and permitting the petitioner to be represented by a separate set of counsel in support of the existing statement of claim (with amendment, if any allowed by the learned Arbitrator).

It is expected that the parties shall cooperate with the present learned Arbitrator in expeditious disposal of the arbitral proceeding. It is made clear that nothing in this order shall be conclusive insofar as the rights and contentions of the parties before the Arbitral Tribunal are concerned and it would be open to all parties to make arguments on all issues, which are kept open for being decided finally by the learned Arbitrator.

Needless to say, if any steps have been taken pursuant to the impugned award, which has been set aside above, such steps stand automatically recalled and reversed.

(SABYASACHI BHATTACHARYYA, J.)