



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

WRIT PETITION NO.1727/2023

M/s. Goodworth Finlease Pvt. Ltd. .Vs. Sameer Rajiv Karambedkar and ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V. V. Bhangde, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : NOVEMBER 11, 2024

Petitioner is aggrieved by order dated 28.07.2022 passed by Principal District Judge, Amravati in Civil M. A. No. 69/2021, thereby rejecting the application.

Petitioner – Original non applicant moved an application for dismissal of the proceeding filed by respondent No.1 (original applicant) under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the, “Act of 1996”). Two points were raised by the petitioner. One is of non payment of Court Fee within prescribed time and other is non joinder of necessary party.

Learned counsel for the petitioner has, for the time being, restricted his argument to non joinder of necessary party. Admittedly, respondent Nos. 2 to 4 herein were parties before the arbitral tribunal, but were not joined as party to the proceeding under Section 34 of the Act of 1996. The learned Principal District Judge, vide impugned order, directed respondent No.1 to join respondent Nos.2 to 4 as party non applicants. This order has been passed on 28.07.2022. The arbitral award was passed on 12.10.2015. Section 34 of the Act

of 1996 provides for four months limitation to challenge the arbitral award.

The question raised is whether after a period of seven years from the date of passing of award, the Principal District Judge could have directed the joinder of parties.

Counsel for the petitioner has invited my attention to Order I Rule 10 of the Civil Procedure Code, 1908. Sub Rule (5) of Rule 10 provides that subject to provisions of Section 22 of the Indian Limitation Act, 1877 (Section 21 of the Limitation Act, 1963), proceeding against any person added as defendant shall be deemed to have been begun only on service of summons.

Counsel has then referred to Section 21 of the Limitation Act, 1963, which provides that where new plaintiff or defendant is added, the suit shall be deemed to have been instituted when he was made a party, unless the Court otherwise directs.

In the present case, learned Principal District Judge has not ordered that the joinder of parties shall take effect from the date of filing application.

In context with above, counsel for the petitioner submits that the proceedings under Section 34 will stand barred by limitation insofar as the newly added non applicants are concerned and, therefore, such directions ought not to have been given by the Principal District Judge that too without giving opportunity of hearing to petitioner as also respondent nos.2 to 4.

Since, none of the respondents appeared despite service, the contention put forth by the petitioner remains uncontroverted.

In the light of above provisions, in my considered view, it will be appropriate to remand the matter back to the Principal District Judge, Amravati for consideration afresh, in accordance with law.

The writ petition is accordingly partly allowed. Impugned order dated 28.07.2022, passed by Principal District Judge, Amravati in Civil M. A. No. 69/2021, is quashed and set aside. The matter is remanded back for consideration afresh, in accordance with what has been stated in the body of order.

The petitioner shall appear before the District Judge, Amravati on 28.11.2024. The Principal District Judge, Amravati shall issue notice to the other side before passing any order. All contentions are kept open.

The writ petition is disposed of. No order as to costs.

(Anil L. Pansare, J.)