



2024 : DHC : 3054



\$~44

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 09th April, 2024**

+ **CS(COMM) 168/2019**

MAHANAGAR TELEPHONE NIGAM LIMITED Plaintiff

Through: Mr. Ajay Pal Kullar & Mr. Arun
Sanwal, Advocates.

versus

M/S. INTERNATIONAL ENGINEERS & PROJECT
CONSULTANT LTD. Defendant

Through: Mr. Mahabir Singh, Sr. Advocate
with Mr. Himanshu Mahajan, Mr.
Veerendra Kumar & Mr. Rajul
Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

**REVIEW PET. 158/2024 (u/S 114 & 151 r/w Order XLVII Order 1 of
CPC, 1908)**

1. By way of present Review Petition, the defendant seeks review of the Order dated 23.02.2024.
2. It is submitted in the petition that the instant Suit under Section 14 of the (old) Arbitration Act, 1940 (hereinafter referred to as the "Act, 1940") has been filed on behalf of the plaintiff seeking directions to the Learned Sole Arbitrator to file a signed copy of the Award dated 14.02.2018 along with the depositions and documents passed by the Learned Sole Arbitrator in Arbitration titled as Mahanagar Telephone Nigam Limited vs. M/s



International Project Consultant Limited.

3. It is asserted that the plaintiff has intentionally concealed and withheld the facts from the Court that initially when the Objections under Section 30 of the Act, 1940 were filed on 02.06.2018, the Learned Sole Arbitrator *vide* Letter dated 09.05.2018 had already forwarded the copy of the Award with information to the plaintiff as well as the defendant. The plaintiff despite being in possession of the copy of the Award, has failed to disclose this fact in the present Suit under Section 14 of the Act, 1940.

4. It is further submitted that the entire record, depositions and the Award in original have already been filed on 06.04.2021 by the Learned Sole Arbitrator in connected matter i.e., *CS(COMM) 27/2021* titled as International Engineers and Project Consultants Limited vs. Mahanagar Telephone Nigam Ltd. and the copies of the same have also been received on behalf of the Plaintiff/Mahanagar Telephone Nigam Limited.

5. It is submitted that despite having received the entire record, the plaintiff has failed to disclose these facts and has erroneously sought directions to be issued to the Learned Sole Arbitrator seeking the original documents, depositions and the Award.

6. It is, therefore, submitted that the reasons given for condonation of delay in filing of the present petition is that the files in the Office of the learned counsel got misplaced due to renovation undertaken therein. However, the copy of the Award had been sent to the Office of the plaintiff directly and there was no question of the same getting misplaced from the Office of the counsel.

7. It is, therefore, submitted that the present Suit under Section 14 of the Act, 1940 was not maintainable. The impugned Order dated 23.02.2024



directing the Arbitrator to file the entire record, documents and the Award has been obtained fraudulently and, therefore, the impugned Order dated 23.02.2024 is liable to be recalled and the Suit of the plaintiff is liable to be dismissed.

8. Submissions heard and record perused.

9. The present Suit has been filed under Section 14 of the Act, 1940 by the plaintiff for seeking directions to the Learned Sole Arbitrator to place on record the documents, depositions and the Award dated 14.02.2018. The plaintiff herein had earlier filed its Objections under Section 30 of the Act, 1940 to the Award dated 14.02.2018 *vide* its earlier OMP (COMM) 434/2018, however, that Suit was dismissed as withdrawn on 08.08.2018 as the Objections could not have been filed directly without seeking the production of the entire record and the Award from the Arbitrator under Section 14 of the Act, 1940. Thereafter, this Suit under Section 14 of the Act, 1940 has been filed on 20.03.2019 for production of the records of the Arbitration.

10. It is pertinent to observe that the earlier proceedings under Section 30 of the Act, 1940 were not the appropriate remedy and had been permitted to be withdrawn with liberty to seek remedy as per law. Therefore, the plaintiff had erroneously pursued its remedy under Section 30 of the Act, 1940 when, in fact, the Suit under Section 14 of the Act, 1940 was required to be filed to seek the production of original documents, depositions, record and the Award passed by the Learned Sole Arbitrator. The time in pursuing a wrong remedy is liable to be excluded in terms of Section 14 of the Limitation Act, 1963.

11. The *first ground* for seeking review is that the copy of the Award had



been made available by the Learned Sole Arbitrator through Letter dated 09.05.2018 addressed directly to the learned Registrar of this Court with the copy of the same to the plaintiff as well as the defendant. It is quite evident that what had been furnished by the Arbitrator was not the entire record, depositions and the documents but only the Award. Therefore, it cannot be said that the requirement of Section 14 of the Limitation Act, 1963 stood complied during the proceedings under Section 30 of the Act, 1940. The plaintiff still did not have the entire record and the documents and, therefore, was justified in filing the present Suit under Section 14 of the Act, 1940.

12. From the record, it is reflected that the Counter-Claim of the defendant was decided by the Arbitrator and a similar Suit bearing No. *CS(COMM) 27/2021* got filed by the defendant, wherein again a request was made by the defendant for filing of the Award, depositions and the documents by the Arbitrator in original. The original Award, documents and the complete record were filed on behalf of the Arbitrator in the Court on 06.04.2021 and the original record has come to be filed much after filing of the present Suit by the plaintiff and the reply filed on behalf of the defendant. Therefore, there could not have been any mention of the original records already having received in the Court on 06.04.2021 as the Section 14 Petitioner was filed way before, in 20.03.2019. Therefore, the claim of the defendant that the Suit itself was fraudulent is incorrect as the filing of the Award is a subsequent event about which there could not have been a mention either in the Suit or in the Reply of the defendant.

13. The prayer made in the present Petition under Section 14 of the Act, 1940 was only for summoning of the entire original record, including depositions, documents and the original Award in the present matter by the



2024 : DHC : 3054



Arbitrator. Since it has now been brought to the knowledge of this Court that the entire record, including the original Award in the claims of the plaintiff as well as the Counter-Claim of the defendant has already been filed in the connected matter, the relief sought stands satisfied.

14. Considering the facts as now brought on record of the original records of the Arbitrator containing the Award and the Counter-Claim and the documents, no further directions are required to be made to the Arbitrator, in the present Suit.

15. **The impugned Order dated 23.02.2024 is hereby reviewed and it is held that since the record has already being filed, no further directions are required to be issued to the Learned Sole Arbitrator in this regard.**

16. The present Review Petition is allowed.

CS(COMM) 168/2019

17. In view of the aforesaid Order in the Review Petition 158/2024, the present Suit is disposed of.

18. The next date of hearing i.e., 07.08.2024 stands cancelled.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 09, 2024
S.Sharma