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IN THE HIGH COURT OF DELHI AT NEW DELHI

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EFA(OS) (COMM) 10/2024, CM Nos.29915/2024 & 29916/2024

SOMESH CHAUDHARY

.....Appellant

Through: Mr. P.B.A. Srinivasan, Adv.

Versus

REEBOK INDIA COMPANY & ANR.

.....Respondents

Through: Mr. Shashank Garg, Ms. Aradhya
Chaturvedi, Mr. Deepak Jaiswal & Mr.
J. Das, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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31.07.2024

1. The appellant has filed the present appeal impugning an order dated 05.09.2023 (hereafter *the impugned order*) passed by the learned Single Judge in OMP (ENF.)(COMM) No.82/2017 captioned *Reebok India Company v. Global Fragrance Pvt. Ltd. & Another*. Respondent no.1 had filed the aforesaid proceedings for enforcement of the arbitral award dated 06.08.2016 (hereafter *the arbitral award*) passed by the Arbitral Tribunal. The appellant was arrayed as respondent no.2 in the arbitral proceedings.
2. The petition [OMP (COMM) No.501/2016] preferred by the appellant and respondent no. 2, under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter *the A&C Act*) assailing the award was rejected by this Court on 21.11.2016.
3. The appellant as well as respondent no.2 preferred an appeal [being FAO(OS)(COMM) No.75/2017] against the decision of the learned Single Judge of this Court rejecting their application for setting aside of the impugned award. The said appeal was dismissed by an order dated 10.04.2017.



4. It is material to note that in the enforcement proceedings [OMP (ENF.)(COMM) No.82/2017], the appellant had repeatedly undertaken to deposit a sum of ₹30,00,000/-. However, had failed to deposit the same. The impugned order indicates that the learned counsel for the appellant had assured the Court that the undertaking to make the said deposit would be honoured. The said undertaking was accepted and it was expressly directed that judgment debtor no.2 (appellant herein) was bound by the same. The Court also directed that in case the amount was not deposited with the Registry of this Court by 05.10.2023, non-bailable warrants would be issued against the appellant and which would be executed by the concerned SHO.

5. It is the appellant's case that the arbitral award does not bind him as he was arrayed as respondent no.2 in the arbitral proceedings in his capacity as the Managing Director of respondent no. 2 (Global Fragrance Pvt. Ltd.). It is earnestly contended that there is no award against the appellant and therefore, he is not bound to make any deposit. It is stated that a petition against respondent no.2 / Global Fragrance Pvt. Ltd. filed under the Insolvency & Bankruptcy Code, 2017 has been admitted and therefore, there is a moratorium for proceeding against respondent no.2.

6. The learned counsel appearing for the appellant also submits that he has made an application to the aforesaid effect before the learned Single Judge in seisin of proceedings for enforcement of the arbitral award but the said application has not been decided as yet.

7. For the purposes of considering the appellant's contention that he was arrayed in the arbitral proceedings solely in his capacity as Managing Director of respondent no.2, and no claim was made against him, this Court had directed the appellant to place a copy of the Statement of Claim filed by respondent no.1 in the arbitral proceedings. The same has been placed on



record.

8. A plain reading of the Statement of Claim indicates that respondent no.1 had also made a claim against the appellant (arrayed as respondent no.2 in the arbitral proceedings). Respondent no.1 had alleged that the appellant being the Managing Director had represented that he was well equipped with the skill and knowledge of manufacturing and sale of cosmetic items. Respondent no.1's claim was, *inter alia*, based on the assertion that it had entered into the agreement with respondent no.2 on the basis of misrepresentations made by the appellant.

9. Respondent no.1 had specifically claimed that the appellant and respondent no.2 were "jointly and severally liable to pay an amount of ₹1,48,00,000/- along with interest at the rate of 18% per annum with effect from 03.12.2012". Based on the pleadings, the Arbitral Tribunal framed the issues to be decided. This included the issue "*Whether Petitioner entitled to amounts as claimed or any other amounts from Respondents? OPP*" [issue no.3].

10. Thus, the question whether the appellant and respondent no.2 are liable to pay the amounts claimed by respondent no.1 (claimant before the arbitral tribunal) was squarely the subject matter of arbitral proceedings. Issue no.3 was decided against the appellant and respondent no.2 (arrayed as respondents before the Arbitral Tribunal) and in favour of respondent no.1 (claimant before the Arbitral Tribunal). This is apparent from the dispositive portion of the award, which reads as under:

"31. In view of my above discussion Issues No. 1,2, 5, 6 are decided against the Respondents and in favour of the Claimant. And Issues No. 3 & 4 are decided in favour of the Claimant and against the Respondents. The result is that the Claimant is held to be entitled to sum of Rs.1.39 crore (Rs.89 lacs + Rs.50 lacs) with interest amounting



to Rs.13,47,000/ calculated @ 18% per annum w.e.f. 3rd December 2012 upto 15.04.2014, and *pendent lite* and future interest from the date of Award i.e., 06.08.2016 till the date of realization. The Counter Claims of the Respondents stand dismissed.”

[Emphasis added]

11. The learned counsel appearing for the appellant fairly states that although the appellant had filed an application under Section 34 of the A&C Act assailing the arbitral award in question but had not taken any ground to the effect that the same was not binding on the appellant. No such ground was taken in the appeal preferred under Section 37 of the A&C Act, as well.

12. It is settled law that the Court cannot go behind the decree in execution proceedings. In terms of Section 36 of the A&C Act, an arbitral award is required to be enforced as a decree.

13. In the aforesaid view, we find no ground to interfere with the impugned order. The appeal as well as the pending applications are accordingly dismissed.

14. However, we clarify that the observations made by this Court will not come in the way of the appellant pursuing his pending application before the learned Single Judge.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 31, 2024

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[Click here to check corrigendum, if any](#)