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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 25th October, 2024***

+ CM(M) 3711/2024 & CM APPL. 63047/2024

DEXTER CAPITAL ADVISORS PVT LTDPetitioner

Through: Mr. M A Niyazi with Ms. Anamika
Ghai Niyazi, Ms. Kirti Bhardwaj, Mr.
Nehmat Sethi and Mr. Arquam Ali,
Advocates.

versus

SEROSOFT SOLUTIONS PVT LTDRespondent

Through: Mr. Harsh Hiroo Gursahani with Mr.
Sayandeep Pahari, Mr. Adarsh Kuamr
and Mr. Tanmay Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The situation herein is somewhat peculiar.
2. The present petition has been filed by claimant who challenges order dated 09.10.2024 passed by learned Sole Arbitrator whereby its request to further cross examine the sole witness of the respondent has been declined and the matter has, resultantly, been fixed up for final arguments.
3. It is contended that since the cross examination is incomplete, for no fault of claimant, and certain vital suggestions and questions have yet not been put, it would, eventually, result in great prejudice and injustice to the claimant if he is denied an opportunity in this regard.
4. During arbitral proceedings, RW-1 Mr. Arpit Badjatya entered into witness box, lastly, on 01.10.2024. That day several questions (from Q.No. 105 to No. 133) were put to him by learned counsel for the claimant.



5. Mr. Niyazi, learned counsel for claimant, who had also appeared before the learned Sole Arbitrator, submits that he had never concluded the cross-examination and, persistently, requested learned Sole Arbitrator to permit him to continue with his cross-examination or else to defer the cross-examination to some other date so that he can finish off such cross-examination but learned Sole Arbitrator, instead, recorded in the *evidence-sheet* that the cross-examination stood concluded and, resultantly, the witness was discharged.

6. According to learned counsel for claimant, no *procedural order* was passed that day either which compelled him to send one communication through e-mail to learned Sole Arbitrator on 03.10.2024 whereby a request was made to grant him further time to cross-examine said witness. The contents of such application would indicate that the claimant had sought one more opportunity of, at least, one session of three hours to finish the cross-examination on a date convenient and suitable to the learned Sole Arbitrator and the witness concerned, which could be even before the date fixed for final arguments.

7. Learned Sole Arbitrator thought it appropriate, and rightly so, to hear both the sides on the above said application moved by the claimant.

8. On the basis of the above said application, a reply was filed by non-claimant and after going through the above said application and reply, learned Sole Arbitrator conveyed his decision, of declining such request, by sending e-mail dated 09.10.2024.

9. Such order is under challenge.



10. If one goes through said order dated 09.10.2024, it would become clear that the learned Sole Arbitrator had, in the beginning of hearing conducted on 01.10.2024, reminded the *newly appointed counsel* for the claimant to conclude the cross-examination within one hour's time, in terms of earlier directions passed by the Tribunal on 10.02.2024.

11. According to learned Sole Arbitrator, such time had been given as per the claimant's own request. It is also mentioned in the above said order that the hearing commenced at 5:35 P.M. and instead of one hour, the Tribunal permitted cross-examination to continue till 7:35 P.M. *Thereafter, once again, a request was made to the Tribunal to defer the cross-examination which was strongly opposed by the respondent and after hearing submissions from both the sides, such request was orally rejected, to be followed by a detailed order.*

12. Unfortunately, there is nothing either in the evidence-sheet or any procedural order passed on 01.10.2024 itself, to even remotely indicate that there was a request from the side of the counsel for claimant and such request had been declined on the premise that the cross-examination had not been concluded within the stipulated time.

13. Eventually, learned Sole Arbitrator rejected the above said request and as noticed already, the matter is now fixed up for final arguments on 09.11.2024. It is prayed by Mr. Niyazi that certain vital questions and suggestions could not be put because of the alleged paucity of time that day and his request to permit him to continue with the cross examination was not entertained, and if one opportunity is granted, it will be ensured that the



cross-examination is concluded, well within a session of two hours, at most.

14. Mr. Harsh Hiroo Gursahani, learned counsel for the respondent had also appeared before the learned Sole Arbitrator on said date and states that there is neither any infirmity in the order nor it requires any interference. It is contended that judicial interference is much circumscribed in such type of matters and the order passed by learned Sole Arbitrator, which otherwise is well-merited, does not call for any interference. He also states that on various previous occasions, the matter had been delayed by none other than claimant himself.

15. Truly speaking, there is a dilemma in the mind of this Court as well because of the position of law.

16. Needless to reiterate, judicial interference in such type of matter is least warranted.

17. This Court may refer to the order passed in this regard by this Court as well. Reference be made to *Kelvin Air Conditioning And Ventilation System Private Limited vs Triumph Reality Private Limited*: 2024 SCC OnLine Del 7137 wherein this Court considered the scope of intervention in a petition filed under a petition filed under Article 227 of Constitution of India in context of challenge made to the interim order passed by learned Arbitral Tribunal and declined to interfere, while observing as under:-

“10. Reference be made to IDFC First Bank Limited Vs. Hitachi MGRM Net Limited: 2023 SCC OnLine Del 4052 whereby Co-ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed



under Section 16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -

“24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be “extremely circumspect”.

25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708] , this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC 706; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd., 2022 SCC OnLine Del 566 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal, 2021 SCC OnLine Del 4023] has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

“24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

- (i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.*
- (ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.*
- (iii) For interference under Articles 226/227, there have to be ‘exceptional circumstances’.*
- (iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.*



(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained."

11. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283.

12. This Court in order dated 03.10.2024 passed in CM(M) 3265/2024 titled as M/s Agarwal Associates (Promoters) Limited vs. M/s Sharda Developers has also observed that the remedy available under Article 227 of the Constitution of India does not stand knocked off by the non-obstante clause of Section 5 of Arbitration & Conciliation Act, 1996 which provides that no judicial authority shall intervene except where so provided and, therefore, though the petition would be maintainable but fact remains that the scope of interference is extremely squeezed.



13. The issue in the present case is merely with respect to the fact that whether “sufficient cause” existed or not for the purpose of condoning delay in filing Statement of Defence.

14. Having seen the order passed by learned Sole Arbitrator, this Court does not find any reason to interfere with the impugned order. The aspect whether the ground shown is “sufficient or not” is primarily in the domain of discretionary jurisdiction and even if this Court was to take a contrary view, the impugned order cannot be set aside while exercising supervisory power under Article 227 of Constitution of India, particularly in context of arbitral proceedings where such interference is, to a very large extent, proscribed.

15. There is also nothing which may indicate that exercise of such discretion smacks off any bad faith or demonstrates any perversity, much less of extreme nature.”

18. However, the adverse impact of incomplete evidence is not difficult to fathom.

19. Cross-examination is one of the most-valuable and effective mean of discovering the truth. The purpose of cross-examination is to elicit suppressed facts and to impeach the credit of a witness. When a fact is stated in examination-in-chief and there is no cross-examination on that point, obviously, it may lead to the inference that the other party accepts the truth of such statement. If the evidence is left incomplete, without there being certain material suggestions, it may, unquestionably, adversely affect the case of the claimant.

20. It does not seem to be a case where irrelevant questions were being put to a witness or there was any deliberate and intended delay. A bare perusal of cross-examination of said witness, recorded on 01.10.2024 and on



previous two dates, would indicate that learned Sole Arbitrator had not disallowed any question, being irrelevant.

21. Right to cross-examination is vital one but parties ought to conclude the same within a reasonable time-limit and cannot stretch the same infinitely. Nonetheless, such right is indefeasible one and should not be defeated, merely on account of ‘time-constraint’ when there is nothing to show that any question, put to witness, was disallowed being irrelevant or which may indicate that there was deliberate delay. Moreover, being claimant, its counsel would rather never want to linger on the matter.

22. Undeniably, though the proceedings are being conducted with requisite alacrity and swiftness, the right to cross-examination should not have been shut merely on the ground that the same was not completed within the allotted time.

23. Yes, learned Arbitrator can always disallow any question which may be found irrelevant and may even impose cost. It can always step in wherever the cross examination is unduly protracted and wholly irrelevant to the issues in question. But to close the evidence, abruptly, on the ground that ‘time was over’ was somehow not desirable.

24. Therefore, though the interference is, strictly speaking, not warranted but keeping in mind the peculiar facts, it seems to be a case falling within the category of *exceptional circumstance*.

25. Resultantly, this Court permits the petitioner herein i.e. claimant to further cross-examine RW-1 Mr. Arpit Badjatya, on the date and time to be



fixed in this regard by learned Sole Arbitrator and for the above said purpose, both the parties shall appear before the learned Sole Arbitrator on 05.11.2024 so that appropriate time and date is given by the learned Sole Arbitrator to claimant for concluding the above said cross-examination.

26. As undertaken above, learned counsel for claimant would complete the remaining cross-examination within one session of two hours.

27. The petition stands disposed of in the aforesaid terms.

28. It also needs to be clarified that above said order has been passed in the peculiar facts of the case and shall not be taken as the precedent.

29. Before parting, it needs to be highlighted that learned counsel for the respondent informed that RW-1 Mr. Arpit Badjatya has rushed to Italy because his mother has suffered Brain haemorrhage. He states that he would make appropriate request in this regard before the learned Sole Arbitrator to permit him to be examined through *video conferencing* mode. Learned Counsel for the petitioner, whereas, submits that claimant is ready to even defray his travelling (air fare) and incidental expenses. We leave it to the wisdom of the learned Sole Arbitrator to consider the aforesaid request and to take appropriate decision in this regard.

(MANOJ JAIN)
JUDGE

OCTOBER 25, 2024/sw