(2025) 01 SC CK 0068

Supreme Court Of India

Case No: Civil Appeal Nos. 51, 52 Of 2025 Arising Out Of Special Leave Petition (Civil) Nos. 26441, 26442 Of 2024

Serosoft Solutions Pvt. Ltd	APPELLANT
Vs	
Dexter Capital Advisors Pvt. Ltd	RESPONDENT

Date of Decision: Jan. 3, 2025

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Arbitration and Conciliation Act 1996 - Section 11, 18, 29A

Hon'ble Judges: Pamidighantam Sri Narasimha, J; Manoj Misra, J

Bench: Division Bench

Advocate: Jayant Mehta, Suhaan Mukerji, Harsh Gursahani, Adarsh Kumar, Sayandeep Pahari, Tanmay Sinha, Jasleen Virk, M/s. Plr Chambers And Co., M.A.Niyazi, Advait Ghosh, Dawneesh Shaktivats, Kratika Singhal, Tamjeed Ahmad, Mrinal, F.a.khan, Anamika Ghai Niyazi, Kirti Bhardwaj, Nehmat Sethi, Arqam Ali

Final Decision: Allowed

Judgement

Pamidighantam Sri Narasimha, J

1. Leave granted.

2. The appellant and the respondent are parties in a pending arbitration. The question for consideration is whether the High Court has correctly

exercised its supervisory jurisdiction under Article 227 in granting the respondent/claimant one more opportunity to cross-examine

appellant/respondentâ€™s witness, despite the Arbitral Tribunal rejecting such a prayer.

3. The brief facts leading to the present appeals are as follows. The appellant/respondent, a startup company providing educational software and

related services, and the respondent/claimant, a provider of capital advisory services to various companies, entered into a Client Service Agreement.

Under this agreement, the respondent/claimant was to provide advisory services to the appellant/respondent. Disputes arose between the parties with

respect to non-payment of fee for the services rendered by respondent/claimant to appellant/respondent company, prompting respondent/claimant to

invoke dispute resolution mechanism through arbitration.

4. Following the constitution of the Arbitral Tribunal, proceedings commenced, and parties submitted their respective statements of claim and defence.

The Tribunal, by its order dated 06.09.2023 formulated the specific issues for consideration that needed to be addressed, by the parties to proceedings.

Following the said order, respondent/claimant side produced two witnesses CW-1 and CW-2. The counsel for the appellant/respondent cross-

examined CW-1 on 17.11.2023 and asked about 22 questions on that day. However, due to time constraints, the cross-examination was deferred and

rescheduled for 21.11.2023. On that date, the cross-examination of CW-1 was completed. On that very day cross of CW-2 was taken up and

completed over the course of two sessions.

5. After the cross-examination of respondent/claimantâ€™s witnesses got concluded, cross-examination of appellant/respondentâ€™s witness RW-1

commenced. This is where the trouble began.

6. On 09.12.2023 a total of 9 questions were put to RW-1, as is evident from the record of proceedings of the Tribunal. The cross-examination of

RW-1 was then deferred to 10.02.2024.

6.1 On 10.02.2024, though the cross commenced at 11 am and continued till 07:00 p.m., respondent/claimantâ€™s counsel sought permission of the

Tribunal to defer the cross-examination of RW-1 to some other day and sought an additional hour for completing the cross-examination of RW-1. By

its order dated 10.02.2024 the Tribunal acceded to respondent/claimantâ€™s request for additional one hour of cross-examination. The Tribunalâ€™s

order notes that the case was reluctantly adjourned to 06.04.2024 for conclusion of the cross.

7. It is alleged that, due to various applications for discoveries and interrogatories filed by the respondent/claimant, the cross-examination of RW-1

was cancelled on 06.04.2024. The proceedings kept on being delayed and the parties consensually extended the mandate of the Tribunal by 6 months

which was due to expire on 16.05.2024 as per Section 29A of the Act. Ultimately, the proceedings resumed with cross-examination of RW-1 on

01.10.2024, where a total 28 questions were put to him. The Tribunal in the record of proceedings noted that the cross-examination of RW-1 stands

concluded and accordingly, the witness was discharged.

8. After two days, i.e. on 03.10.2024, respondent/claimant moved an Interlocutory Application before the Tribunal seeking extension of time for cross-

examination of RW-1. Tribunal heard the parties on the said application and by its order dated 09.10.2024 noted that arbitral proceedings were time

bound and in fact the extended mandate was also to expire soon. The Tribunal also noted that despite exhausting twice the allotted time for cross-

examination of RW-1, the respondent/claimantâ€™s approach reflected lack of preparedness and a non-serious attitude. With this view of the matter

the Tribunal rejected the application and directed that final arguments should conclude by November 2024, so that there is sufficient time for

preparation and making of the award. Respondent/claimant challenged the above referred order of the Arbitral Tribunal by filing a petition under

Article 227 of the Constitution and sought a direction to the Tribunal for providing further opportunity to cross-examine RW-1. By the order impugned

before us the High Court noted that judicial interference in such type of matter was least warranted, but came to the conclusion that in view of the

exceptional circumstances there can be a direction to the Tribunal to grant further opportunity to the respondent/claimant to cross-examine RW-1 on

the date and time fixed by the Tribunal. Questioning the above referred order the appellant/respondent is before us.

9. Heard learned counsel for both the parties.

10. We may recapitulate that the Section 11 application was allowed by the High Court on 08.05.2023 leading to the constitution of the Tribunal which

held the first hearing on 19.05.2023. It is evident that the cross-examination of the appellant/respondentâ€™s witness RW-1 commenced on

09.12.2023 when the respondent/claimantâ€™s counsel asked 9 questions on that very day and the cross was adjourned for 10.02.2024. On

10.02.2024, the record shows that the cross-examination commenced at 11 am and concluded by 7 pm during which time the

respondent/claimantâ€™s counsel asked as many as 104 questions to the said witness. After a long lapse of almost 8 months, during which period the

mandate of the Arbitral Tribunal was exhausted, the cross-examination commenced on 01.10.2024. Even on that day the cross-examination was

commenced at 5.35 pm and concluded at 7.40 pm, which is more than two hours.

11. It is in the above referred background that the legality and the propriety of the respondent/claimantâ€™s application for further time to cross-

examine RW-1 was to be considered by the Arbitral Tribunal.

12. The first principle that governs â€˜conduct of arbitral proceedingsâ€™ under Chapter V of the Act is the obligation of equal treatment of parties.

Under Section 18 of the Act, it is the statutory duty of the Arbitral Tribunal to ensure that the parties are treated with equality and each party is given

full opportunity to present its case. At the same time, there is yet another statutory obligation, which is imposed on the judicial authorities. That is the

statutory incorporation of judicial restraint in interfering with matters governed under Part I of the Act relating to arbitration agreement, composition

and jurisdiction of Arbitral Tribunal, coupled with the conduct of the proceedings and making, challenge and enforcement of the award. This objection

of restraint on the judicial authority is overriding and notwithstanding anything contained in any other law for the time being in force.

13. Having looked into the matter, we are of the opinion that the Arbitral Tribunal seems to have given full opportunity to all parties, which is amply

evident from the record. On the other hand, the unrestrained cross-examination of RW-1 by the respondent/claimant has already exceeded 12 hours,

but the respondent/claimant does not seem to be satisfied with it.

14. In any event of the matter when the Arbitral Tribunal by its order dated 09.10.2024 held - â€˜that far and no furtherâ€™, to the

respondent/claimantâ€™s endeavour to cross-examine RW-1, the High Court should have restrained itself from interfering. In order to justify its

interference and extension of time, the High Court has referred to and relied on a judgment of the same Court

Kelvin.Air.Conditioning.and.Ventilation.System.Pvt.Ltd.v.Triumph.Reality.Pvt.Ltd. 2024SCC Online Del 7137. Certain conditions for exercising

jurisdiction under Articles 226/227 are mentioned in the judgment. Conditions (v) and (vi) of the said judgment could have provided sufficient guidance

for the High Court to consider whether interference is warranted or not. The relevant portion of the said order is as under:-

â€œ(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 â€˜exceptional rarityâ€™ or if there is â€˜bad faithâ€™ 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.â€

15. It is evident from the above that even as per the quote hereinabove interference under Article 226/227 is â€˜permissible only if the order is

completely perverse i.e. that the perversity must stare in the face.â€™ Condition (vi) to (x) underscores the reason why High Courts ought not to

interfere with orders passed by the Arbitral Tribunals for more than one reason.

16. We looked into the other parts to see if the High Court has in fact found any perversity in the decision of the Tribunal. We found none. The High

Court has not bothered to indicate under what circumstances the order passed by the Tribunal is perverse. All that the High Court has said is that

cross-examination is one of the most valuable and effective means of discovering the truth. This is a normative statement, and nobody disputes the

said principle. The only enquiry required was whether there is denial of opportunity for an effective cross-examination of the witness. There is

absolutely no discretion about this aspect of the matter, except to say that in the facts and circumstances of the case and as an exceptional

circumstance as well, the request of the respondent/claimant is excessive.

17. Having considered the matter in detail, we find no justification in the order passed by the High Court in interfering with the directions of the

Arbitral Tribunal holding that full and sufficient opportunity to cross-examine RW-1 has already been given and no further extension of time is

warranted. For the reasons stated, we allow the appeals and set aside the orders passed by the High Court in CM(M) 3711/2004 and CM Appl.

63047/2024 dated 25.10.2024.

18. In the facts and circumstances, we further direct that the Arbitral Tribunal shall resume the proceedings and conclude the same as expeditiously

as possible.