

(2012) 03 BOM CK 0283

Bombay High Court

Case No: Arbitration Appeal No. 6 of 2009 Alongwith CAR/9 of 2009

Devendra Shantilal Kothari

APPELLANT

Vs

Mother India Securities Pvt. Ltd.
and The Stock Exchange,
Mumbai

RESPONDENT

Date of Decision: March 2, 2012

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 1, 10, 11, 12, 13
- Civil Procedure Code, 1908 (CPC) - Section 104, 20

Citation: (2013) 2 ALLMR 340 : (2012) 5 BomCR 95 : (2012) 114 BOMLR 973 : (2013) 2 MhLj 897

Hon'ble Judges: Anoop V. Mohta, J

Bench: Single Bench

Advocate: Ashish Rao with Mr. Tejas Shah instructed by M and M Legal Venture, for the Appellant; R.V. Thakkar instructed by y M/s. Dave and Girish and Co., for the Respondent

Judgement

Anoop V. Mohta, J.

The Appellant, who is a share broker, has invoked Section 37 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act) and challenged a rejection order dated 22 February, 2002 passed by the Judge of the Bombay City Civil Court, (City Civil Court) on a Petition u/s 34 of the Arbitration Act filed by the Appellant.

2. The Appellant/Petitioner and Respondent No. 1, both are share brokers of Bombay Stock Exchange (BSE), Respondent No. 2.

The Appellant purchased 100 shares of Odyssey Technology Limited on 24.03.2000 for one Mr. Kirti M. Gandhi. Mr. Gandhi forwarded those shares for registration to the Registrar of the Company M/s. HiTech Share Registry Private Limited (the Registrar). The Appellant/petitioner received only 100 shares from Respondent No. 1. The balance alleged lost shares could not be located. Respondent No. 1,

therefore, exchanged letters with Respondent No. 2. Respondent No. 1 lodged an FIR on 14.04.2000 for 100 shares only. The request was also made for duplicate shares. In view of the dispute, the Registrar stopped the transfer process of the shares. Respondent No. 1, after 7 months claimed to have lost 200 shares by putting blame on Appellant/Petitioner and filed an arbitration petition with Security Exchange Board of India (SEBI) on 20 November 2000. instead of filing Suit for injunction as directed. The Company was not party to the proceedings. An arbitration application filed by Respondent No. 1 decided on 20.12.2000 by the Arbitral Tribunal of BSE, at Mumbai awarded Rs.49,900/for 100 shares, though the claim was for Rs.64,450/. A First Appeal preferred on 19.01.2001 was dismissed so also the Second Appeal by the respective Appellate Tribunals of the BSE on 28.03.2001. The Appellant filed Section 34 Petition in the City Civil Court Court at Bombay. This Appeal is against the said order.

3. First of all, it is relevant to consider whether the City Civil Court is a "Court" as defined u/s 2(1)(e) of the Arbitration Act. The relevant definitions of Arbitration Act are as under:

Section 2(1)(e) of Arbitration Act, " Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small causes."

The definitions of "City Court" and "High Court" under The Bombay City Civil Court Act, 1948, are as under :

2(1) "City Court" means the Court established u/s 3;

2(2) "High Court" means the High Court of judicature at Bombay.

3. Constitution of City Court. The State Government may, by notification in the Official Gazette, establish for the Greater Bombay a court, to be called the Bombay City civil Court. Notwithstanding anything contained in any law, such court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the Greater Bombay, except suits or proceedings which are cognizable

(a) by the High Court as a Court of admiralty or Vice Admiralty or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial jurisdiction, or

(b) by the High Court for the relief of insolvent debtors, or

(c) by the High Court under any special law other than the Letters Patent, or

(d) by the Small Cause Court:

Provided that the State Government may, from time to time, after consultation with the High Court, by a like notification extend the jurisdiction of the City Court to any suits or proceedings which are cognizable by the High Court as a court having testamentary or intestate jurisdiction or for the relief of insolvent debtors.

4. Power of State Government to enhance jurisdiction of City Court. Subject to the exceptions specified in section 3, the State Government may, by notification in the Official Gazette, invest the City Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature arising within the Greater Bombay and of such value not exceeding twenty five thousand rupees as may be specified in the notification.

12. High Court jurisdiction barred except in certain cases. Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court:

Provided that the High Court may, for any special reason, and at any stage remove for trial by itself any suit or proceeding from the city Court.

15. Appeals and limitation. (1) An appeal shall lie to the High Court from.

(a) every decree passed by the Judge of the City Court, and

(b) such order passed by the said Judge as are specified in and to the extent provided for by section 104 of the Code of Civil Procedure, 1908 (V of 1908).

(2) The period of limitation for an appeal from a decree or order of the City Court shall be thirty days from the day of such decree or order;

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

4. In view of Section 34, the State Government has power to enhance the jurisdiction of City Civil Court, but subject to Section 3 of the Arbitration Act by which jurisdiction to receive or try or dispose of all Suits and other proceedings, of a civil nature arising within the Greater Bombay of valuation so fixed and as specified in the Notification.

5. There is no mention about Arbitration Act, 1996 in any of the provisions of the City Civil Court Act.

6. The Arbitration Act shall govern and prevail so far as the arbitration Petition or proceedings or Appeal are concerned in every aspect. Merely because the pecuniary jurisdiction even if enhanced that itself, in view of above clear provisions of Arbitration Act, no way sufficient to entertain such proceedings arising out of Arbitration Act by the City Civil Court. The submission that in view of proviso to Section 3 of Civil Court Court Act, the State Government has power to extend the

jurisdiction of civil Court to any Suit or proceedings which are cognizable by the High Court is also unacceptable. So far as the arbitration proceedings are concerned, specifically in view of the definition of "Court" as defined and explained by the Supreme Court as well as other Courts. The arbitration petition is not a suit.

7. For the purpose of Section 2(1)(e) of the Arbitration Act, the Bombay High Court is "the Principal Civil Court" having Ordinary Original Civil Jurisdiction for the purpose of Part I i.e Sections 1 to 43 of the Arbitration Act, 1996. It covers basic Petitions/Applications under Sections 9, 34, 37 and 42. Clause 12 of the Letters Patent is relevant and decisive factor than Section 20 of the CPC (CPC). [Jindal Vijayanagar Steel \(JSW Steel Ltd.\) Vs. Jindal Praxair Oxygen Company Ltd.](#), A Full Bench of Bombay High Court in [Fountain Head Developers Vs. Mrs. Maria Arcangela Sequeira \(since deceased through LRs.\) and Others](#), has observed in paragraph No. 9 that

The pecuniary jurisdiction of a Court, therefore, has no significance for the purposes of the Act of 1996

It is also observed that

In other words, the pecuniary jurisdiction is no longer a material for deciding the jurisdiction of a Court being the principal Court of Original Jurisdiction for the purpose of a petition u/s 34 of the Arbitration and Conciliation Act.

Therefore, the valuation for the purpose of Court and pecuniary jurisdiction was Rs.49,900/as City Civil Court's jurisdiction to deal with Suits upto Rs.50,000/itself is not sufficient. Therefore, the Arbitration matters which are maintainable in High Court having Ordinary Original Civil Jurisdiction and being the principal Civil Court, the aspect of pecuniary jurisdiction as observed loses its importance.

8. The execution/enforcement of award/decreed as contemplated u/s 37 of the Act, will be governed accordingly, but subject to the provisions of CPC.

9. Part II of the Arbitration Act (Sections 43 to 49) deal with the Foreign Award, its enforcement and its challenge. The above meaning of "Court" is relevant even for these Sections.

10. An explanation to Section 47 of the Arbitration Act, has made it further clear that the meaning of "Court" for the purpose of Chapter I and Part II of the Arbitration Act, shall be as per Section 2(1)(e). So is the position of the Appellate provision u/s 50 of the Arbitration Act.

11. We are not concerned, at this stage, the choices of Court jurisdiction, out of two or more, the parties may agree. And also the aspect of Section 42 and such other provisions.

12. Therefore, the Arbitration matters which are maintainable only on the Original Side of the High Court, in view of above, cannot be entertainable by the City Civil

Court. In other words, such arbitration matters are cognizable by the Original Side of High Court and not by the City Civil Court, Mumbai.

13. In view of above, it is very clear that City Civil Court is not principal Court as defined u/s 2(1)(e) of the Arbitration Act. Therefore, an application u/s 34 as filed by the Appellant before the City Civil Court was not maintainable. The submission that there was no objection raised at any point of time by anybody at any stage is not relevant, basically in view of the above clear legal position and for want of jurisdiction itself.

14. The City Civil Court has no jurisdiction to entertain Section 34 Petition. There is no dispute that the Appeal lies against the order u/s 34 in view of clear provisions of Section 37 of Arbitration Act. The issue is, if the City Civil Court has no jurisdiction to entertain any application u/s 34, the Appeal so filed in the present circumstances, in the High Court, u/s 37 against such order, in my view, is also not maintainable.

15. The point still remain that the Award was passed and maintained by the Arbitral Tribunals constituted under the Byelaws, Rules and Regulations of the Bombay Stock Exchange (the byelaws). The learned counsel appearing for the Appellant has submitted that there exist no dispute which falls within the ambit of Byelaws of the BSE. The dispute was with regard to the lost of 100 shares.

16. The parties had appeared before the Tribunal. The first Arbitral Tribunal, by unreasoned Award dated 20122000, in two lines, disposed of the matter in favour of Respondent No. 1 and thereby directed the Petitioner/Appellant to pay Rs.49800/for 100 shares. No reason whatsoever is given even to the objection so raised by the Appellant.

17. As per the Byelaws, the matter was placed before a Bench of Tribunal of BSE. By an Award/order dated 17012001 by adopting the same procedure, without assigning any reason to the grounds so raised by the Appellant, in three sentences, the Appeal was disposed of. The Tribunal has passed the award/order in two sentences that Appeal Bench has added one more sentence only.

18. The matter further placed before the Second Appellate Bench of the Tribunal of BSE. The nature of the reasons of the award dated 28 March 2001, was also not different. The five lines award is as under :

Upon hearing both parties and considering the documents in detail the Full Bench is of the view that the Appellant had received the 100 extra shares of Odyssey Technologies Ltd from the Respondent.

Therefore, the Full Bench decided unanimously to dismiss the appeal and upheld the award No. 957 dated 17th January, 2001 of the lower bench.

19. The Application u/s 34 dealt with by the learned Judge of the City Civil Court in detail for the first time and has added reasons which were missing in the basic

Award passed by the Arbitral Tribunal. The reasons should have been given by the first Arbitral Tribunal and not by the Court u/s 34 of the Arbitration Act. The decision on title and transfer of shares was relevant and not the receipt of shares by the Appellant. The dispute with regard to loss of shares or title between Respondent No. 1 and the transferee who was not party to the arbitration agreement or proceedings ought not to have been decided in such fashion by the Arbitral Tribunal under the byelaws of BSE. Even by applying the doctrine of waiver or the acquiescence, such award, as passed is without jurisdiction. The Tribunals and the Court, both have no jurisdiction to adjudicate such dispute. The awards and the order are without jurisdiction and liable to be quashed and set aside. Though concurrent orders, but illegal and without jurisdiction, the Court can interfere with such final awards and also the consequential actions. In view of this, if City Civil Court has no jurisdiction to entertain Section 34 Application as recorded above., there is no question of entertaining even the Appeal u/s 37 by the High Court against the said order. All points are kept open for taking appropriate petition or application. However, as submitted by the counsel for the Appellant that there is no point to remand the matter and also for the fact that shares valuations are practically very nominal, there is no point in remanding the matter even before the BSE tribunals. I am inclined to accept the same and to avoid complication and delay and as the whole procedure so adopted was totally illegal and without jurisdiction, I am inclined to quash and set aside the same.

20. Therefore, taking overall view of the matter, I am inclined to set aside the order passed by the City Civil Court dated 22 February 2002 and also orders/Awards passed by the Arbitral Tribunal, as recorded above. However, I am inclined to observe that the parties are at liberty to settle the matter if so advised.

21. Resultantly, the order:

The order passed by the City Civil Court on application u/s 34 of Arbitration Act dated 22.02.2002 as not maintainable, is quashed and set aside.

(i) The Arbitral Award passed and maintained by the Arbitral Tribunals (BSE), dated 20.12.2000, 17.01.2001 and 28.03.2001 as recorded above, are also quashed and set aside.

(ii) The Appeal u/s 37 of the Arbitration Act as filed is not maintainable.

(iii) The amount so deposited by the Appellant in the Investor Grievance Cell of Respondent No. 2 (BSE) is permitted to be withdrawn, if not withdrawn by anybody.

(iv) The liberty is granted to settle the matter and to take out or initiate appropriate proceedings in accordance with law.

22. The Appeal is accordingly disposed of in the above terms. The Civil Application No. 9/2009 is also disposed of. There shall be no order as to costs.