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

Date of Decision: 31st August, 2022

\+ O.M.P. 20/2019

PUNITA BHARDWAJ ..... Petitioner

Through: Mr. A.K. Singla, Senior Advocate with Mr. Rahul Shukla and Mr. Akshit Sachdeva, Advocates (Enrolment Nos. D/405/2006, D/2055/2020).

versus

RASHMI JUNEJA ..... Respondent

Through: Mr. Siddharth Batra, Mr. Siddharth Satija, Mr. Akash Sachan and Ms. Shivani Chawla, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. The present petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"] is directed against an order dated 04.11.2019, passed by the learned Sole Arbitrator, who is in *seisin* of disputes between the parties. By the impugned order, the learned arbitrator has rejected an application filed by the petitioner for amendment of the statement of claim.

2. A suit [CS(OS) 2603/2014] was originally filed by the petitioner herein against three defendants, of whom the respondent

herein was the principal defendant and the other two defendants were arrayed as proforma defendants. By an order dated 07.11.2016, the suit, alongwith five other suits pending in this Court, were referred to arbitration before a former Judge of this Court. The relevant paragraphs of the order of reference read as follows:-

> *"Learned counsel for the parties submit that the disputes, subject matter of the present six suits, be referred to a Sole Arbitrator.* ***It is also agreed that the parties will place before the learned Arbitrator certified copies of the pleadings filed in the above matters and the documents filed along with the pleadings.***
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> *Accordingly, Mr.Justice V.K. Shali, a former Judge of this Court, Mobile No.9717495000, is appointed as a sole Arbitrator to adjudicate upon all the disputes and differences arising between the parties.* ***The learned Arbitrator would proceed ahead from the stage at which the suits are pending.*** *Parties will place before the learned Arbitrator certified copies of the present pleadings and the documents filed along with the pleadings. The Arbitrator shall fix a date and a time and inform the same to the counsel for the parties."*[1]

3. It appears that the six proceedings have been taken up by the learned arbitrator together. In the suit out of which the present proceedings arise, the petitioner claims the following reliefs:-

> *"(A) Decree of declaration thereby declaring that the Saving Bank Account No. 040201000021080 with Indian Overseas Bank, Rajindra Place, Usha Road, New Delhi opened by defendant No.1 in the name of plaintiff and utilization of funds deposited therein, was illegal and unauthorised and fraudulent and does not bind the plaintiff and by way of consequential relief, restraining*

[1] Emphasis supplied.

defendant No.1 from attributing payments deposited therein as payment made to plaintiff in any manner.

(B) ***Decree of declaration thereby declaring that the Sale Deed dated 28-07-2010 registered on 29-07-2010 on registration No. 20174 in Book No.1, Vol. No. 17926 on Pages 168-179****, in the office of Sub Registrar, Sub District-II, Janakpuri, New Delhi, obtained by defendant No.1 from plaintiff,* ***as void liable to be delivered up and cancelled****, and by way of consequential relief directing the Registering Authority, Sub Registrar - II Janakpuri, New Delhi to delete the above described documents, from its records of registered instrument maintained in his office.*

(C) ***Decree of mandatory injunction thereby directing the defendant No.1 to return the original documents above-described Sale Deed dated 28.09.2007*** *bearing registration No. 19384 Book No. 1 Vol. No. 15107 on pages 166-196 registered with Sub Registrar - II, Janakpuri, New Delhi to plaintiff free from all encumbrances and liens.*

(D) Grant any other or further order(s) considered just, fit and proper in the facts and circumstances of the case.

(E) Award"[2]

4. On 21.07.2017, the petitioner sought amendment of the statement of claims for inclusion of various paragraphs in the statement of claim and the following two additional prayers:-

"(D) Decree of declaration in favour of claimant/ plaintiff and against respondent/ defendant No. ***1 thereby declaring that plaintiff made sale deed dated 28.7.2010 registered on 29.7.2010 as document No. 20174 Book No. I, Vol No. 17926 on pages 168-179 in the office of Sub Registrar, Sub Distt.-II, Janakpuri, New Delhi in the form of short term accommodation on assurance***

[2] Emphasis supplied.

and understanding recognized and accepted by defendant No.1 in meeting taken place on 27.9.2013, is legal, valid and subsisting and liable to be enforced against defendants.

(E) decree in favour of claimant/ plaintiff and against respondent / defendant No. 1 thereby directing defendant No.1 to reconvey her property No. 132, Narang Colony, Janakpuri, New Delhi consisting of free hold residential plot of land admeasuring 465.7 sq.yds. and building constructed thereon upto terrace floor bounded on North by : Property No. D-133, South by : Property No. D-131, East by : road 30 ft. and West by : Service Lane 15 ft., free from all encumbrances at her cost and expenses."[3]

5. Although amendments to the pleadings as well as to the prayers was sought in the application filed before the learned arbitrator, Mr. A.K. Singla, learned Senior Counsel for the petitioner, made a statement before this Court, recorded in the order dated 25.07.2022, that he limits the relief sought to amendment of the prayer clause alone. Having regard to the view that I propose to take on the maintainability of the present petition, it is unnecessary to examine whether such a course would be permissible given the apparent inconsistency between prayer (B) of the claim as filed and the proposed relief sought to be added by way of prayer (D).

6. The respondent resisted the amendment, and the amendment application has been dismissed by the impugned order dated 04.11.2019. The relevant paragraphs of the impugned order are as follows:-

"10. I have gone though the pleadings as well as the averments made in the application, ***I find that this is not***

[3] Emphasis supplied.

an opportune time and legally sustainable to permit the claimant to amend the statement of claim. *The reason for this is on account of the fact that the suit itself was filed in the year 2014 which has been treated as a statement of claim and the written statement filed thereto has been treated as a statement of defence and till 2017 no such application was filed.* ***It is for the first time in the year 2017, this application seeking amendment of the claim was filed and yet though it remained on the board but was never pressed.*** *It will be pertinent here to mention that while the matter for adjudication by an Arbitral Tribunal, the maximum period which is given is only one and a half year. This time was also utilised by the parties though on some occasion at the instance of the Arbitral Tribunal to settle their dispute amicably top the satisfaction of both the parties but without any concrete result with the result the entire period of one and a half year had gone without any fruitful results. Thereafter a joint application was filed before the Hon'ble High Court of Delhi seeking enlargement of time for the purpose of deciding the arbitral claim on merits. The Hon'ble High Court was pleased to enlargement of time to decide the matter on merits afresh within a year which was reckoned with effect from 1st May, 2019. From 1st May, 2019 also almost six months have gone and we are still to record the evidence in the matter.*

11. It may also be pertinent to mention hat on the date just a month back, Mr. Rahul Shukla Ld. Counsel appearing for claimant with Mr. A.K. Singla, Sr. Counsel had made a statement to the effect that in order to cut short the controversy, want to file a consolidated evidence of the claimant/respondent so as to expedite the matter. Thereafter further time was also taken to submit such an affidavit. Accordingly the matter was fixed today i.e. 4th November, 2019. ***Now the Ld. Counsel Mr. Rahul Shukla appearing for the claimant has racked up the issue of pendency of the application seeking amendment as well as the fact that in this particular case, issues***

have not been framed. *Further once evidence has been ordered to be recorded, amendment ought not to be allowed.*

12. One argument advanced for not filing the affidavit that issues are not framed. Even if the issues are not framed, the points of differences between the parties have to be treated as issues and there need not any formal framing of issues as per CPC. Therefore what is left is only an application seeking amendment of the claim and ***if one time amendment is allowed then the whole process becomes retrogate and by no chance, the mater can be concluded in the next six months which are left for the purpose of not only recording of evidence of the parties but also writing an award and pronouncing the same.***

13. Therefore, the only inference which I get is that the ***claimant wants to deliberately delay the disposal of the arbitration orders by way of adjudication on merits.*** *If that is permitted to be done* ***it will unnecessarily not only delay the disposal but will be casting aspersions on functionally of the arbitral functioning but would cause avoidable delay. I, therefore, I feel that the present application at this point of time is totally misconceived and accordingly the same is disallowed. Expression of any view herein before will not be treated as expression on the merit of the case.****"*[4]

7. Mr. Siddharth Batra, learned counsel for the respondent, has raised a preliminary objection as to the maintainability of the present petition under Section 34 of the Act, directed against an order of the learned arbitrator, dismissing an application for amendment. In this regard, Mr. Batra relies upon a judgment of a Coordinate Bench of this Court in *Container Corporation of India Ltd. vs. Texmaco Limited*[5].

[4] Emphasis supplied.

[5] 2009 SCC OnLine Del 1594 : (2009) 2 Arb LR 573

He has also drawn my attention to two judgments of Coordinate Benches of this Court [in *Rhiti Sports Management Pvt. Ltd. vs. Power Play Sports & Events Ltd.*[6] and *ONGC Petro Additions Limited vs. Tecnimont S.P.A. and Another*[7]], whereby challenges to the interlocutory orders of arbitral tribunals have been held to be not maintainable.

8. On the question of maintainability, Mr. Singla, on the other hand, relies upon two other judgments of Coordinate Benches of this Court [in *M/s Cinevistaas Ltd. vs. M/s Prasar Bharti*[8] and *Lt. Col. H.S. Bedi Retd. and Anr. vs. STCI Finance Limited*[9]], whereby petitions under Section 34 of the Act against dismissal of amendment applications have been held to be maintainable.

9. As the judgments in *Container Corporation*[10], *M/s Cinevistaas*[11] and *Lt. Col. H.S. Bedi Retd.*[12] deal directly with orders on amendment applications, these are taken up for consideration first.

10. The first of these judgments in point of time is the judgment in *Container Corporation*, wherein this Court held as follows:-

> *"3.* ***A perusal of the order dated 1st May 2009 passed by the learned Arbitral Tribunal shows that the Tribunal dismissed the application for amendment of written statement on the ground that it was made at the stage when the final arguments were being addressed before the Tribunal.*** *The claimant had already concluded its*

[6] 2018 SCC OnLine Del 8678 [O.M.P. (COMM) 394/2017, decided on 01.05.2018]
[7] 2019 SCC OnLine Del 8976 [O.M.P. (COMM) 196/2019, decided on 01.07.2019]
[8] O.M.P. (COMM) 31/2017, decided on 12.02.2019
[9] O.M.P. (COMM) 546/2020, decided on 07.12.2020
[10] Supra (note 5)
[11] Supra (note 8)
[12] Supra (note 9)

arguments and the respondent had partly argued the matter and the matter was posted for hearing of remaining arguments on 28th April 2009 when it could not be taken up and was posted on 1st May 2009 when an application under Section 23 of the Act was filed by the petitioner for amendment of written statement so as to include a counter claim. ***The Tribunal dismissed the application having regard to the gross delay in making application*** *and did not consider it appropriate to allow the prayer made in the application.*

4. The Arbitral Tribunal has wide discretion to allow or dismiss applications for amendment of claim or written statement filed before it during the proceedings. There is no provision under the Act for approaching the Court against an order of allowing or dismissing the amendment application. The issue pressed for by petitioner is whether dismissing of an application of amendment of the written statement so as to include the counter claim amounts to giving an interim award which can be challenged under Section 34.

5. An interim award is in the nature of a decision of the Arbitral Tribunal on some of the claims of the parties. Occasionally, the Arbitral Tribunal is called upon to give a part award particularly when a part of the claim of the claimant stands admitted by the opposite party either in the pleading or otherwise. The act does not define an interim award. Section 2 (c) of the Act, however provides that an arbitral award included an interim award. Generally an interim award is like a preliminary decree within the meaning of Section 2(2) of the Civil Procedure Code or it is like a decree based on the admissions of parties as envisaged under Order 12 Rule 6 CPC. However, in any case, an interim award must make a provisional arrangement by the Arbitral Tribunal during the proceedings pending before it, but before passing the final award.

> *6. I consider that* ***dismissing of an application for amendment of the written statement whereby the petitioner was not allowed to include the counter claim at a belated stage cannot be termed as an interim award so as to allow challenging such order under Section 34.*** *The petitioner would be at liberty to assail the final award and can take all the ground of challenge as available under law as and when final award is passed by the learned Arbitral Tribunal. The petitioner cannot be allowed to challenge dismissal of its application for amendment as an interim award.* ***One of the purposes of enactment of Arbitration & Conciliation Act, 1996 was to minimize the intervention of the courts during arbitral proceedings and that is why Section 5 of the Act prohibits the Courts from interfering in the arbitration process.*** *The judicial intervention during arbitral proceedings is not permissible unless it is specifically provided by Part-I of the Act. The effect of non-obstantive clause in Section 5 is that the provisions of Part-I of the Act will prevail over any other law for the time being in force in India. This provision recognizes minimum role of judicial intervention in arbitral proceedings. It clearly brings out the object of the Act i.e. to minimize the judicial intervention and to encourage speedy and economic resolution of disputes by the arbitral tribunal, in case where the disputes are entered by the arbitration agreement."*[13]

11. Turning to the two judgments cited by Mr. Singla, the petitions under Section 34 of the Act were held to be maintainable against dismissal of applications for amendment of the statement of claims (in *M/s Cinevistaas*[14]) and of the statement of defence (in *Lt. Col. H.S. Bedi Retd.*[15]).

[13] Emphasis supplied.
[14] Supra (note 8)
[15] Supra (note 9)

12. As far as maintainability is concerned, this Court in *M/s Cinevistaas*[16] noticed that the impugned order rejected amendment of certain claims on the ground that they were barred by limitation, and observed as follows:-

> *"22. The question that then arises is whether the order of the Ld. Arbitrator constitutes an 'Award'. Under Section 2(1)(c), an award includes an 'interim award'.* ***Whether the impugned order in the present case constitutes an interim award or not is to be decided by seeing the nature of the order and not the title of the application,*** *which was decided. The order, in fact, rejects the proposed amendments in claim nos. V and VI, by holding that the same are barred by limitation.* ***Insofar as the difference between the newly claimed amounts and the earlier claimed amounts are concerned, this is a final adjudication. There is a finality attached to the award*** *and there is nothing in the final award that would be dealing with these claims. It is not just an interim award, but a rejection of the additional claims/amounts finally.*
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> *23.* ***The order is not to be construed as a mere procedural order or an order rejecting a technical amendment, but in fact a rejection of substantive claims.*** *Amendments can be of several kinds. They can range from mere amendment of cause title, addition/deletion of few paragraphs, correction of errors, addition of new claims, correction of existing claims, etc. Every amendment is not to be treated in the same manner. The question in every case of amendment is as to whether it decides a substantive issue….."*[17]

13. The Court relied upon the judgment of the Supreme Court in *Shah Babulal Khimji vs. Jayaben D. Kania & Anr.*[18], which

[16] Supra (note 8) See paragraph 22
[17] Emphasis supplied.
[18] (1981) 4 SCC 8

distinguished between an adjudication which conclusively determines a claim and has the "*characteristics and trappings of finality*", thus giving it the characteristics of a "*judgment*", and those interlocutory orders which do not partake of these characteristics. The Court also noticed the judgment in *India Farmers Fertilizer Cooperative Limited vs. Bhadra Products*[19], wherein the Supreme Court had occasion to consider the characteristics of an "interim award" and held that the interim award must conclusively determine some of the issues between the parties.

14. Following these authorities, this Court in *M/s Cinevistaas*[20] came to the conclusion that rejection of amendment on the ground of limitation does decide the claims finally, and is therefore, in the nature of an interim award. The judgment in *Container Corporation*[21] was distinguished on the ground that the petition under Section 34 of the Act in that case was against an application for amendment which was rejected as belated.

15. The judgment in *Lt. Col. H.S. Bedi Retd.*[22] is on similar lines, *inter alia* to the effect that the view taken in *M/s Cinevistaas* has been followed on the specific finding that the plea of the petitioner therein with regard to "*equitable set-off*" would attain finality by way of the impugned order.

16. The judgments in *Rhiti Sports*[23] and *ONGC Petro Additions*[24] do

[19] (2018) 2 SCC 534
[20] Supra (note 8)
[21] Supra (note 5)
[22] Supra (note 9)
[23] Supra (note 6)
[24] Supra (note 7)

not deal with the applications for amendment of pleadings. In fact, these judgments have been distinguished *inter alia* on this ground in *Lt. Col. H.S. Bedi Retd*. It is therefore not necessary to deal with these judgments further.

17. Section 23(3) of the Act provides for amendment of pleadings in arbitral proceedings. It reads as follows:-

> *"23(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it."*

18. The three judgments of this Court cited by learned counsel for the parties must be read in the context of this provision. The statute clearly vests discretion in the arbitral tribunal to disallow a party to amend or supplement its pleadings on the ground that the application is belated. In *Container Corporation*[25], the amendment was rejected by the arbitral tribunal on this ground and the challenge under Section 34 of the Act was held not to be maintainable. In *M/s Cinevistaas*[26] and *Lt. Col. H.S. Bedi Retd.*[27] on the other hand, the Court came to the conclusion that the rejection of the amendments were in the nature of final adjudication of the claims and defences proposed to be raised. It is this factor which clothed the orders of the tribunal with the characteristic of finality and rendered them susceptible to challenge as interim awards. This distinction, in my view, is the key to determining

[25] Supra (note 5)
[26] Supra (note 8)
[27] Supra (note 9)

the maintainability of the present petition.

19. In the facts of the present case, the learned arbitrator has proceeded only on the ground that the amendment was sought belatedly. Paragraphs 12 and 13 of the impugned order make this position clear, and in fact, in paragraph 13, the learned arbitrator has stated that "*expression of any view herein before will not be treated as expression on the merit of the case*".

20. Further, it is evident that the suit was filed before this Court as far back in 2014 and referred to arbitration in the year 2016. The application for amendment was filed by the petitioner only on 21.07.2017. Even thereafter, it is recorded by the learned arbitrator that the matter proceeded without the petitioner seeking an adjudication of the said application until 04.11.2019, when the impugned order was passed. In the meanwhile, proceedings continued before the learned arbitrator, and issues appear to have been framed in these proceedings on 17.05.2018.[28] During the pendency of the present petition before this Court also, I am informed that the parties have proceeded to lead evidence before the learned arbitrator and the proceedings are now at the stage of final arguments.

21. In view of the aforesaid position, I am of the view that the impugned order in the present case does not constitute an interim award, susceptible to challenge under Section 34 of the Act. The petition is, therefore, dismissed as not maintainable, leaving it open to the parties to take such remedies as may be available to them in

[28] Although the impugned order does not conclusively indicate that issues were framed in the present proceedings, a document has been handed up by Mr. Batra in Court by which it appears that issues were framed on 17.09.2018.

accordance with law.

22. It is made clear that I have not adjudicated upon the merits of the case made out by the petitioner.

PRATEEK JALAN, J

AUGUST 31, 2022
'vp'/