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

Date of Decision: 15th October, 2024.

+ W.P.(C) 14422/2024, CM APPL. 60450/2024 & CM APPL. 60451/2024

HOME AND SOUL PRIVATE LIMITED ERSTWHILE KNOWN AS VERTICAL LIMITS INFRATECH PVT. LTD.Petitioner

Through: Mr. Alok K. Aggarwal, Ms. Anushruti, Ms. Anusha, Ms. Aanavi Oberoi, Advocates

versus

T.V. TODAY NETWORK LIMITED ERSTWHILE KNOWN AS MAIL TODAY NEWSPAPERS PVT. LTD.Respondent

Through: Mr. Shahrukh Ejaz, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present writ petition impugns order dated 22nd August, 2024, passed by the Sole Arbitrator disposing off an application under Section 16 of the Arbitration and Conciliation Act, 1996,¹ deferring the issue of limitation to be adjudicated at the time of final disposal of the case.
2. The Petitioner contends that by postponing the adjudication of the limitation issue, the Sole Arbitrator has disregarded the specific direction of this Court as recorded in the order dated 16th February, 2024 in Arb. P. 657/2023, wherein the Arbitrator was mandated to first decide the



preliminary issue of limitation before proceeding with the substantive dispute. The Petitioner asserts that limitation being a critical threshold issue ought to have been adjudicated upfront. It is argued that, contrary to the Court's observations, the impugned order effectively postpones this determination, leaving the issue unresolved until the final disposal, thus, rendering the current proceedings vulnerable to further procedural complications and potential delays. Additionally, the Petitioner emphasizes that limitation is not merely procedural but touches upon the jurisdiction of the Arbitrator. If the claims are barred by limitation, the proceedings would be null and void ab initio, and it would serve no purpose to proceed with the arbitration in the absence of a definitive ruling on this point. By failing to decide the issue of limitation as a preliminary matter, the Arbitrator has, according to the Petitioner, acted contrary to established legal principles and in disregard of this Court's directions. Consequently, the Petitioner seeks intervention from this Court to ensure that the issue of limitation is conclusively decided before the arbitration proceeds any further.

3. On the issue of maintainability, counsel for the Petitioner contends that the present writ petition falls within an exceptional category that necessitates the Court's intervention. He argues that the bar of limitation is evident from the Respondent's own pleadings and documents, and therefore, the Arbitrator should not have proceeded without first adjudicating the limitation issue. The failure to address the objection raised under Section 16 of the Arbitration and Conciliation Act at the outset of the proceedings, amounts to a procedural irregularity. Counsel places reliance on this Court's

¹ "the Act"/ "Arbitration and Conciliation Act"



ruling in *Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Limited*,² underscoring the necessity of judicial oversight where an arbitrator has deviated from a clearly mandated procedural framework.

4. The Court has duly considered the arguments advanced by the Petitioner but remains unconvinced. It is a well-established principle, reaffirmed by this Court in *C.S Construction Company Private Limited v. Excelling Geo*³ and *Engineering and Hindustan Alloys Private Limited v. Maa Sheetla Ventures Limited*,⁴ that a writ petition under Articles 226 and 227 of the Constitution of India can only be entertained in arbitration matters under rare and exceptional circumstances. In the present case, the impugned order pertains to an application under Section 16 of the Arbitration and Conciliation Act, 1996, which empowers the Arbitral Tribunal to rule on its own jurisdiction. If the Tribunal accepts the plea of jurisdiction under Section 16(2) or 16(3), an appeal is permissible under Section 37 of the Act. However, if the Tribunal rejects the plea or reserves its decision, as it has done here, the proceedings continue, and any challenge to the Tribunal's findings can only be made after the final award is rendered. The scheme of the Act is clear: judicial interference at an intermediate stage, where the Arbitral Tribunal chooses to proceed with the arbitration, is expressly prohibited. Moreover, the Legislature's intent behind not providing an appellate remedy for every interim order is a deliberate effort to allow arbitration proceedings to continue unimpeded, minimizing judicial

² CA No. 14665/2015, decided on 6th January, 2021

³ W.P.(C) 10027/2024, decided on 25th July, 2024

⁴ W.P.(C) 10561/2024, decided on 31st July, 2024



intervention. Invoking the extraordinary jurisdiction of this Court under Articles 226 or 227 of the Constitution for every interlocutory decision of the Tribunal would undermine this legislative objective and defeat the purpose of arbitration as a speedy and efficient mode of dispute resolution. Moreover, the absence of an appellate remedy under Section 37 of the Act for such orders does not provide grounds for this Court's intervention at this stage. The correct avenue for addressing grievances against the Arbitral Tribunal's decision, including any rulings under Section 16, is through a challenge to the final award under Section 34 of the Act. This principle has also been articulated by this Court in *Surender Kumar Singhal & Ors. v. Arun Kumar Bhalotia & Ors.*⁵ Accordingly, the petition is not maintainable, and the parties must await the final award before pursuing any further legal remedies.

5. Nonetheless, as the Petitioner has raised concerns regarding the issue of limitation, the Court finds it necessary to make a few observations. In its order dated 16th February, 2024, passed in Arb. P. 657/2023 under Section 11 of the Arbitration and Conciliation Act, this Court specifically directed the Arbitral Tribunal to address the question of limitation as a preliminary issue. The Court's order stated:

"28. It is a settled law that limitation is a mixed question of facts and law and the same is required to be adjudicated by learned Arbitrator. However, the learned Arbitrator shall frame the preliminary question on the point of limitation and shall proceed ahead only after the preliminary issue is decided.

29. If the claim is found to be barred by the limitation then the arbitrator need not proceed further. If the claim is found to be within the time the dispute shall be adjudicated in accordance with law."

⁵ CM(M) 1272/2029, decided on 25th March, 2021



6. On the above issue, the Arbitrator in the impugned order is extracted below:

“10. On perusal of the averments in the Statement of Claim and Statement of Defence, the Tribunal is of the view that the question of limitation cannot be decided/adjudicated without obtaining evidence from the parties to substantiate their respective pleas. It is relevant to note that this issue was agitated by the respondent before the Hon’ble High Court in the petition under Section 11 of the Act. The Hon’ble High Court in its order dated 06.02.2024 observed that the limitation being a mixed question of facts and law is required to be adjudicated by the Id. Arbitrator. In the instant case, the claimant has admittedly performed its part of the contract by providing advertising space in terms of the Barter Agreements. The respondent has neither delivered the property to the claimant nor has paid any cash compensation. The averments of the claimant in the claim petition that the respondent was promising to deliver the property even after the expiry of the period of agreements and only in 2021 a dispute arose between the parties when the respondent expressed its intention not to comply with its obligations and rejected the claim of the claimant cannot be brushed aside or rejected at this stage. In the case of Maj. (Retd.) Inder Singh Rekhi vs. DDA, (1988) 2 SCC 338, the Hon’ble Supreme Court emphasized that a dispute can only arise when a claim is asserted by one party and denied by the other and merely inaction does not constitute a dispute. Case of the claimant is that it never negotiated with the respondent after performance was denied in 2021.

11. It has further come on record that though the 2nd Barter Agreement was only for a period of 1 year and was to expire on 20.06.2014, the parties remained in contractual relationship till March, 2016. Even after the expiry of the 2nd Barter Agreement, the respondent released orders to the claimant for publication of the advertisement. The claimant has placed on record various invoices raised for the advertisement space made available to the respondent till March, 2016. Prima facie it can be inferred that time was not the essence. Since there was no fixed period under the barter agreements for specific performance, the period to calculate the limitation will start when the dispute between the parties arose. All these contentions/issues/averments need to be adjudicated during trial. The respondent itself is not sure as to when the cause of action for raising the claims expired. In the application under Section 16, the respondent has given different periods when the limitation to raise the claims expired.

12. Regarding the contention of the Id. Counsel for the respondent



that the Barter Agreements being unregistered and unstamped are not enforceable, the Tribunal is of the view that this controversy needs adjudication during trial particularly when the claimant has claimed that no stamp duty is required to be paid and the Barter Agreements are not required to be registered under the law.

13. In view of above discussion, issue of limitation is kept open and will be adjudicated after getting the evidence of the parties, at the time of final disposal of the case.

14. The application filed by the respondent under Section 16 stands disposed of in the above terms

15. Observations in the order shall have no impact on the merits of the case.”

7. From the above-noted extract, it is evident that the Arbitrator has duly considered the contentions raised and has given satisfactory reasoning leading to the rejection of Petitioner’s application under Section 16 of the Act. Moreover, it must be noted that the observations made in an order deciding an application under Section 11 of the Arbitration and Conciliation Act, cannot be construed as a final determination on the issue of limitation. This is because whether a particular claim is barred by limitation is ultimately a question that has to be answered based on the specific facts of each case. The order under Section 11 is passed at a preliminary stage, where the disputes sought to be referred to arbitration are broadly outlined. It is only during the arbitration proceedings, when the statement of claims and counterclaims are presented, that the foundation facts fully emerge for consideration.

8. In fact, the order under Section 11 of the Act specifically acknowledged this complexity, stating that limitation is a mixed question of law and fact, requiring adjudication by the Arbitrator. The order made it clear that the Arbitrator must frame the preliminary issue on limitation and proceed further only if the claim is found to be within the period of



limitation. The Arbitrator was directed to discontinue proceedings if the claim was found to be time-barred. Given the intricate nature of such issues, it falls within the Arbitrator's jurisdiction, when considering challenges under Section 16, to decide whether to resolve the limitation question immediately or defer it until the parties have had the opportunity to lead evidence. This deferral may be particularly necessary where the limitation issue requires factual determinations, making it unsuitable for resolution purely on legal grounds.

9. Furthermore, the issue of limitation, raised as a jurisdictional challenge under Section 16, is rarely a pure question of law. More often, it is a mixed question of law and fact. Whether a claim is barred by the law of limitation depends upon the facts that determine the cause of action and the point from which the limitation period is to be computed. These facts are frequently contested and require the parties to lead evidence. While the Petitioner may argue that the limitation issue is *ex facie* evident from a bare perusal of the statement of claim, and thus, a pure question of law, this is seldom the case. Determining limitation generally involves a factual inquiry, which cannot be bypassed by assuming that the claim is barred purely based on initial pleadings.

10. In conclusion, while the Petitioner may view the limitation question as a threshold issue, the decision to defer it until sufficient evidence is available is within the Arbitrator's discretion. Challenging the same through a writ petition under Article 226 or 227 of the Constitution is neither appropriate nor permissible unless there are compelling circumstances, such as the order being manifestly perverse or contrary to established legal



principles. Such an exercise would encroach upon the domain of the Arbitrator, whose mandate is to adjudicate both factual and legal disputes in the arbitration proceedings. Therefore, any intervention by this Court, at this stage, is wholly unwarranted.

11. In light of the above, the present petition, along with pending applications, if any, is disposed of.

SANJEEV NARULA, J

OCTOBER 15, 2024/ab