



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 873/2024

Riddhi Siddhi Infraproject Pvt. Ltd., Having Its Registered Address At Rsgs The Universe Campus Hiran Magri Extension Opposite Sector 9 Udaipur Rajasthan Through Its Authorized Representative Om Prakash Kumawat S/o Bhanwar Lal Kumawat Aged About 50 Years R/o Ujjwal Apartment Bhatt Ji Ki Bari Udaipur Rajasthan

----Appellant

Versus

1. M/s Anil Industries, Old Bus Stand Bhilwara Rajasthan Through Its Owner Proprietor / Authorized Representative Anil Dangi Residing At Old Bus Stand Bhilwara Rajasthan
2. Anil Dangi, Navkar Greens Parshwanath Society Bhilwara
3. Anil Dangi S/o Late Parakram Singh Dagi, R/o Navkar Greens Parshwanath Society Bhilwara

----Respondents

For Appellant(s) : Mr. Pushkar Taimini
Mr. Sanjay Nahar

For Respondent(s) : Mr. Sandeep Saruparia
Mr. Nikhil Ajmera

**HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**

Judgment

Date of Judgment :: 29/05/2024

Per Hon'ble Mehta, J(oral):

Reportable

1. Instant appeal which has been preferred under Section 13 of the Commercial Courts Act, 2015, calls in question, the order dated 24.01.2024, passed by the learned Commercial Court, Bhilwara, whereby the appellant's request for extending the interim order dated 10.10.2023 was refused.



2. The facts precisely narrated are that the appellant had moved an application dated 19.09.2023 under section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") with assertion that in relation to an agreement dated 10.12.2009, a dispute has arisen between the parties and as per clause 31 of the said agreement which was to be resolved by way of arbitration. And accordingly, invoking clause 31, the appellant appointed Mr. Satyanarayan Derashri as an Arbitrator and initiated the proceedings as required. But as the respondent is not taking any interest, the proceedings in terms of clause 31 and decision by way of Arbitration is likely to take some time. It was thus, prayed that until the dispute is resolved by the Arbitrator and award is passed, by way of interim measure the respondent be restrained from alienating the property or from raising construction on the disputed land and also be directed to maintain status quo.

3. Pursuant to the application aforesaid, the Commercial Court passed an order dated 10.10.2023 and directed the parties to maintain status quo in relation to the land (Khasra Nos.3021, 3022, 3023 of Tehsil Bhilwara) in dispute.

4. Thereafter, on 18.01.2024, the appellant moved this Court by way of filing an application under section 11 of the Act of 1996, for securing appointment of Arbitrator.

5. During the pendency of above referred application viz. Civil Misc. Case No.15/2023, pending before the Commercial Court, it was contended by the respondent that the order dated 10.10.2023 had a life of 90 days only, per force provision of section 9(2) of the Act of 1996. Faced with such stand, the present appellant filed an



application dated 11.12.2023 with a prayer to pass further orders under section 9 of the Act of 1996 or to extend the interim order dated 10.10.2023.

6. The appellant's said application was rejected and the application (Civil Misc. Case No.15/2023) filed under section 9 of the Act itself was disposed of by the Commercial Court on 24.01.2024. While rejecting the application (Civil Misc. Case No.15/2023), the Commercial Court observed that the appellant was required to take up the arbitral proceedings within a period of 90 days i.e. on or before 10.01.2024, whereas the application under section 11 of the Act of 1996 came to be filed before Hon'ble High Court belatedly, on 18.01.2024. According to the Commercial Court as the appellant had failed to take up the proceeding for securing appointment of Arbitrator within the statutory timeline of 90 days, no indulgence can be granted.

7. Mr. Taimini, learned counsel for the appellant argued that Commercial Court has erred in non-suiting the appellant on the ground that it has not taken up the arbitral proceedings under section 11 of the Act of 1996, within a stipulated period (upto 10.01.2024).

8. He invited Court's attention towards section 21 of the Act of 1996 and submitted that arbitral proceedings should be deemed to have commenced on 12.07.2023-when the notice of appointment of Arbitrator was received by the respondent. He argued that as a matter of fact and law, the arbitral proceedings had already commenced and the mandate of section 9(2) of the Act of 1996 had been met.



9. Learned counsel for the appellant submitted that when the appellant has already filed an application under section 11 of the Act of 1996 before the High Court, it was upon the learned Commercial Court to have either passed a fresh order under section 9 of the Act of 1996 or to have extended the interim order dated 10.10.2023 for a further period.

10. Mr. Saruparia, learned counsel for the respondent vehemently opposed the appellant's prayer and submitted that the appellant has intentionally delayed the filing of application under section 11 of the Act of 1996 and since, it had not filed application under section 11 of the Act of 1996 within prescribed period, the Commercial Court was justified in rejecting its request. He argued that no indulgence can be granted to a litigant who is not vigilant about statutory requirements.

11. Mr. Saruparia, learned counsel for the respondent prayed that the appeal be dismissed and the interim order of maintaining status quo passed by this Court vide order dated 21.03.2024 be vacated.

12. Heard learned counsel for the parties.

13. So far as sub-section (2) of section 9 of the Act of 1996 is concerned, the same indisputably provides that "the arbitral proceedings shall be commenced within a period of 90 days from the date of such order". If such expression is read in isolation, the order of the Commercial Court appears to be infallible, but the same has been passed being oblivious of what has been contained in section 21 of the Act of 1996.

14. According to section 21 of the Act of 1996, once the notice of appointment of Arbitrator has been given by either party, the



arbitral proceedings should be deemed to have commenced. The step for filing the application under section 11 of the Act of 1996 is a step in furtherance of securing appointment of Arbitrator and the same cannot be construed to be commencement of arbitral proceedings.

15. There is no gainsaying the fact that an application under section 11 of the Act of 1996 has been filed by the appellant on 18.01.2024 and both the parties are contesting the same before the designate of Hon'ble the Chief Justice.

16. As observed above, the notice for appointment of Arbitrator had been issued on 12.07.2023 and hence, the arbitral proceedings had commenced. As such the view taken by the Commercial Court is contrary to law. The reasons given by the Commercial Court that as the appellant took up proceeding under section 11 of the Act of 1996 on 18.01.2024 after passing of 90 days' time from the date of interim order, no order can be passed is also unsustainable in the eye of law.

17. Sub-section (2) of section 9 of the Act of 1996 is wide enough and it unequivocally empowers the Court to extend an order of interim measure. Opening words of section 9-"A party may, before or during arbitral proceedings or at any time after the making of arbitral award" and the closing phrase of sub-section(2) "within a period of 90 days from the date of such order or within such further time as the Court may determine", clothe the Court with power to extend the order of interim measure even beyond 90 days.

18. The Commercial Court, while passing the order oppugned, has relied upon the judgment of Hon'ble Karnataka High Court,



cited by learned counsel for the respondent, rendered in the case of **M/s. Paton Constructions Private Ltd. vs. M/s. Lorven Projects Ltd., and Anr.** reported in **2017 SCC Online Kar 3469**. We have gone through the same. According to us, the same differs from the present case in facts and situation. In above referred judgment, the application under section 9 of the Act of 1996 was presented on 13.11.2013 and interim measure was granted vide order dated 21.12.2013. The interim measure stood vacated automatically on expiry of three months from 13.11.2023, as per Rule 9(4) of the High Court of Karnataka Arbitration (Proceedings Before the Courts) Rules, 2001 (hereinafter known as High Court of Karnataka Arbitration Rules, 2001) which provides that if arbitral proceedings are not initiated within three months from the date of presentation of the application under section 9 of the Act of 1996, any interim order granted shall stand vacated without any specific order to that effect by the Court which passed the order.

19. On perusal, it is clear that in the above case, the arbitral proceedings had not been initiated until the application under section 9 of the Act of 1996 was filed. That apart, Rule 9(4) of the High Court of Karnataka Arbitration Rules, 2001 mandates that the process of appointment of Arbitrator has to be initiated before the expiry of three months from date of presentation of application under section 9 of the Act of 1996, whereas no such Rule prevails in State of Rajasthan. However, in present case, the arbitral proceedings had been initiated way back on 12.07.2023. The facts of the case in hands is clearly distinguishable from the facts of the case before Karnataka High Court.



20. According to us, as the Commercial Court had passed an order for taking interim measures to maintain status quo on 10.10.2023, ideally, it should have extended the same in the facts obtaining in the case. The fact that application under section 11 came to be filed after 90 days (on 18.01.2024) was not indicative of dilly-dallying tactics or negligence on the part of the appellant.

21. But then, there is another aspect of the matter. The Commercial Court has passed a blanket order of injunction and directed the 'status quo' to be maintained in relation to the disputed land.

22. While passing interim order or taking interim measure, the Court is required to have a prima-facie grasp of the dispute and claim of the parties. The Court should look at the nature of controversy and consider the relief claimed or amount claimed. If the dispute is in relation to monetary claim or the same can be measured in terms of money, then, in place of passing blanket orders of maintaining status quo qua the property, the Court should secure the amount likely to be awarded to the claimant or as claimed.

23. Admittedly, the claim of the appellant as shown in para No.6 of the application under section 9 of the Act so also in the application under section 11 of the Act of 1996 is of Rs. 9,21,81,250/-. Therefore, the Commercial Court was required to secure the amount of claim or approximate amount which could be awarded. Whereas the Court has ordered to maintain status-quo regarding the entire land covered by the agreement. We are of the considered view that such order has not only affected the rights of the respondent but has adversely impacted the rights of



various investors and purchasers. Passing of the orders like the one that has been passed in the case in hands, may lead to innumerable complications.

24. During the course of submission, Mr. Saruparia, learned counsel for the respondent informed that as against the claim of the appellant, the respondent proposes to file a counter claim of Rs.11,37,70,140/-.

25. Hence, in order to meet the ends of justice and to balance the equity, we deem it appropriate to ask the respondent to furnish one solvent surety of Rs. 10 Crores to the satisfaction of the Commercial Court, Bhilwara, within a period of 15 days from today. The Commercial Court shall not insist upon furnishing cash security, Bank Guarantee or FDR.

26. The surety so furnished shall remain in force until the appellant or the respondent move(s)/prefers an application under section 17 of the Act of 1996 before the Arbitrator to be appointed by the High Court pursuant to the application under section 11 of the Act of 1996 that has been filed by the appellant.

27. The arbitrator shall pass a fresh order in exercise of his power under section 17 of the Act of 1996 (if deemed appropriate) in accordance with law, without being influenced or affected by the order instant or any observation made herein.

28. The appeal so also stay application stand disposed of accordingly.

(RAJENDRA PRAKASH SONI),J

(DINESH MEHTA),J

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