
(2009) 07 DEL CK 0125
In the Delhi High Court
Case No : OMP. No. 370 of 2002

Indus Ind Bank Ltd.

APPELLANT

Vs

Ram Laxman Hotels Ltd. and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1), 34, 42

Citation : (2009) 162 DLT 332 : (2010) 8 RCR(Civil) 3187

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : K.K. Patra and Shivendra Swarup, for the Appellant; None, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The question for consideration is whether, a third party, who was not a party to the arbitration agreement or the arbitration proceedings, can file a petition u/s 34 of the Arbitration Act, 1996 with respect to an arbitral award on the ground of the same affecting the said third party.

2. The petitioner bank is averred to have granted credit facilities etc to the respondent No. 1 company. Upon default by the respondent No. 1 company, the petitioner bank initiated proceedings before the DRT, Mumbai, subsequently transferred to DRT, Pune. The said proceedings are informed to have culminated with an order in favour of the petitioner and Recovery Certificate averred to have been issued against the respondent No. 1 company.

3. It is the case of the petitioner that the respondent No. 1 company, with a view to delay the recovery proceedings entered into an agreement with respondent No. 2 NRI Lead Bank alleged to be carrying on business in banking services without authority of the Reserve Bank of India. Respondent No. 1 company vide the said agreement is stated to have assigned its just and legal dues in favour of the respondent No. 2, in the contention of the petitioner, illegally. It is further the case of the petitioner that collusive arbitration proceedings were commenced between the respondent No. 1 company and the said respondent No. 2 before

ADR Arbitral Tribunal, Consortium Plaza, 8-J, Gopala Tower, 25 Rajendra Place, New Delhi which has been impleaded as the respondent No. 3. The said arbitral tribunal is stated to have made an interim award dated 26th July, 2002 with respect to the immovable property of the respondent No. 1 company, directing restoration of status quo ante as on 14th May, 2001 with respect thereto. The respondents No. 1 and 2 on the basis of the said interim award are stated to be making applications by way of impediment to the proceedings before the DRT, Pune and/or its recovery officer. The petitioner in the circumstances preferred the present petition for setting aside of the said interim award of ADR Arbitral Tribunal.

4. Only the respondent No. 2 NRI Lead Bank filed a written statement to the petition. It is, inter alia, the plea in the written statement that the arbitral award had been filed in the Principal Civil Court of District Judge, Pune and this Court has no jurisdiction to entertain the petition; that u/s 42 of the Act also the court at Pune alone was entitled to entertain the petition. On merits the award was sought to be justified.

5. The respondent No. 1 could not be served by ordinary process and was ordered to be served by publication for today. Publication has been effected. None has appeared on behalf of the respondent No. 1 None appeared for the respondent No. 2 as well. The respondents are proceeded against ex parte and the counsel for the petitioner has been heard.

6. A perusal of the record shows the same to be incomplete. The annexures referred to in several of the documents are not annexed thereto. On inquiry the counsel for the petitioner states that since the petitioner is not a party to the transaction between the respondent No. 1 and the respondent No. 2 or even to the arbitration proceedings between them, the petitioner has filed whatever documents were made available to it and has no means to file the complete records. On further inquiry as to whether the recovery proceedings initiated by the petitioner were held up in any manner for the reason of the award aforesaid, the counsel informed that the proceedings have been going on and some monies have also been recovered. On inquiry as to how the territorial jurisdiction of this court has been invoked though it is admitted that respondent No. 1 company has its registered office at Mumbai and properties at Pune and that the agreement between the petitioner and the respondent No. 1 company was also reached outside the jurisdiction of this Court, the territorial jurisdiction of this Court was sought to be justified only for the reason of the arbitration proceedings having been conducted by respondent No. 3 ADR Arbitral Tribunal within the jurisdiction of this Court. However, the venue of arbitration does not determine the court within the meaning of the Act. The plea of Section 42 of the Act raised by the respondent No. 2 in its reply also remains unanswered.

7. Though from averments on record, grave doubt is cast with respect to the respondent No. 3 ADR Arbitral Tribunal but there is a technical objection to the maintainability of this petition. The petition u/s 34 of the Act can be preferred

only by a party to the arbitration proceedings and not by a third party. The Chief Justice A.P. Shah of this Court sitting in the Division Bench of the Madras High Court in Chennai Container Terminal Pvt. Ltd. Vs. Union of India (UOI) and Others, has held that Section 34 read with the definition of party in Section 2(1) (h) of the Act makes it amply clear that only a party to the arbitration agreement can invoke the provisions of Section 34 of the Act; a third party has no locus standi to challenge the award u/s 34 of the Act. Similarly, a Single Judge of this Court also in Florentine Estates of India Limited and Others Vs. CREF Finance Limited, held to the same effect. In view of the said legal position, the petition u/s 34 of the Act by the petitioner who is admittedly not a party to the arbitration proceedings is not maintainable and is liable to be dismissed.

8. However, I must hasten to add that the dismissal of the petition ought not to be understood in any way as coming in the way of the petitioner in pursuing the recovery proceedings in pursuance to the recovery certificate or in any manner against the respondent No. 1 company. The arbitral award to which the petitioner is not party cannot determine / affect the rights of the petitioner and cannot come in the way of execution of the orders obtained by the petitioner by following the due process of law against the respondent No. 1. From the documents before this Court it appears that the arbitral tribunal was aware of the claims of the petitioner against the respondent No. 1 and its properties but nevertheless proceeded to make the order which was / is being used against the petitioner. It is such a practice which is bringing a bad name to arbitration and need to be condemned with full force. However, having held that this court has no jurisdiction, I am refraining from taking any further steps against the respondents.

9. With the aforesaid observations, the petition is disposed of, leaving the parties to bear their own costs.