

(1983) 12 BOM CK 0001

In the Bombay High Court

Case No : Company Application No. 2303 of 1983 in Company Petition No. 577 of 1983

Manavendra Chitnis and another

APPELLANT

Vs

Leela Chitnis Studios P. Ltd. and others

RESPONDENT

Date of Decision : 15-12-1983

Acts Referred:

Arbitration Act, 1940 — Section 30, 34
Civil Procedure Code, 1908 (CPC) — Section 10, 141, 151
Companies Act, 1956 — Section 397, 398, 399, 400, 402

Citation : (1985) 58 CompCas 113 : (1984) MhLj 586

Hon'ble Judges : N.K. Parekh, J

Bench : Single Bench

Judgement

Parekh, J.—This judge's summons dated October 21, 1983, has been taken out by the applicants for an order that further proceedings in Company Petition No. 577 of 1983 be stayed under the provision of s. 34 of the Indian Arbitration Act, 1940, and that costs of the summons be provided for and for such other and further reliefs as this court may deem fit. The summons by the respondents.

2. The facts that give rise to this summons are that there are two groups in the first respondent company, one group known as "the Chitnis group" and the other group known as "the Srivastava group". Both these groups are at loggerheads. Certain disputes and differences having arisen between the two groups, the same were referred to the arbitration of one Bal Thackeray. The Bal Thackeray made an award dated November 24, 1982, whereby he, inter alia, directed that the members of the Srivastava group do transfer their shareholding in the first respondent company to the Chitnis group, on the Chitnis group paying to the Srivastava group a sum of Rs. 11.68 lakhs. The said award was filed in this court. Sudha Srivastava (i.e., the second respondent herein) (belonging to the Srivastava group) thereupon filed a petition, being Petition No. 68 of 1983 in this court, inter alia, challenging the said award. The petition has been accepted and presently adjourned for recording of evidence. Pending these proceedings, one

Kumar Amit being respondent No. 3 (in this judge's summons filed a petition on this court being Petition No. 269 of 1983 under ss. 397 and 398 of the Companies Act, inter alia, against the Chitnis and the Srivastava group. This petition was resisted principally by the Chitnis group and the locus of the said Kumar Amit to file the said petition was challenged. What seems to have transpired is that the said Kumar Amit had about 1,200 shares of the first respondent company in his name. However, at the hearing of the said petition, it turned out that out of the said 1,200 shares, 600 shares were transferred to the name of one or the other member belonging to the Chitnis group, and the other 600 shares were transferred to one or the other member belonging to the Srivastava group. Therefore, the record of the company did not show any shares standing in the name of Kumar Amit. Kumar Amit took up the position that a fraud had been practised on him and that he was still the owner of the said shares. Be that as it may, it appears that in view of the fact that the company's record did not reflect the name of Kumar Amit as a shareholder, it came to be held that Kumar Amit had no locus standi to file the said petition, and Kumar Amit came to be non- suited.

3. It is thereafter that Sudha Srivastava (one of the members of the Srivastava group) filed this petition being petition No. 577 of 1983 under ss. 397 and 398 of the Companies Act. The "Chitnis group", on their part, have taken out the present judge's summons for the reliefs mentioned in paragraph I above.

4. When this judge's summons reached hearing, Mr. Zaiwalla, the learned counsel for the applicants (i.e., "the Chitnis group "), moved an amendment to the effect that the proceedings in the company petition should be stayed not only in view of s. 34 of the Arbitration Act but should be stayed in view of the provisions of s. 10, read with ss. 141 and 151,, CPC 1908. The amendment has been allowed.

5. Mr. Zaiwalla, the learned counsel for the applicants (i.e., the Chitnis group) next narrated the facts leading up to this judge's summons, and contended that, admittedly, there were differences and disputes between the two groups. That these disputes were referred to the arbitration of one Bal Thackeray. That the arbitrator had made an award under which the "Srivastava group" has to sell their shares to the "Chitnis group" for a sum of Rs. 11.68 lakhs. That this award is in fact a final adjudication of a court of the parties' own choice and would be final and binding on the parties. That it cannot be said that the award is just waste-paper. On the other hand, as observed by the Supreme Court in the case of Satish Kumar and Others Vs. Surinder Kumar and Others, , an award which is made is entitled to that respect which is due to the judgment of a court of last resort. That it does create rights in property although those rights may not be enforceable until the award is made a decree of the court. Mr. Zaiwalla argued that there are now in fact two proceedings before this court (a) petition filed by Sudha Srivastava (of the Srivastava group) challenging the said award, and (b) this Petition No. 577 of 1983 filed under ss. 397 and 398 of the Companies Act.

That it may transpire the challenge to the award may fail and the award is upheld. That if this petition is proceeded with, the court may arrive at a different conclusion in so far as the shares are concerned. In other words, there was a possibility of there being conflicting decisions on the same subject. That in view of this, it would only be fit and proper to stay this petition and the proceedings therein, more particularly, in view of the provisions of s. 10 read with ss. 141 and/or s. 151 of the CPC. Mr. Zaiwalla, however, conceded that s. 34 of the Indian Arbitration Act would be of no relevance whatsoever in so far as this matter was concerned.

6. Mr. Bhatt, the learned counsel for respondent No. 2, stated that in view of Mr. Zaiwalla's statement pertaining to s. 34 of the Indian Arbitration Act, he did not wish to make any submission in so far as that section was concerned. That Mr. Zaiwalla had, however, pressed into service the provision of s. 10 read with s. 141, and s. 151, CPC. That s. 10, CPC, dealt with stay of suits, pending in court of competent jurisdiction, and admittedly there were no such pending suits. In view of this, no question of stay of these proceedings under s. 10 read with s. 141, CPC, could arise.

7. Mr. Bhatt next argued that Mr. Zaiwalla had, however, contended that the stay should be granted by the court in its exercise of powers under s. 151, CPC. That it would hence be necessary to consider the scope of the powers of the court under ss. 397, 398 and 402 of the Companies Act, and in this context look at the observations made in the case of *Bennet Coleman and Co. Vs. Union of India and Others*, That, in that case, the court held, ss. 397, 398 and 402 deal with emergent situations or extraordinary circumstances where the normal corporate management had failed and had run into oppression or : mismanagement and steps were required to be taken to prevent oppression and/or mismanagement in the conduct of the affairs of the company. That the powers of the court under ss. 397, 398 and 402 could not be read as being subject to the other provisions contained in sections dealing with usual corporate management of a company in normal circumstances. That the topic or subjects dealt with ss. 397 and 398 were such that it would be impossible to read any such restriction or limitation on the powers of the court acting under s. 402. That under cl. (a) of s. 402, the court's order may provide for a regulation of the conduct of the company's affairs in future and under cl (g), the court's order may provide for any other matter for which in the opinion of the court it was just and equitable that provision should be made. That an examination of the said sections brings out two aspects : first, the very wide nature of the power conferred on the court, and, secondly, the object that is sought to be achieved by the exercise of such power, with the result that the only limitation that could be impliedly read on the exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by those sections, and that beyond this limitation which arises by necessary implication, it would be difficult even to read any other restriction or limitation on the exercise of the court's power. That ss. 397 and 398 were not only to avoid winding up of the company if

possible and to keep it going, but at the same time was to relieve the minority shareholders from acts of oppression and mismanagement but preventing its affairs being conducted in a manner prejudicial to public interest, and if that be the objective, the court would have power to interfere with the normal corporate management which may take the form of appointing of an administrator or a special officer or a committee of advisers, etc., who would be in charge of the affairs of the company. The court could even have a truncated form of corporate management if the exigencies of the case required it, and any truncated form of corporate management can never conform to all the provisions dealing with corporate management. Therefore, it was clear that while acting under s. 398 read with s. 402 of the Companies Act, the court had ample jurisdiction and very wide powers to pass such orders and give such direction as it thought fit to achieve the object.

8. Mr. Bhatt argued that if such be the powers that the court is vested with by reason of the said three sections, it would be inconceivable that any such powers can be enjoined on any arbitrator or that an arbitrator can exercise the same. That it must, therefore follow that matters which fall within the purview of ss. 397 and 398 cannot be left to arbitration, and even if they are arbitrated upon, such arbitration would be of no consequence, and in any event, cannot fetter the said powers of the court. That in view of this, the question of granting of a stay of these proceedings cannot arise.

9. Mr. Bhatt further contended that even if the articles of association provided that the disputes and differences pertaining to the mismanagement or oppression be referred to arbitration, even then, a shareholder would have a right to file a petition under ss. 397 and 398, provided of course, the provisions of s. 399 were satisfied and the jurisdiction of the court would not be debarred. That a court will not stay a petition filed under ss. 397 and 398 based on an arbitration clause. In support of this contention, Mr. Bhatt relied upon the decision in *Surendra Kumar Dhawan v. R. Vir* [1977] 47 Comp Cas 276 (DelHI). In the said case, it was held that the shareholders of a company had a right to file a petition under s. 397 or s. 398 of the Companies Act, 1956, for relief against mismanagement or oppression, if the provisions of s. 399 were satisfied. That any article providing that a difference between the company and its director or between the directors themselves or between any members of the company and any person shall be referred to arbitration cannot debar the jurisdiction of the court in the matter of a petition under s. 397 or s. 398. That the court will not stay a petition under s. 397 on an application under s. 34 of the Arbitration Act, 1940, based on the arbitration clause. Mr. Bhatt submitted that in this matter, an award had come to be filed, but the principle would be no different, and the petitioner would be entitled to no relief on this judge's summons.

10. Mr. Bhatt next invited attention to the ruling in the case of *O.P. Gupta Vs. Sfflv General Finance (P) Ltd. and Others*, . In that case, it was observed that merely because there is an article in the in the articles of association of the

company to the effect that any dispute between the company on the one hand and its members on the other will be referred to arbitration, the court will not stay a petition under s. 397 or 398 of the Companies Act, 1956, for relief against mismanagement of or oppression in the affairs of a company. That such an article could not be called into play for the purpose of staying proceedings under s. 397 or s. 398. The provision of ss. 397 and 398 and of s. 434 gave exclusive jurisdiction to the court and the matters dealt with thereby cannot be referred to arbitration. It was further held that no arbitrator could possibly give relief to the petitioner under ss. 397 and 398 or pass any order under s. 402 or s. 403. Mr. Bhatt submitted that in view of this also, the applicants would be disentitled to relief.

11. Mr. Bhatt submitted that looking to the very wide powers of the court, and in view of the ratio of the aforementioned decisions, the question of exercising powers under s. 151 by this court on this judge's summons cannot arise.

12. Mr. Doctor, the learned counsel for respondent No. 3 argued that respondent No. 3 herein was the person who had filed a petition being Petition No. 269 of 1983. That in the said petition, it was held that respondent No. 3 had no locus standi, and by reason of this, the petition had failed. But in so far as the present judge's summons is concerned, the position is wholly different. Admittedly, respondent No. 3 is a technical director of the company. His services are sought to be terminated. In other words, his rights are directly being affected. That in fact, he has been made a party-respondent to the main petition and, therefore, the question of his (i.e., respondent No. 3) having no locus standi in so far as this application is concerned cannot arise.

13. Mr. Doctor urged that coming to the subject-matter of this judge's summons, it is true that there are two proceedings, one being a petition for the setting aside of the award filed by the second respondent herein and the other being Petition No. 577 of 1983, but the subject-matter of both these proceedings were different. In the petition for setting aside the award, what was impeached was an award, and to consider whether the said award was liable to be set aside, the court had to arrive at one or the other conclusions set out in s. 30 of the Indian Arbitration Act. The said section provides as follows :

"30. An award shall not be set aside except on one or more of the following grounds, namely : (a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the court superseding the arbitration or after arbitration or proceedings have become invalid u/s 35;

(c) that an award has been improperly procured or is otherwise invalid."

14. That the said section made it clear that what the court was primarily concerned in the said proceedings was the conduct of the arbitrator, and not the

conduct of the shareholders of the company. That in so far as this petition under ss. 397 and 398 was concerned, the court was primarily concerned with the conduct of the shareholders. That the subject-matter of both the proceedings were wholly different and the question of granting a stay on this judge's summons cannot arise.

15. Now, considering the rival contentions, it may be stated that admittedly there has been an award. As regards the effect of such an award is concerned, the Supreme Court has, in the case of Satish Kumar and Others Vs. Surinder Kumar and Others, , referred to the decision in the case of Bhajahari Saha Banikya V. Behari Lal Basak ILR [1906] Cal 881 , wherein it was observed as follows :

"The award is in fact a final adjudication by a court of the parties' own choice, and until impeached upon sufficient grounds in an appropriate proceeding, an award, which is on the face of it regular, is conclusive upon the merits of the controversy submitted, unless possibly the parties have intended that the award shall not be final and conclusive."

16. In this case, it is an admitted position that the award has been impeached and it is not urged by the applicants that this impeachment is not on sufficient ground, and not in an appropriate proceeding. This must detract from Mr. Zaiwalla's argument as to the effect of the said award. Then again, considering the ratios laid down in the cases cited by Mr. Bhatt, it is abundantly clear that merely because there is an arbitration clause or an arbitration proceeding, or for that matter an award, the court's jurisdiction under ss. 397 and 398 cannot stand fettered. On the other hand, courts have gone to the length to hold that the matter which can form the subject-matter of a petition under ss. 397 and 398 cannot be the subject-matter of an arbitration, for an arbitrator can have no powers such as are conferred on the court, such as s. 402 of the Companies Act. Furthermore, as pointed out by Mr. Doctor, the scope of the two enquiries, namely, that of the petition for setting aside the award, and this petition (No. 577 of 1983) under ss. 397 and 398 are wholly different. In view of all this, s. 10, CPC, read with s. 141 can have no application whatsoever, nor can, in view of the above discussion, the question of exercising powers under s. 151 arise.

17. In the result, the company application fails. The same is dismissed. The costs of the company application will be costs in the cause.