

(2001) 03 MP CK 0047
In the Madhya Pradesh High Court
Case No : Civil Revision No. 877 of 2000

Midex Overseas Ltd.

APPELLANT

Vs

M/s Dewas Soya Ltd. and another

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34(1), 34(2), 34(4)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2001) 3 MPHT 140 : (2001) 2 MPLJ 391

Hon'ble Judges : Subhash Balwant Sakrikar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.B. Sakrikar, J.

The applicant/objector has directed this revision against order dated 26-8-2000 passed by the learned 3rd Addl. District Judge, Indore in M.J.C. 30/99, thereby allowing the application filed on behalf of the non-applicant No. 1 u/s 34(4) of the Arbitration & Conciliation Act, 1996 (for short the Act of 1996).

Briefly stated the facts of the case are-

That on the application of the non-applicant No. 1 under an Agreement of Arbitration between the present applicant and non-applicant No. 1, the non-applicant No. 2, Arbitral Tribunal has passed award dated 1-5-99, in connection with the dispute arose between the parties. On 15-7-99, the applicant/objector filed objections u/s 34(1) and (2) of the Act of 1996 and prayed for setting aside of the award dated 1-5-99 passed by the Arbitral Tribunal. On filing of the objections the non-applicant No. 1 filed an application u/s 34(4) of the Act of 1996, praying for adjournment of the proceedings pending before the Trial Court for a period determined by the Court in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other actions as in the opinion of the Arbitral Tribunal to eliminate the grounds stated in the

application for setting aside the arbitral award. The aforesaid application filed on behalf of non-applicant was opposed on behalf of the applicant by filing a written reply stating therein that, the non-applicant No. 1 could not be allowed to fill up lacuna, apparent in the award taking advantage of the provisions of Section 34(4) of the Act of 1996. It is also stated that in view of the grounds raised by the applicant in its application u/s 34(1) & (2) of the Act of 1996, it is not proper to resume the arbitral proceeding; as the applicant has challenged the jurisdiction of the Arbitral Tribunal to pass the award, as also on the ground of committing misconduct by the said arbitrators in passing the award. Learned Trial Court by the impugned order allowed the application filed on behalf of the non-applicant No. 1 u/s 34(4) of the Act of 1996, and resumed the arbitral proceeding to the arbitrators for taking appropriate steps with regard to the objections raised in the original application to eliminate the grounds raised for setting aside the award till 28-12-2000. Aggrieved the applicant, has filed this revision.

On consent of the learned counsel for the parties, this revision petition was heard on merits at the stage of admission. I have heard Shri A.M. Mathur, learned senior counsel with Shri Satpalsingh for the petitioner and Shri G.M. Chaphekar, learned senior counsel with Shri R. Thanewala for the non- applicant No. 1. Learned counsel for the petitioner contended that as the applicants have made serious allegation of misconduct against the arbitrators and also challenged their appointment and jurisdiction, as such the case should not have been remanded to the arbitrators for filling up the lacuna. The counsel submitted that the objections raised on behalf of the applicant were incapable of elimination by the non-applicant No. 2, arbitrators. Learned counsel also contended that in the application filed on behalf of the non-applicant No. 1, a prayer for resuming the arbitral proceedings was made only with regard to the grounds mentioned in Para 2 of the application; but the learned Trial Court gave opportunity to the Arbitral Tribunal to resume the arbitral proceedings on all the grounds raised on behalf of the applicant in his original objection application. In view of the aforesaid facts the order impugned of the Trial Court is illegal and contrary to the provisions of Section 34(4) of the Act of 1996 and deserves to be set aside.

As against this, learned counsel for the non-applicant No. 1 submitted that when an application for setting aside an award is received by the Court and on the request made by the party to resume the arbitral proceedings or take such other action, as in its opinion will eliminate the grounds for setting aside the award, the Court is competent to resume the arbitral proceedings to the arbitrators for taking appropriate steps for eliminating the grounds raised u/s 34(1)(2) of the Act of 1996 for setting aside the award. Learned counsel submitted that the case was remanded to the Arbitral Tribunal only for resuming the award on the grounds mentioned in the application filed on behalf of the non-applicant and the order is only restricted for the grounds raised by the non-applicant. The order impugned can not be considered to be contrary to provisions of Section 34(4) of the Act of 1996 or without jurisdiction as such, the order impugned requires no

interference in view of provisions of Section 115 of C.P.C.

I have considered the rival submissions of the learned counsel for the parties and perused the record as also the provisions of Section 34 of the Act of 1996. On perusal it emerged that when an application for setting aside an award is received by the Court on behalf of any of the parties to the arbitration u/s 34(1) of the Act of 1996 and if on the request of any party the Court considers it appropriate to adjourn the proceedings for a period to be fixed by the Court in order to give Arbitral Tribunal an opportunity to resume arbitral proceedings or to take such actions as in its opinion will eliminate the grounds for setting aside the award, the Court is competent to pass an order u/s 34(4) of the Act of 1996. In the instant case, in the application filed on behalf of the non-applicant No. 1, an opportunity to resume the arbitral proceedings was prayed on the following objections raised on behalf of the applicant in his application filed u/s 34(1) of the Act of 1996:

- (a) The arbitrators failed to examine the broker and sort out his evidence thus depriving the objector of the valuable evidence during the arbitral proceedings.
- (b) The arbitrators did not examine the broker Mr. Atul Mundhra or permit him to be cross-examined in respect of terms of the contracts and signature of the parties.
- (c) That the award is not duly stamped.

In my considered opinion the grounds mentioned in the application of the non-applicant for resuming the arbitral proceedings, does not appear to be connected with the misconduct of the arbitrators or with regard to the jurisdiction of the arbitrators raised on behalf of the applicant for setting aside the arbitral award in dispute; as such I do not find any illegality or any jurisdictional error committed by the Trial Court in passing the impugned order on the application filed on behalf of the non-applicant No. 1 u/s 34(4) of the Act of 1996. I do not find any scope of interference in the order impugned of the Trial Court exercising jurisdiction u/s 115 of the CPC. However, I consider it necessary to make it clear, that the order impugned giving opportunity to the Arbitral Tribunal to resume arbitral proceedings u/s 34(4) of the Act of 1996, is only restricted for the grounds as mentioned by the non-applicant No. 1 in its application filed u/s 34(4) of the Act of 1996.

Consequently, this revision petition being devoid of any merit and substance, is accordingly dismissed without any order as to costs.

Civil Revision dismissed.