

(1993) 02 BOM CK 0101

In the Bombay High Court

Case No : Chamber Summons No. 293 of 1992 in Arbitration Petition No. 16 of 1989 and 183 and 201 of 1991 in A.P. No. 16 of 1989 in A.P. No. 197 of 1989

Mrs. Suruchi Chand and Others

APPELLANT

Vs

Dr. Naresh Chand and Others

RESPONDENT

Date of Decision : 12-02-1993

Acts Referred:

Arbitration Act, 1940 — Section 41

Citation : (1993) 2 BomCR 641 : (1993) 95 BOMLR 575

Hon'ble Judges : S.M. Jhunjhunwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.M. Jhunjhunwala, J.—Since parties to the above proceedings are common and the proceedings involve common facts and common points of law, the same are being disposed off by a common order.

2. One Ramesh Chand (since deceased), Dr. Naresh Chand and Mahesh Chand have been real brothers. Ramesh Chand died in a car accident at the age of 47 years on 18th December, 1986. Mrs. Suruchi Chand is the widow of the said Ramesh Chand. Ms. Saloni Chand and Ms. Shivani Chand are the daughters of the said Ramesh Chand. The said Suruchi Chand, Saloni Chand and Shivani Chand are the petitioners in Arbitration Petition No. 16 of the 1989 filed in this Court. The said Suruchi Chand, Saloni Chand and Shivani Chand are hereinafter collectively referred to as "the petitioners". Mahesh Chand is 5th respondent in the said Arbitration Petition No. 16 of 1989 and Dr. Naresh Chand is the 1st respondent in the said Arbitration Petition No. 16 of 1989. Respondent Nos. 2, 3 and 4 in the said Arbitration Petition No. 16 of 1989 form one group along with the said Dr. Naresh Chand and are hereinafter jointly referred to as "Naresh Chand Group". Respondent Nos. 6 to 21 in the said Arbitration Petition No. 16 of 1989 are the children of 5th respondent and they along with the said Mahesh

Chand form one group, hereinafter jointly referred to as "Mahesh Chand Group". The petitioners form one group, which is hereinafter Jointly referred to as "Ramesh Chand Group". Respondent Nos. 22 to 31 to the said Arbitration Petition No. 16 of 1989 are various private limited companies whose businesses till 18th December, 1986 were carried on by one or more of the members of the said three groups. The said three groups also had controlling interest in Western India Glass Works Ltd. (hereinafter) referred to as "WIG). The said Ramesh Chand Group had 28% share in the business of the said WIG. There are other immovable properties in which the said Ramesh Chand Group has an interest.

3. After the demise of the said Ramesh Chand, disputes arose between the said Ramesh Chand Group on the one hand and the said Naresh Chand Group and Mahesh Chand Group on the other hand in relation to the businesses as also in relation to 28% share of the said Ramesh Chand Group in the business of the said WIG and the said Ramesh Chand Group had filed a company petition in this Court being Company Petition No, 49 of 1988 for winding up of the Mahalakshmi Glass Works Pvt, Ltd, who is respondent No. 22 in the said Arbitration Petition No, 16 of 1989. In order to preserve family peace and harmony and to resolve all disputes and differences between the said three groups and to avoid future disputes, the said three groups arrived at a family arrangement whereby the said Ramesh Chand Group agreed to go out of the businesses jointly carried and sever its connection with the businesses, companies, firms, association of persons and the said WIG and further agreed to receive the value of its 1/3rd share therein including in the Immovable property situate at Hyderabad as also of its interest to the extent of 28% in the business of the said WIG. Since the said three groups were unable to agree upon the value of shares of the said Ramesh Chand Group as also to the mode, manner and time of payment thereof and also as to whether the payment thereof was to be made with or without interest, the parties constituting the said groups including the said limited companies agreed to refer the same to arbitration as per the arbitration agreement arrived amongst them which has been incorporated in the said Family Arrangement executed on 3rd January, 1989. As provided in the said Family Arrangement and in pursuance thereof, an Arbitration Suit No. 197 of 1989 was filed by the petitioners in this Court for filing the said arbitration agreement in this Court and for an order of reference of the disputes and differences between the parties thereto "to arbitration. On 31st January, 1989, a decree in that suit was passed by this Court and the said arbitration agreement was ordered to be filed in this Court and the order of reference to arbitration was made by this Court.

4. The petitioners had filed an Arbitration Petition No. 16 of 1989 in this Court to secure payment of the amounts payable to the petitioners under the said Family Arrangement dated 3rd January, 1989 as also for enforcement of the covenants contained therein by having necessary orders passed therein. On 31st January, 1989 consent terms were arrived at between the parties to the said Arbitration Petition No. 16 of 1989 and order in terms of the said consent terms which were

filed in this Court in the proceedings of the said Arbitration Petition No. 16 of 1989 was passed by this Court on 31st January, 1989. The said consent terms were certified to be in the interest of and for the benefit of the minor respondents in the said Arbitration Petition No. 16 of 1989. Since the said order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989 was executed only partly, the petitioners took out the aforesaid Chamber Summons No. 293 of 1992 for enforcement of the said consent order dated 31st January, 1989. The said Mahesh Chand has filed the aforesaid Arbitration Petition No. 183 of 1991 to restrain the petitioners from receiving any payment from the respondents under the said consent order dated 31st January, 1989. The said Naresh Chand Group along with the said limited companies being respondents Nos. 22 to 31 in the said Arbitration Petition No. 16 of 1989 have filed the aforesaid Arbitration Petition No. 201 of 1991 against the said Ramesh Chand Group and the said Mahesh Chand Group including one Jamunabai (since deceased) for restraining the said Ramesh Chand Group from recovering from the said Naresh Chand Group as also from the said limited companies any amount under the said consent order dated 31st January 1989. Virtually both the said Arbitration Petitions, viz., Arbitration Petition No. 183 of 1991 and Arbitration Petition No. 201 of 1991 are counterparts of the aforesaid Chamber Summons No. 293 of 1992. This position that the said Arbitration Petition No. 183 of 1991 and Arbitration Petition No. 201 of 1991 are counterparts of the said Chamber Summons No. 293 of 1992 is accepted by Mrs. Nanavati, the learned Counsel appearing for the petitioners in Arbitration Petition No. 183 of 1991 as also by Mr. Zaiwalla, the learned Counsel appearing for the petitioners in Arbitration Petition No. 201 of 1991.

5. It is an admitted position that the amounts payable to the petitioners under the said consent order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989 have not been fully paid to the petitioners. However, the main contention raised on behalf of the said Mahesh Chand Group, the said Naresh Chand Group and the said companies in support of their denial of their obligations to make payments to the petitioners under the said consent order dated 31st January, 1989 is that by reason of the order passed by the Supreme Court on 11 th July, 1991 in SLPs Nos. 8469 of 1991, 8941 of 1991 and 10958 of 1991, the said consent order dated 31st January, 1989 has stood vacated and consequently the petitioners are not entitled to the payments therein. Hence, the question which arises for consideration is as to whether the said consent order dated 31 st January, 1989 passed by this Court in the said Arbitration Petition No, 16 of 1989 was an interlocutory order and as such has stood vacated by reason of the said order dated 11th July, 1991 passed by the Supreme Court in SLPs Nos. 8469 of 1991, 8941 of 1991 and 10958 of 1991.

6. After the said arbitration agreement was ordered to be filed in this Court in the said Arbitration Suit No. 197 of 1989, the learned learned Arbitrators entered upon the reference and proceeded with the arbitration. Since the time to make the award expired, the petitioners filed Arbitration Petition No. 200 of, 1989 in

this Court seeking extension of time for the learned Arbitrators to make the award. In that petition, an order was passed by this Court on 27th August, 1990 and the time to make the award was extended. Being aggrieved by the said order the said Jamunabai filed an appeal being Appeal No. 1061 of 1990 and the said Dr. Naresh Chand also filed an appeal being Appeal No. 1062 of 1990 in this Court. Both these appeals were admitted. Notices of Motion were taken out in the said Appeals for stay of the operation of the said order passed on 27th August, 1990 and ad-interim reliefs were granted therein. However, the Division Bench of this Court by its order dated 13th March, 1991 vacated the orders granting ad-interim reliefs in the said Notices of Motion. Aggrieved therefrom, the- said Jamunabai riled SLP No. 10958 of 1991 and the said Dr. Mahesh Chand riled SLP No. 8941 of 1991 in the Supreme Court After the ad-interim reliefs granted in the said Notices of Motion was vacated by the Division Bench of this Court on 13th March, 1991, the said Mahesh Chand filed a suit in the Civil Court at Hyderabad on 1st April, 1991. The petitioners took out a Contempt Notice of Motion being Notice of Motion No. 861 of 1991 in the said Appeal No. 1061 of 1991 and ex parte interim reliefs therein was granted by the Division Bench of this Court on 11th April, 1991. The said Mahesh Chand filed SLP bearing No. 8469 of 1991 against the said ex-parte ad-interim order in the Supreme Court and in these circumstances, the Supreme Court was seized of the said SLPs bearing Nos. 8469 of 1991, 8941 of 1991 and 10958 of 1991. On 11th July, 1991, the Supreme Court, inter alia passed the following order in the said SLPs.

We have heard the learned Counsel for the parties. In view of the facts and circumstances of these cases we are of the opinion that they should be transferred to the Original Side of the Bombay High Court and all the interlocutory matters in which orders have been passed by the Court/Courts should be re-heard and decided afresh by the Bombay High Court. Accordingly, we direct that :

(I) Suit No. 277 of 1991 and all proceedings therein including IA 393 of 1991 pending in the Court of Vth Additional Judge, City Civil Court, Hyderabad, are transferred to Bombay High Court (Original Side) :

(II) Suit No. 1928 of 1991 and all proceedings therein including IA 391 of 1991 pending in the Court of IIIrd Asstt. Judge, City Civil Court, Hyderabad, are transferred to Bombay High Court (Original Side);

(III) With a view to facilitate the hearing or the re-hearing as the case may be of all the interlocutory matters unhindered by the earlier orders, we grant leave in Special Leave Petitions 8468 of 1991, 8941 of 1991 and 10958 of 1991 and without examining the merits of the rival contentions of the parties before us we set aside all the interlocutory orders passed in the different cases either by the Hyderabad Court or Bombay High Court. As a result the Appeals Nos. 1061 of 1990 and 1062 of 1990 as also Appeal Nos. 10461 MM 2581 of 1990 against order dated 11-4-1991 stand allowed.

(IV) It is clarified that none of the orders passed by any of the Courts disposing of interlocutory matters shall be treated to have become final and it will be open to the parties to re-agitate their respective points of view which will be decided by the Bombay High Court (Original Side) on their merits. The parties will be also at liberty to make further interlocutory applications, xxx xxx xxx...

7. It is evident from the said order passed by the Supreme Court that the said consent order dated 31st January, 1989 passed by this Court in the said Arbitration Petition No. 16 of 1989 was not in consideration before the Supreme Court at the time when the said order dated 11th July, 1991 was passed by the Supreme Court. As mentioned by the Supreme Court in Clause III of its said order, the Supreme Court granted leave in the said SLPs and without examining the merits of the rival contentions of the parties before the Supreme Court, it set aside all the interlocutory orders passed in different cases either by the Hyderabad Court/s or this Court and consequently the said Appeals filed in this Court stood allowed. The interlocutory orders passed in the different cases either by the Hyderabad Court/s or this Court which were under challenge before the Supreme Court did not include the said consent order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989. The Supreme Court had by its said order dated 11th July, 1991 set aside all the interlocutory orders which were passed in different cases by the Hyderabad Courts and this Court which were under challenge before the Supreme Court and consequently thereupon the Appeals mentioned in the said Clause III of the said order stood allowed. The said consent order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989 being the final order passed in the said Arbitration Petition No. 16 of 1989 was not an interlocutory order and as such was not set aside by the said order dated 11th July, 1991 passed by the Supreme Court. The parties to the said Arbitration Petition No. 16 of 1989 had accordingly understood the said order dated 11th July, 1991 passed by the Supreme Court and as borne out from their subsequent conduct, they accepted the position that the said consent order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989 was not set aside by the Supreme Court. Subsequent to the said order dated 11th July, 1991 passed by the Supreme Court, three payments of Rs. 50,000/- each payable under the said consent order dated 31st January, 1989 were made to the petitioners by cheques drawn by Kohinoor Glass Factory Pvt. Ltd., the 29th respondent in Arbitration Petition No. 16 of 1989 wherein the said Mahesh Chand and the said Dr. Naresh Chand are the only Directors. The said payments were made on 13th July, 1991, 14th August, 1991 and 14th September, 1991 in respect of amounts payable to the petitioners for the months of July, August and September, 1991. The said consent order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989 was not coterminous with the award of the Arbitrators in the arbitration reference pending before them. The said consent order dated 31st January, 1989 was passed to work out the rights and liabilities and/or obligations under the said Family Arrangement dated 3rd January, 1989 and as such was not an interlocutory order so as to be

adversely affected by the said order dated 11th July, 1991 passed by the Supreme Court. The embargo against disposal of the assets by the respondents in the said Arbitration Petition No. 16 of 1989 continues even after making of the award in the arbitration reference. Merely because a reference to Section 41(b) of the Arbitration Act, 1940 has been made in the title of the said Arbitration Petition No. 16 of 1989, the said Arbitration Petition had not become an interlocutory or interim petition. Title of the said petition did not ipso facto make it as interlocutory or interim one. Sub-clause (b) of Section 41 of the Arbitration Act, 1940 invest the Court with powers relating to the matters mentioned in paragraphs 1 to 5 of the Second Schedule to the said Act. The Court is to exercise such powers with reference to these matters as it has for the purpose of, and in relation to, any proceeding before the Court. The powers which the Court can exercise in relation to matters mentioned in paragraphs 1 to 5 of the Second Schedule to the said Act do not relate only to interlocutory reliefs.

8. In the facts and circumstances of the case I hold that the said consent order dated 31st January, 1989 passed in the said Arbitration Petition No. 16 of 1989 was a final order and not an interlocutory order and as such the said order was not set aside by the order dated 11th July, 1991 passed by the Supreme Court. I further hold that the said consent order dated 31st January, 1989 is binding on the parties and since the petitioners are denied their rights thereunder, the petitioners are entitled to the reliefs claimed in the Chamber Summons. " Hence, the Chamber Summons is made absolute in terms of prayers (a) and (b).

In view of the aforesaid order in the Chamber Summons No. 293 of 1992, both the Arbitration Petition No, 183 of 1991 and Arbitration Petition No. 201 of 1991 are dismissed.

In the circumstances of the case there shall however be no order as to costs.

The learned Counsel appearing for the contesting respondents apply for stay of the operation of the order passed in Chamber Summons No. 293 of 1992.

Application rejected.