

(2000) 09 DEL CK 0135

In the Delhi High Court

Case No : FAO (OS) 250 of 2000 and CM 1197 of 2000

Niko Resources Limited

APPELLANT

Vs

Gujarat State Petroleum Corp.

RESPONDENT

Date of Decision : 06-09-2000

Acts Referred:

Delhi High Court Act, 1966 — Section 10

Citation : (2000) 55 DRJ 654

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : P. Chidambaram and Rajiv Nayar and Sachin Datta, for the Appellant; Mukul Rohatgi, Senior Advocate, Meenakshi Arora and Prabhjit Jauhar, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The appellant presented an application u/s 9 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") in this Court praying for interim measure of protection. The said application came up before learned single Judge on 4.6.2000. While issuing notice to the respondents for 7.8.2000 on the prayer of the appellant, a limited ex pane ad interim order was passed directing that "any decision taken by the respondent will be subject to further orders of this Court. In the meantime, if the peeling becomes operational, the respondents shall keep accounts of the steps and revenue taken by them." Pursuant to the dusty notice issued, the respondent put in appearance through counsel on 7.8.2000. Time, as prayed, was allowed to file reply, which was to be filed within ten days. Three days" time was allowed to file rejoinder. Learned Single Judge, Keeping in view the facts and circumstances, made an observation that in the meanwhile, it will be in the interest of the parties to sit together and explore the possibility of commissioning and operating the pipeline. The case was directed to be taken up on 24.8.2000.

2. On 24.8.2000 when the petition came up before learned Single Judge, it was

noticed that because of delay on the part of the appellant in filing appeal, rejoinder was not filed by the appellant. While granting time to the appellant to file rejoinder, hearing of the application was postponed to 18.9.2000.

3. The appellant's version is that the Senior counsel appearing on behalf of the appellant had on 7.8.2000 strenuously pressed for orders to the effect that the appellant should be allowed to commission and operate the pipeline and that no third party rights should be created in respect of the pipeline. It is the appellant's version that as regards commissioning and operation of the pipeline, learned Single Judge observed that the parties may sit together and expire the possibility of commissioning and operating the pipeline, but as regards creation of third party rights, no specific order was passed by the Court in view of the learned Senior counsel appearing on behalf of the respondent having made a statement to the effect that no further action or steps will be taken and that status quo will be maintained. The said statement was not recorded in view of the specific request made by learned Senior counsel appearing for the respondent. There is a serious dispute as regards the circumstances under which the alleged statement appears to have been made, but that will not make any difference in so far as the instant appeal is concerned.

4. It is urged on behalf of the appellant, that pursuant to the observations of the Courts, a proposal was made by the appellant in its letter dated 7.8.2000, which was rejected by the respondent through its letter dated 8.8.2000. When on 24.8.2000 the case came up before the Court, learned Senior counsel appearing for the respondent pointed out that he would not like to continue with the statement made on the previous date by learned senior counsel appearing for the respondent. It is submitted that in view of the withdrawal of statement, it was prayed on behalf of the appellant that till the next date, further interim order be passed to the extent that third party rights be not created in the assets in question. Such prayer was not granted by learned Single Judge. Appellant feeling aggrieved against the said order has preferred this appeal.

5. The order dated 24.8.2000 reads as under:-

"Reply in this case has been filed on 22nd August, 2000, though copy was served upon the petitioner on 21st August, 2000. Mr.Chidambaram requests for time to file rejoinder. Let rejoinder be filed within one week.

Mr. Rohtagi states that as per his information some statement was made by Mr. Venugopal on the last date of hearing but he is not in a position to maintain that statement any further. Mr. Ghidambaram states that as the matter is urgent, he will like to address arguments on the application for injunction and states that till such time arguments are heard, the respondents should be restrained from creating third party rights.

It is already 3.55 PM and I am in the midst of hearing arguments in three part-heard matters and it may, Therefore, be not possible for me to hear arguments in this case today. In the facts to this I am also not inclined to grant any order of

restraint at this stage.

List this case again on 18th September, 2000 for arguments. DASTI."

6. A preliminary objection has been raised by learned counsel for the respondent about maintainability of the appeal on the ground that it is neither an order granting nor an order refusing to grant any measure u/s 9 of the Act, Therefore, the same is not appealable u/s 37 of the Act. This order is also not appealable either u/s 10 of Delhi High Courts Act or under Clause 10 of the Letters Patent.

7. We heard learned counsel for the parties both on the maintainability of the appeal and on merits, but we will first try to deal with the question of maintainability of the appeal. Briefly, the facts as stated by the appellant are that on 23.9.1994 pursuant to the bid invited by Government for development of petroleum resources in the contract area defined as Hazira Gas Field, a Production Sharing Contract was made between Government of India on the one hand and Gujarat State Petroleum Corporation Limited (GSPC)-the respondent and M/s.Niko Resources-appellant on the other hand. The appellant and respondent collectively are designated as contractor under the contract. Pursuant to the said Production Sharing Contract, the appellant and the respondent entered into a joint operating agreement to define their respective rights and obligations with respect to the operations to be conducted under the Production Sharing Contract. This agreement was signed on 5.12.1994 and the provisions thereof relate to conduct of joint operations, functions and duties of the operator, the manner of conducting and effecting operation programmes. Appellant has been appointed as the sole operator for operation of the contract. Appellant states that against the action on the part of the respondent in seeking to unilaterally expropriate and alienate the property and assets in 14 Km, long 36" pipeline from Hazira Gas Field to Village Mora in Gujarat of which appellant is joint owner, the said petition u/s 9 of the Act was filed. It is claimed that the pipeline was built jointly by the appellant and the respondent as part of the development plan of Hazira Gas

8. Filed on the basis of Production Sharing Contract, which is a tripartite contract between the appellant and the respondent on one hand and Government of India on the other hand. The said contract expressly confers upon the appellant the status of an operator. The pipeline project was conceived under a tripartite Production Sharing Contract. In pursuance of the said contract, a Joint Operating Agreement was also entered into under which appellant has got a right of operation. The impugned action of the respondent which is to be adjudicated upon by arbitration, is in complete violation of the express obligations under the Production Sharing Contract and Joint Operating Agreement. Impugned action on the part of the respondent in seeking to defeat the rights of the appellant by transfer of the pipeline to its subsidiary Company known as Gujarat State Petronet Limited is illegal and in violation of contractual provisions and as such, the appellant was entitled to interim measure of protection with a view to preserve the assets so. that if ultimately award is made in favor of the appellant,

the assets are available and for that purpose, application u/s 9 was moved. Part relief was granted ex parte to the appellant. After the respondent put in appearance, a solemn statement was made, but on the next date when inability was expressed by the respondent to continue with the statement, request was made by the appellant to pass appropriate order and as the same has not been passed by learned Single-Judge, it affects valuable rights of the appellant and the same would be appealable in view of ratio of the decision of Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, read with the two decisions of this Court in Nisha Raj and Anr. v. Pratap K. Kaula and Ors., 1995 1 A.D. 533 and Exports Unlimited v. Delhi State Industrial Development Corporation, 1996 (37) DPJ 109. Learned counsel for the respondent on the other hand contends that the impugned order dated 24.8.2000 is simply an order adjourning the hearing of the application for grant of interim measures: It is neither an order granting nor refusing to grant any measure u/s 9 of the Act. As such, it is not appealable. Ex parte order was passed on 4.8.2000 in favor of the appellant. On 24.8.2000, learned Single Judge while adjourning the application, observed that it is not possible to pass any further order of restraint "at this stage". Such an order will not be a "judgment" on the ratio of decision in Shah Babulal Khimji's case (supra).

9. We have considered the submissions made at the Bar. In Shah Babulal Khimji's case (supra), Supreme Court observed that every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments, which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. The trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other. With regard to such orders, Supreme Court said that the same are purely interlocutory and cannot constitute judgment. The Apex Court, however, by way of sample laid down various illustrative examples of an order which may amount to judgment stating that it is not possible to give such an exhaustive list as may cover all possible cases. Law with its dynamism, pragmatism and vastness is such a large ocean that it is well-nigh impossible to envisage or provide for every possible contingency or situation so as to evolve a device or frame an exhaustive formula or strategy to confine and incarcerate the same in a strait-jacket. Whether any order would be covered by the term "judgment" will have to be decided by the Court concerned in the light of tests, observations and principles enunciated.

10. The Supreme Court while adopting and approving generally the tests laid down by Sir White, C J. in the judgment in T.V.Tuljaram Row v. M.K.R.V. Alagappa Chettiar, 35 Mad 1 said that part from the said tests, following consideration must prevail with the Court:-

(1) That the Trial Judge being a senior court with vast-experience of various branches of law occupying a very high status should be trusted to pass

discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the Trial Judge in the cause of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate Court (Division Bench) will be flooded with appeals from all kinds of orders passed by the Trial Judge. The courts must give sufficient allowance to the Trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is *ex facie* legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings." In addition to the above and the tests" laid down by Sir White, C.J., the Supreme Court emphasized that the tests laid down by Sir Couch, C.J. in *Justices of the Peace for Calcutta v. Oriental Gas Co.*, 8 Beng LR 433, as modified by later decisions of Calcutta High Court in *Chandi Charon Saha v. Jnanendra Nath Bhattacharjee*, 29 CLJ 225; *Mathura Sundari Dassi v. Haran Chandra Shaha* AIR 1916 Cal 361; *Shorab Merwanji Modi and Another Vs. Mansata Film Distributors and Another*, and *Mohammed Felumeah Vs. S. Mondal and Others*, , should be also borne in mind.

11. In *Nisha Raj's* case (supra), the appeal was, filed by the plaintiff against an order passed by learned Single Judge only issuing notice to the defendant on an application under Order 39 Rules 1 and 2 C.P.C. filed along with a suit for specific performance of agreement for sale. The question under consideration was whether an appeal lies under Order 43 Rule 1(r) C.P.C. against an order passed under Order 39 Rule 3 C.P.C. directing notice to the defendants and alternatively whether the order of learned Single Judge ordering notice is a judgment within Section 10 of Delhi High Court Act, 1996 and is appealable. Relying upon the decision in *Shah Babulal Khimji's* case (supra), it was held that the order of learned Single Judge ordering notice under Order 39 Rule 1(3) C.P.C. is not a judgment u/s 10 of Delhi High Court Act and hence an appeal against such an order is not maintainable.

12. A Division Bench of this Court in *Exports Unlimited's* case (supra) after referring to the decision in *Shah Babulal Khimji's* case (supra) and a few other decisions, held that an order passed by learned Single Judge, during hearing of a civil suit, granting or refusing leave to deliver interrogatories does not decide any right of the party to the suit, nor does it conclude any stage in the suit or proceedings. Therefore, it does not amount to judgment within the meaning of Section 10(1) of Delhi High Court Act.

13. Considering the facts and circumstances of the case and as noticed above, on the appellant's prayer for *ex parte* interim relief, learned Single Judge while issuing notice did pass an order on 4.8.2000. When the respondent put in appearance, time was allowed to file reply. It appears that on 24.8.2000, the

appellant insisted upon in granting larger interim relief than the one, which had already been granted on 4.8.2000 and which was in operation, but the Court adjourned the appellant's application u/s 9 of the Act for hearing arguments, observing that it was already 3.55 p.m. and he was in the midst of hearing arguments in three other part-heard matters and it may, Therefore, be not possible for him to hear arguments on that day and that in view of the facts, the Court was not inclined to grant any order of restraint "at this stage". Such an order, in our opinion, is an order purely interlocutory and will not constitute and be covered by the expression "judgment", as used in Section 10 of Delhi High Court Act and as held in Shah Babulal Khimji's case (supra). Learned Single Judge took no decision in the matter. The order is simply an order of adjournment saying in express terms that at that stage, he was not inclined to grant any further order of restraint. Consequently, in our opinion, the order will not be appealable u/s 10 of Delhi High Court Act or under Clause 10 of Letters Patent or u/s 37 of the Act.

14. As we have held that the appeal as not maintainable, Therefore, we are not expressing any opinion on the merits of the case. Any observation made by us while disposing of the appeal will not prejudice learned Single Judge in deciding the pending applications on merits, in accordance with law.

15. Dismissed as not maintainable.