
(2015) 02 MP CK 0005
In the Madhya Pradesh High Court
Case No : W.P. No. 8368/2014

PVR (Previously Cinemax India Ltd.) Gurgaon, Haryana	APPELLANT
Vs	
Malik Brothers	RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 11(8), 12, 13
Constitution of India, 1950 — Article 136

Citation : (2015) 2 MPJR 304

Hon'ble Judges : S.C. Sharma, J.

Bench : Single Bench

Judgement

S.C. Sharma, J.—The petitioner before this Court, a Company, has filed this present writ petition for issuance of an appropriate writ permitting the parties to apply for appointment of Arbitrator afresh by filing appropriate application under Section 11 of the Arbitration & Conciliation Act, 1996. It has been stated that an application was preferred u/S. 11 of the Arbitration & Conciliation Act, 1996 and this Court by order dt. 14/3/2011 has appointed Hon"ble Justice Shri P.D. Muley (Retd.) as a Sole Arbitrator. It has been further stated that the sole Arbitrator has not granted adjournment and is proceeding ahead with the arbitration and other grounds have also been raised for permitting the parties to apply for appointment of a new Arbitrator. Learned counsel for the petitioner has placed reliance upon a judgment delivered by the apex Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, and his contention is that in the light of the aforesaid judgment a new Arbitrator can be appointed keeping in view the peculiar facts and circumstances of the case.

2. On the other hand, learned counsel for the other side has vehemently argued before this Court that Sec. 12 read with Sec. 13 of the Arbitration & Conciliation Act, 1996 prescribes grounds for challenging the Arbitrator and a further remedy is available for challenging the Award u/S. 34 of the Act of 1996.

3. This Court has very carefully gone through Sec. 12 and Sec. 13 of the

Arbitration & Conciliation Act, 1996. None of the ingredients of Sec. 12 and Sec. 13 are attracted In the present case. On the contrary, there is a judgment delivered by the Constitutional Bench of the Hon''ble Supreme Court of India in the case of S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, . Paragraph 47 of the aforesaid judgment reads as under:

"47. We, therefore, sum up our conclusions as follows:

i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.

ii) The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court.

(iii) In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated, judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the judge designated would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the judge designate.

(v) Designation of a district judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(vii) Since an order passed by the Chief Justice of the High Court or by the designated judge of that court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution of India to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.

(ix) In a case where an arbitral tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the arbitral tribunal will have

the jurisdiction to decide all matters as contemplated by Section 16 of the Act.

(x) Since all were guided by the decision of this Court in *Konkan Railway Corpn. Ltd. and Anr. v. Rani Construction Pvt. Ltd.* and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or arbitral tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the concerned High Court or a Judge of that court designated by the Chief Justice.

(xii) The decision in *Konkan Railway Corpn. Ltd. and Anr. v. Rani Construction Pvt. Ltd.* is overruled."

4. Keeping in view the aforesaid judgment delivered by the apex Court, this Court is of the considered opinion that the petitioner does have a remedy to challenge the award passed against him, if any, by filing appropriate application u/S. 34 of the Act of 1996.

5. Learned counsel for the petitioner has also placed reliance upon the judgment delivered by the Delhi High Court in the case of *Raj Kumar Dua and another v. Naresh Adhlakha and others* (O.M.P. 527/2009 & I.A. No. 11711/2009, decided on 29/7/2010) and in the case of *Bharat Heavy Electricals Ltd. v. C.N. Garg and others* (decided on 29/9/2000).

6. This Court has very carefully gone through the aforesaid judgments relied upon by the learned counsel for the petitioner and the judgments are distinguishable on facts.

7. The petitioner does have a remedy of challenging the award especially in the light of the judgment delivered in the case of *S.B.P. & Co., (supra)*. This Court is of the considered opinion that no case for interference at this stage is made out in the matter. The admission is accordingly declined.