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Satyam Computer Services Limited Vs. Venture Global Engineering Llc and anr.

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Court : Andhra Pradesh

Decided On : Feb-19-2010

Reported in : 2010(3)ALT1

Judge : V.V.S. Rao and; B.N. Rao Nalla, JJ.

Acts : Arbitration Act, 1940 - Sections 30 and 36; ;Arbitration and Conciliation Act, 1996 - Sections 5, 8(1), 12, 14, 24, 28(2), 31, 33, 34, 34(1), 34(2), 34(3) and 82; ;Indian Companies Act, 1956; ;Evidence Act, 1872 - Section 19; ;Limitation Act, 1963 - Article 158 - Sections 5, 29(2) and 29(3); ;Representation of People Act, 1951 - Section 83(1); ;Code of Civil Procedure (CPC) , 1908 - Sections 28, 31, 35, 35A, 35B, 107, 126, 133, 135, 144, 148A, 149, 151 and 152 - Order 3 - Order 5 - Order 6, Rules 2, 4 and 17 - Order 8, Rules 5(2) and 9 - Order 9 - Order 13 - Order 14, Rule 1, Order 7, Rule 7, Orders 14 to 19, Order24, Order 41; ;Constitution of India - Article 227; ;Karnataka Civil Rules; ;Karnataka Arbitration (Proceedings Before the Courts) Rules, 2001 - Rules 4 and 12; ;Andhra Pr

Appeal No. : C.R.P. No. 5712 of 2009

Appellant : Satyam Computer Services Limited

Respondent : Venture Global Engineering Llc and anr.

Advocate for Def. : D. Prakash Reddy, Sr. Adv. for; S. Niranjan Reddy, Adv.

Advocate for Pet/Ap. : K. Ramakrishna Reddy, Sr. Adv. for; K. Vivek Reddy, Adv.

Disposition : Petition allowed

Judgement :
ORDER

V.V.S. Rao, J.

Introduction

1. This revision petition under Article 227 of Constitution of India is by Satyam Computer Services Limited (Satyam) against the order, dated 03-11-2009 in I.A. No. 1331 of 2009 in O.P. No. 390 of 2008 passed by the Court of II Additional Chief Judge, City Civil Courts, Hyderabad. By the said order, learned Chief Judge while granting permission to Venture Global Engineering LLC (Venture) having its principal office in Michigan, to file additional pleadings took on record the additional pleadings in O.P. No. 390 of 2008. The order is impeached mainly on the ground that Section 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act or the Act) bars any additional pleadings being brought on record in a petition to set aside an arbitral award.

Fact of the matter

2. The admitted factual position in brief is as follows. Satyam and Venture formed Satyam Venture Engineering Services Private Limited (SVES) - second respondent herein; for providing engineering and computer services to automotive industry. The capital participation is in the ratio of about 50:50. The joint venture formation, ownership pattern etc., are governed by inter alia J.V. Agreement, shareholders' agreement (both of 20-10-1999) and Non-Compete Agreement, dated 11-02-2000 to which SVES is also Party. Article VIII of shareholders' agreement contemplates the 'events of default' as to mean bankruptcy, breach of agreement in material aspect and failure to cure within thirty (30) days, transfer or attempt to transfer any shares in violation of transfer restrictions set fourth in Article VII and change in control of the respective shareholders. As per Section

8.02, upon the occurrence of an event of default, non-defaulting shareholder shall have an option to purchase the defaulter's shares at book value or cause immediate dissolution and liquidation of SVES. As per Section 11.05, the laws of State of Michigan, govern the shareholders' agreement and provides for submission of disputes to London Court of International Arbitration (LCIA). Further as per Section 11.05(c), Satyam, Venture and SVES are required to act in accordance with Indian Companies Act, 1956 and other applicable Acts/Rules being in force in India at any time, even if such laws are contrary to the shareholders' agreement.

3. In 2000, Satyam Manufacturing Technologies (SMTI) entered into agreement with TRW - a manufacturer and supplier of automotive equipment - to provide engineering and IT services. They agreed to sub-contract to automotive engineering works to SVES. Satyam levied US $3 an hour towards administrative charges. According to Satyam, they retained US $859,899 from the TRW receipts. Venture disputed alleging that Satyam retained a total of US $ 2,188,000 and also alleged concealment and dereliction of duty as JV partner. This led to a dispute and Satyam requested for LCIA arbitration. The sole arbitrator considered Venture's alleged breach by Satyam of its obligations and passed reasoned award dated 03-04-2006 ordering delivery of share certificate to Satyam and payment to Venture US $ 622,656 with interest.

4. After Venture failed in its challenge of the award before the Courts in States of Michigan and Illinois, Satyam filed petition before Michigan Courts for its enforcement. The same was allowed and was confirmed in appeal. At that stage, Venture filed O.S. No. 80 of 2006 on the file of the Court of Chief Judge, City Civil Courts, Secunderabad. The same was dismissed. The resulting appeal being C.C.C.A. No. 26 of 2007 was also dismissed. The matter was carried to Supreme Court. In Venture Global Engineering v. Satyam Computer Services Limited (1) : 2008 (6) SCJ 420 : (2008) 4 SCC 190 : AIR 2008 SC 1061, apex Court held that the foreign award can be challenged under Section 34 of the Arbitration Act and remanded the matter with direction to dispose of the matter within six months from the date of the said Judgment. The suit was then transferred and marked as O.P. No. 390 of 2008 before the learned Additional Chief Judge, City Civil Court.

Venture filed interlocutory application under Order VIII Rule 9 of Code of Civil Procedure, 1908 (CPC) seeking leave to bring on record the additional pleadings relating to certain events of January, 2009. The same was opposed by Satyam and by impugned order, the lower Court allowed the application.

Applicability of CPC

5. The arbitral tribunal shall not be bound by CPC or Indian Evidence Act, 1872 and the arbitral tribunal shall have power to determine the admissibility, relevance, materiality and weight of any evidence (see Section 19). But Rule 12 of the Andhra Pradesh Arbitration Rules, 2000 (the Rules, for brevity) made by High Court of Andhra Pradesh in exercise of powers under Section 82 of the Arbitration Act makes certain provisions of CPC applicable to 'the proceedings before a Court'. Rule 12 of the Rules reads as under:

12(1) Save as otherwise expressly provided in the Act or these Rules the following provisions of the Code of Civil Procedure, 1908 (V of 1908) shall apply to the proceedings before a Court in so far as they may be applicable thereto; namely;

(i) Sections 28, 31, 35, 35A, 35B, 107, 133, 135, 144, 148A, 149, 151 and 152; and

(ii) Orders III, V, VI, IX, XIII, XIV to XIX, XXIV and XLI.

(2) (a) For the purpose of facilitating the application of the provisions referred to under Sub-section (1) the Court may construe them with such alterations, not affecting the substance, as may be necessary or proper to adapt the matters before it; and

(b) The Court may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if it is satisfied that the interests of the parties will not thereby be prejudiced.

6. An application for appointment of arbitrator under Section 8(1), an application for an order by way of interim measure, an application/petition to set aside the arbitral award, an application to enforce domestic or foreign award are some of the

proceedings which commonly come up before the civil Court. Order VIII of CPC which deals with written statement, set off and counter claim does not apply to the proceedings under the Act. Though Order VI which deals with pleadings generally is made applicable, having regard to the language used in Rule 12(1), to say that the Rules contained in Order VI CPC apply as it is, is misconception. Order VI - for that matter the provisions mentioned in Sections 12(i) and (ii) (sic. Rule 12(1)(i) and (ii)); are applicable, 'insofar as they may be applicable thereto'. In relying on the provisions of CPC referred to in Rule 12(1), the Court cannot ignore the provisions of the Arbitration Act and apply all provisions of CPC, which are contrary to the substantive and procedural aspects of the Arbitration Act. Therefore, an application under Order VIII Rule 9 of CPC for bringing additional pleadings on record would not lie. Similarly, if any amendment of the pleadings in a petition to set aside arbitral award contravenes Section 34 of the Act, such an application cannot be accepted merely because Order VI CPC is made applicable by High Court made Rules.

7. Section 34(2) of the Arbitration Act enumerates grounds to set aside the award. We are not concerned with the same. However, Sub-sections (1) and (3) are relevant and read as under.

34. Application for setting aside arbitral award:

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and sub-section (3).

(2) omitted

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal;

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may

entertain the application within a further period of thirty days, but not thereafter.

(emphasis supplied)

8. A party aggrieved by an award can succeed under Section 34 of the Arbitration Act only when such party is able to furnish proof that the arbitral award is vitiated by the grounds mentioned in Section 34(2) including the ground that such arbitral award is not valid under the law to which the parties have subjected to or that the award is not in accordance with substantive Indian law or it violates principles of natural justice or the award is not in accordance with the agreement of the parties or the award is in conflict with public policy of community. In addition, a party can succeed only if an application is made within three months from the date on which the party received arbitral award or if such an application is made within a further period of thirty days as may be extended by the Court on being satisfied that the applicant was prevented by sufficient cause. Section 34(1) and (3) appear to contain a rule of limitation. But a closer look would show that the anxiety of the legislature presumably having regard to the UNCITRAL Model law, to give finality to arbitral awards with least barriers and harassments is reflected therein.

9. A party who allows the time to lapse beyond three months is precluded from assailing the award. Indeed, the Court is barred from entertaining a petition to set aside arbitral award if it is presented beyond further time stipulated in the proviso to Section 34(3) of the Arbitration Act. Similarly, if a formal application is moved but without raising the grounds enumerated in Section 34(2) or without furnishing proof thereof, such party is also precluded again raising grounds after the period stipulated in Section 34(3) of the Arbitration Act. As a necessary corollary, it is reasonable to read the purport of Rule 12(1) of the Arbitration Rules in accordance with Section 34(1) and (2). Thus, if a party who fails to urge or fails to place necessary materials or fails to take necessary pleadings, comes forward with an application to amend the petition under Section 34(1), the Court has to necessarily look to the purport of Section 34(1) read with Section 34(3) and reject belated pleadings by way of amendment. We are also supported by the decisions of Supreme Court and High Court of Bombay, to which a brief reference is made hereafter.

10. Madanlal v. Sunderlal (2) : AIR 1967 SC 1233 threw up the question whether objections to arbitral award under Arbitration Act, 1940 (old Act) could be raised after expiry of the period of limitation under Article 158 of the Limitation Act made applicable to petitions under Section 30 of old Act. Allahabad High Court took the view that objections to award after period of limitation would be barred. Affirming the said views, a Division Bench of Supreme Court ruled.

It is clear therefore from the scheme of the Act that if a party wants an award to be sat aside on any of the grounds mentioned in Section 30, it must apply within 30 days of the date of service of notice of filing of the award as provided in Article 158 of the Limitation Act. If no such application is made award cannot be set aside on any of the grounds specified in Section 30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for if it is so treated it will be barred by limitation. ...It is not in dispute in the present case that the objections raised by the appellant were covered by Section 30 of the Act, and though the appellant did not pray for setting aside the award in his objection that was what he really wanted the court to do after hearing his objection. As in the present case the objection was filed more than 30 days after the notice it could not be treated as an application for setting aside the award, for it would then be barred by limitation. The position thus is that in the present case there was no application to set aside the award as grounds mentioned in Section 30 within the period of limitation and therefore the Court could not set aside the award on those grounds. There can be no doubt on the scheme of the Act that any objection even in the nature of a written-statement which falls under Section 30 cannot be considered by the Court unless such an objection is made within the period of limitation (namely, 30 days), though if such an objection is made within limitation that objection may in appropriate cases be treated as an application for setting aside the award.

(emphasis supplied)

11. In Bijendra Nath Srivatsava v. Mayank Srivatsava (3) : (1994) 6 SCC 117 : AIR 1994 SC 2562 : 1994 (3) ALT 27 (D.N), the property dispute among heirs was referred to arbitration. An award was passed dividing the properties. The same was submitted to civil Court for confirmation. At that stage, an application under Order VI Rule 17 of CPC for amendment of objections on behalf of one of the parties was moved and was allowed by the civil Court, which made the award rule of the Court. Before the High Court, challenging the award inter alia it was urged that the entertainment of amendment application was wrong. Overruling the same on the ground that the objectors (of amendment application) had knowledge of the proceedings, the High Court affirmed the award and the civil Court decree. The Supreme Court set aside the High Court decree. Relying on Sumant N. Balkrishna v. George Fernandez (4) : (1969) 3 SCC 238 : AIR 1969 SC 1201 observed as under.

We are of the opinion that the High Court was in error in treating the said amendments as merely better particulars of what had already been pleaded in the original objections. The High Court appears to have lost sight of the well recognized distinction between statement of material facts which is required under Order 6 Rule 2 C.P.C. and particulars which are required to be stated under Order 6 Rule 4 C.P.C. In the context of Section 83(1) (a) and (b) of the Representation of People Act, 1951, which contains provisions similar to Order 6 Rules 2 and 4 C.P.C, this Court, after posing the question, what is the difference between material facts and particulars, has observed:

The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quire distinct. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section

because then the efficacy of the words 'material facts' will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of action cannot be said to be good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all.

If the petitioner has omitted to allege a corrupt practice, he cannot be permitted to give particulars of the corrupt practice. One cannot under the cover of particulars of the corrupt practice give particulars of a new corrupt practice. They constitute different causes of action. (Sumanth N Balkrishna (supra))

This is in consonance with the rule that a charge of fraud must be substantially proved as laid and that when one kind of fraud is charged, another kind of fraud cannot, upon the failure of proof, be substituted for it. (See: Abdool Hoossein v. Turner (1887) 14 I.A. 111) The same is true for the charge of misconduct. This means under Order 6 Rule 4 C.P.C. particulars have to be furnished of the plea of fraud or misconduct raised in accordance with Order 6 Rule 2 C.P.C. and it is not permissible to introduce by way of particulars a plea of fraud or misconduct other than that raised in the pleadings.

Applicability of Limitation Act

12. Whether the provisions of Section 5 of the Limitation Act, 1963 are applicable to a petition challenging the award under Section 34 of the Arbitration Act, and whether Arbitration Act specifically excludes Limitation Act with reference to Section 29(2) thereof, fell for consideration before Supreme Court in Union of India v. Popular Construction Company (5) : (2001) 8 SCC 470 : AIR 2001 SC 4010. The Central Government suffered arbitration award and filed an application under Section 30 of 1940 Act before the High Court which was later converted into one under Section 34 of the 1996 Act. The same was dismissed by learned single Judge on the ground that it is barred by limitation under Section 34(3) of the Arbitration Act, which was confirmed by Division Bench. It was submitted before the Supreme Court that Section 29(2) of the Limitation Act applies. Popular Construction Company relied on Section 34(3) of the Arbitration Act to exclude the applicability of Limitation Act under Section 29(3) thereof. Referring to

Vidyacharan Shukla v. Khubchand Baghel (6) : AIR 1964 SC 1099, Hukumdev Narain Yadav v. Lalit Narain Mishra (7) : (1974) 2 SCC 133 : AIR 1974 SC 480, Mangu Ram v. Municipal Corporation of Delhi (8) : (1976) 1 SCC 392, Patel Naranbhai Marghabhai v. Dhulabhai Galbabhai (9) : (1992) 4 SCC 264 : AIR 1992 SC 2009 and Union of India v. Hanuman Prasad and Brothers (10) (2001) 8 SCC 476 : 2000 AIR SCW 3934 (2), Supreme Court ruled that the phrase 'but not thereafter' used in the proviso to Section 34(3), 'would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act and would therefore bar the application of Section 5 of that Act'. Further, having regard to Sections 5 and 34 of the Arbitration Act, Supreme Court emphasized limited judicial intervention in arbitration matters as follows:

The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need 'to minimize the supervisory role of courts in the arbitral process'. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms. ...Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award 'in accordance with' Sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application 'in accordance with' that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36. ...Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to 'proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow' (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

13. In Fiza Developers and Inter-trade Private Limited v. AMCI (I) Private Limited (11) 2009 (7) SCJ 564 : 2009 (4) Arb. LR 176 (SC), Supreme Court answered the question whether 'issues' as contemplated under Order XIV Rule 1 of CPC should be framed in applications under Section 34 of the Arbitration Act in the following manner.

We may, therefore, examine the question for consideration, by bearing three factors in mind. The first is that the Act is a special enactment and Section 34 provides for a special remedy. The second is that an arbitration award can be set-aside only upon one of the grounds mentioned in sub-section (2) of Section 34 existing. The third is that proceedings under Section 34 requires to be dealt with expeditiously.... The scope of enquiry in a proceedings under Section 34 is restricted to consideration whether any one of the grounds mentioned in Sub-section (2) of Section 34 exists for setting aside the award.... The grounds for setting aside the award are specific. Therefore, necessarily a petitioner who filed an application will have to plead the facts necessary to make out the ingredients of any of the grounds mentioned in sub-section (2) and prove the same. Therefore, the only question that arises in an application under Section 34 of the Act is whether the award requires to be set aside on any of the specified grounds in Sub-section (2) thereof. Sub-section (2) also clearly places the burden of proof on the person who makes the application. Therefore, the question arising for adjudication as also the person on whom the burden of proof is placed is statutorily specified. Therefore, the need for issues is obviated. Framing of issues is necessary only where different types of material propositions of fact or law are affirmed by one party and are denied by the other and it is, therefore, necessary for the court to identify the issues and specify the party on whom the burden to prove the same lies. When this exercise has already been done by the statute, there is no need for framing the issues. In other words, an application under Section 34 of the Act is a single issue proceedings, where the very fact that the application has been instituted under that particular provision declares the issue involved. Any further exercise to frame issues will only delay the proceedings. It is thus clear that issues need not be framed in applications under Section 34 of the Act.

14. Fiza Developers (11 supra) was a case from the State of Karnataka. High Court which framed Karnataka Arbitration (Proceedings Before the Courts) Rules, 2001. Rules 4(b) and 12 thereof read as under:

4(b) Contents of application:

Application under Section 14 or Section 34 shall be registered as an arbitration suit, the applicant being treated as the plaintiff and the parties to the award other than the applicant being treated as defendants and the proceedings thereafter shall be continued as in the case of a suit and all the provisions of the Code of Civil Procedure, 1908, shall apply to such proceedings insofar as they could be made applicable.

12. Applicability of the Civil Procedure Code, 1908: Subject to what is provided for in the Arbitration and Conciliation Act and these Rules, the provisions of the Code of Civil Procedure and Karnataka Civil Rules of Practice may be applied to the proceedings under the Act to the extent considered necessary or appropriate by the court or judicial authority.

15. Before the Supreme Court, it was contended that in any arbitration suit (application under Section 34), the Court shall have to frame issues under Rule 4(b). The apex Court laid down that framing of issues is not an integral part of the process of proceedings under Section 34 of Arbitration Act. The relevant observations need exception.

While an applicant in an application under Section 34 is interested in getting an order setting aside an award, his opponent is equally interested in ensuring that it is not set aside, but upheld. While an applicant presents his case to the judge to prove that the award is liable to be set aside, the respondent puts forth his case to refute the claim of the applicant that the award is liable to be set aside. An application under Section 34 in that sense is adversarial in nature. But proceedings under Section 34 differ from regular civil suits in a significant aspect. In a regular civil suit, in the event of failure to file a defence, it will be lawful for the Court to pronounce the judgment on the basis of facts contained in the plaint (vide Order VIII Rule 5(2) of the Code). But in an application under Section 34, even if

there is no contest, the court cannot, on the basis of the averments contained in the application, set aside the award. Whether there is contest or not, the applicant has to prove one of the grounds set out in Section 34(2)(a) and (b). Even if the applicant does not rely upon the grounds under clause (b), the court, on its own initiative, may examine the award to find out whether it is liable to be set aside on either of the two grounds mentioned in Section 34(2)(b).

16. Fiza Developers (11 supra) also indicates 'the Court's routine procedure' which is ordinarily followed in adjudicating the petitions under Section 34 of the Arbitration Act as under:

Having regard to the object of the Act, that is providing an expeditious alternative binding dispute resolution process with minimal court intervention, it is difficult to envisage proceedings under Section 34 of the Act as fullfledged regular civil suits under Code of Civil Procedure. Applications under Section 34 of the Act are summary proceedings with provision for objections by the defendant/respondent, followed by an opportunity to the applicant to 'prove' the existence of any ground under Section 34(2). The applicant is permitted to file affidavits of his witnesses in proof. A correspondent opportunity is given to the defendant/respondent to place his evidence by affidavit. Where the case so warrants, the court permits cross-examination of the persons swearing to the affidavit. Thereafter, court hears arguments and/or receives written submissions and decides the matter. This is of course the routine procedure. The court may vary the said procedure, depending upon the facts of any particular case or the local rules. What is however clear is that framing of issues as contemplated under Rule 1 of Order 14 of the Code is not an integral part of the process of a proceedings under Section 34 of the Act.

17. In Pushpa P. Mulchandana v. Admiral Radhakrishna Tahilani (12) : 2001 (2) Arb LR 284 (Bombay), B.N. Srikrishna, J (as His Lordship then was) referring to Madan Lal (2 supra) agreed with the view that a petition under Section 34 of the Arbitration Act has to be made within limitation prescribed by the Act and that it is not permissible for the Court to permit amendment of the petition after period of limitation as it would tantamount to entertain a fresh petition beyond period of limitation. Sitting in a Bench, the same learned Judge in Vastu Invest and Holdings

Private Limited v. Gujarat Lease Financing Limited (13) : 2001 (2) Arb LR 284 (Bombay), was emphatic that, 'a ground not initially raised in the petition to challenge the award would not be permitted to be subsequently raised by the amendment if the application for amendment itself was beyond the limitation fixed for filing the petition challenging the award'. A similar view was taken by Aurangabad Bench in Anilkumar Jinabhai Patel v. Pravinchandra jinabhai Patel (14) : 2007 (3) Arb LR 91 (Bombay) and a Judgment, dated 29-04-2009 in Patel Engineering Company Limited v. Konkan Railway Corporation Limited (15) ().

18. After referring to Rule 803C(a) of Bombay Arbitration Rules, Division Bench of Bombay High Court in the last cited case observed:

Perusal of the above quoted Rule shows that it is a requirement of this Rule that the petitioner makes a concise statement of the material facts relied on by the petitioner in support of his challenge to the award. Section 34(3) prescribes the time limit within which the petition challenging the arbitral award can be filed. So far as this Court is concerned, it is now a settled law, that the time limit prescribed under Section 34 is absolute and unextendable and that a ground of challenge to arbitral award could not be introduced by way of amendment into the petition filed under Section 34, after expiry of the statutory period. If a general ground that the arbitrators had acted contrary to the contract without specifying which claim awarded was contrary to which term of the contract is considered to be adequate pleading for setting aside the award under Section 34, the question of unextendable time limit or of ground not being permitted to be introduced by way of amendment would never arise. A petitioner would only have to file one page petition alleging that the Arbitrator had acted contrary to the contract and then, thereafter at the hearing of the petition, the petitioner would be able to refer to a specific claim awarded which according to him were contrary to specific clauses of the contract. If grounds and material facts regarding each challenge to the award are not stated, the opposite party would not know which part of the award is being challenged and the ground of challenge and would not be in a position to respond to or deal with the challenge.

(emphasis supplied)

19. Therefore, on a reading of Section 34(1) and (3) of Arbitration Act, 1996 and Sections 5 and 29(2) of Limitation Act, we are convinced that even though Rule 12(1)(i) and (ii) of A.P. Rules makes Order VI applicable by reference, a party would not be entitled to file an application under Order VI Rule 17 CPC for amendment if such amendment defeats the intent behind Section 34(1) read with (3) of Arbitration Act. Reading both harmoniously, one can always argue that an amendment can be permitted if it is sought within the unextendable stipulated time under Section 34(3) and an amendment sought after a period of 120 days would not be permissible.

20. Venture filed the suit challenging the award of the arbitrator in 2006. The same was dismissed. Their effort before this Court in appeal proved futile. They went to Supreme Court and the matter was directed to be taken up as a petition under Section 34 of Arbitration Act. It was registered as O.P. No. 390 of 2008. The application under Order VIII Rule 9 of CPC was filed on 15-6-2008, after lapse of two years from the date of filing of suit. This application indisputably is for raising additional grounds or certain aspects, which are allegedly not within the knowledge of Venture. Such an application - in view of the law discussed supra; is impermissible because any additional pleadings or amendment - if it is so permissible; have to strictly comply Section 34(1) read with Section 34(3) of Arbitration Act. Further, Section 5 of Limitation Act, which stands excluded by reason of language used in Section 34(3) of Arbitration Act cannot be brought into arbitral proceedings indirectly relying on Rule 12 of A.P. Rules. Rule making authority cannot be presumed to have intended to operate the Rules in contravention of the provisions of Parent Act. These reasons supplement those in the last part of this judgment and shall be read along with them.

Raising a contention not raised before Arbitral Tribunal

21. There cannot be any dispute that as per Chapters V and VI of Part I of the Arbitration Act, while conducting arbitration proceedings and making of award, the arbitrator has to make the award and 'shall decide the issue in accordance with the substantive law for the time being in force' with reference to the statements of claim and defence and the evidence presented under Section 24 of the Arbitration

Act. As per Section 28(2), the arbitrator shall decide ex aequo et bono (16) (As per Law Lexicon by Ramanath Iyer, ex aequo et bono means 'according to what is just and good'.) or as amiable compositeur only if the parties have expressly authorized to do so otherwise the arbitral tribunal shall decide in accordance with the terms of the contract and usage of trade applicable to the transaction. Section 34(2) contemplates the grounds to set aside the arbitral award. An objecting party, it is trite - can urge these grounds only with reference to the allegations and averments contained in the statements of claim or defence and the evidence let in. Even in conventional judicial process, an aggrieved person ordinarily is not permitted to take additional pleas not raised before the original adjudicating authority. Having regard to Sections 28 and 31 of Arbitration Act even arbitral tribunal cannot permit the amendments or additional material after the completion of arbitral process. That the petitions filed under Section 34 are summary proceedings, that the provisions of CPC and Evidence Act are not applicable and that least judicial intervention and least procrastinating unending procedures are part of UNCITRAL Model Law cannot be denied.

22. In Fiza Developers (11 supra), Supreme court indicated that grounds for setting aside award being specific necessarily a person who filed an application will have to plead the facts necessary to make out the ingredients of any of the grounds mentioned in Section 34(2). In Mcdermott International Inc., v. Burn Standard Company Limited (17) : 2006 (4) SCJ 660 : (2006) 11 SCC 181 : 2006 (5) ALT 1.3 (DNSC), Supreme Court indicated that the grounds or points which are not urged in the application under Section 34 before the arbitrator or before the authority under Section 34 cannot be raised later. The relevant observations are follows:

We cannot also lose sight of the fact that BSCL did not raise any objection before the arbitrator in relation to the jurisdiction of the arbitrator. A ground to that effect has also not been taken in its application under Section 34 of the Act. We, however, even otherwise do not agree with the contention of Mr. Mitra that a partial award is akin to a preliminary decree. On the other hand, we are of the opinion that it is final in all respects with regard to disputes referred to the arbitrator, which are subject matters of such award. ... We may notice that BSCL

had never pleaded before the arbitrator that the time was of the essence of the contract. In construction contracts generally time is not of the essence of the contract unless special features exist therefor. No such special Features, in the instant case, have been brought to our notice.

23. In TATA Hydro Electric Power Supply Company Limited v. Union of India (18) : (2003) 4 SCC 172 (para 21) : AIR 2003 SC 1581, a similar view was taken. Further more, under Section 34 of the Arbitration Act, the Court can only set aside the award and leave the parties to begin arbitration afresh. The Court cannot correct errors and substitute an award with its dicta, and the exercise of the power to set aside the arbitral award is not by way of roving enquiry warranting the reliance only on the material that existed and exhibited, at arbitral stage before arbitrator. Such summary proceeding is only with reference to the pleadings and evidence placed before the arbitral tribunal and the related grounds urged under Section 34(2) before the Court.

24. The text, context and purpose of Sections 34(1) and (3) of Arbitration Act and interpretation thereof in line with Uncitral Model Law of International Arbitration does not leave any doubt that an aggrieved party availing the remedy to set aside arbitral award cannot be permitted to raise grounds or bring on record additional material, which was not available to arbitral tribunal. That would amount to initiation of fresh arbitration and the Court has no such power unless the impugned arbitral award is set aside, for the reasons and grounds prescribed in Section 34(2) of Arbitration Act. The material or post January 2009 events, which are sought to be made part of the record, are not relevant nor a fact in issue. The core issue in arbitral proceedings was whether Satyam was in default as defined in Section 8.01 of Shareholders' agreement or Venture was in default. The three parties involved in the contract and transaction are corporate entities and admittedly continued to be in existence and engaged the same core business as it was before commencement of arbitral proceedings. Therefore, for these reasons and also those in the last part of judgment, Venture cannot be permitted to raise any additional grounds after expiry of stipulated period.

Venture's Application

25. Venture filed two applications before the Court below. One being I.A. No. 1331 of 2009 seeking permission to file additional pleadings and the other being I.A. No. 1494 of 2009 praying the Court below to bring on record the subsequent developments and events as stated therein together with documents filed therewith. Reading these two together, there cannot be any doubt that in effect Venture filed an application under Order VIII Rule 9 of CPC. It is certainly not an application under Order VI Rule 17 for amendment. Even if it is one, it is without merit and untenable. The reasons for this conclusion are the following.

26. First, a party to the proceeding in a suit has to file an application in form No. 13 seeking amendment in accordance with Rule 53 of A.P. Civil Rules of Practice and such an application shall be accompanied by an affidavit as contemplated under Rule 60 of the Andhra Pradesh Civil Rules of Practice (19) (These Rules have been made by High Court of Andhra Pradesh with the previous approval of the Governor of the State in exercise of power under Article 227 of Constitution of India and Section 126 of CPC). An application for amendment must contain the pleadings to be deleted, pleadings to be added or pleadings to be substituted by way of amendment and these must also be mentioned in the affidavit accompanying application. Both these are absent in the two applications filed by Venture.

27. Secondly, the interlocutory application being I.A. No. 1331 of 2009 was itself filed seeking permission to file additional pleadings under Order VIII Rule 9 of CPC. These additional pleadings were filed in I.A. No. 1494 of 2009 praying the Court below to take subsequent developments and events as stated therein on record. While allowing I.A. No. 1331 of 2009, the Court below observed that events subsequent to award dated 03-04-2006 can be taken on record. Therefore, there was no amendment as such allowed by the Court below and the entire procedure adopted is erroneous and contrary to the provisions of CPC itself.

28. Thirdly, Order VIII Rule 9 of CPC confers a restrictive right on the parties to the proceedings and the right of the respondent to a proceeding to present additional written statement or an additional pleading is not absolute right. The discretion conferred on the Court to permit additional pleadings by the respondent has to be

exercised, having regard to Order VII Rule 7 of CPC. This principle was given a go-by while passing the impugned order.

29. Fourthly, indisputably Venture alleged concealment and dereliction of obligation on the part of Satyam, which was overruled by the sole arbitrator. The same is now sought to be urged with an unrelated and unconnected statement of Satyam's CEO on 07-01-2009. This has no nexus with the actual dispute raised before the sole arbitrator.

30. Sixthly (sir. Fifthly), acceptance of additional pleadings or the alleged amendments consequently lead to adducing fresh evidence and such fresh evidence is not permissible under Section 34 of Arbitration Act; and

31. Lastly, interlocutory application whether it is under Order VIII Rule 9 of CPC or under Order VI Rule 17 of CPC filed beyond an unextendable period under Section 34(3) of Arbitration Act cannot be permitted by the Court dealing with set aside petition.

32. The Senior Counsel for both the parties have taken this Court through JV agreement and shareholders agreement to buttress their respective views. Aware of the limitations in exercise of its powers under Article 227 of Constitution of India with reference to the summary proceeding under Section 34(1) of Arbitration Act and also being aware that the matter is still pending with the Court below, this Court must keep away from adjudicating these matters. It is for the Court below to consider the matter with reference to the petitions, counters and rejoinders filed before it ignoring additional pleadings ordered to be taken on record by it.

Transfer of case?

33. Before parting with this order, we may record unsatisfactory slow pace with which the case is being dealt with by the Court below in spite of directions of Supreme Court in Venture (1 supra), 'to dispose of the suit on merits one way or the other within a period of six months from the date of receipt of a copy of the judgment.' Indeed, on 01-12-2009, we also directed the Court below to dispose of the matter as directed by Supreme Court. Indisputably, six months time granted by

apex Court expired long back. Pointing out this, learned Standing Counsel for Satyam submits that in exercise of jurisdiction under Article 227 of Constitution of India, High Court can transfer the case to another Court to comply with the order of Supreme Court. After perusing Dr. Dinesh Kumar v. Motilal Nehru Medical College (20) : (1990) 4 SCC 627 : AIR 1990 SC 2030, Ranbir Yadav v. State of Bihar (21) : (1995) 4 SCC 392 : AIR 1995 SC 1219 and Bharat Earth Movers v. CIT (22) : (2000) 6 SCC 645 : AIR 2000 SC 2636 : 2000 (5) ALT 16.1 (DNSC), we are inclined to accept the submission. In Ranbir Yadav (21 supra), the Supreme Court ruled that under Article 227 of Constitution, High Court can exercise plenary administrative power to transfer the case to another Court, which has bigger and better arrangement. Therefore, we direct that the O.P. No. 390 of 2008 on the file of the Court of II Additional Chief Judge, City Civil Court, Hyderabad, which has a pendency of 3014 cases, be transferred to the Court of Chief Judge, City Civil Court, Hyderabad, which has a pendency of 1880 cases (23) (On our directions, High Court obtained information regarding pendency in the Court of Chief Judge and three Additional Chief Judge Courts), with a request to dispose of the matter as expeditiously as possible on top priority, keeping in view the fact that the directions issued by Supreme Court in Venture (1 supra) have not been complied with so far.

34. In the result, we allow the civil revision petition and set aside the impugned order in I.A. No. 1331 of 2009 in O.P. No. 390 of 2008 and further direct that the O.P. be transferred to the Court of Chief Judge, City Civil Court, Hyderabad, for being disposed of expeditiously as requested herein above. We also direct the Venture to pay costs of Satyam in this revision petition.

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