

M/S. Medicine India. Vs. State of U.P.and Others.

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Court : Allahabad

Decided On : Jul-02-2010

Judge : Shri Narayan Shukla, J.

Acts : The Arbitration And Conciliation Act, 1996 - Sections 34, 37 ;

Appeal No. : Writ Petition No.1182 (MS) of 2010.

Appellant : M/S. Medicine India.

Respondent : State of U.P.and Others.

Advocate for Pet/Ap. : Mr.Anil Kumar Tewari, Adv.

Judgement :

1. Heard Mr.Anil Kumar Tewari, Senior Advocate assisted by Mr.Apoorva Tewari, learned counsel for the petitioner as well as learned Standing Counsel. Through the instant writ petition the petitioner has challenged the order dated 12th of January, 2010, passed by the District Judge, Lucknow in Regular Suit No.50 of 2004, whereby the petitioner's application for amendment i.e. application No.C- 27 has been dismissed as barred by time.

2. The learned counsel for the petitioner submitted that once the suit challenging the award was filed within time, the application for amendment cannot be rejected on the ground of limitation as the time provided under Section 34 of the Arbitration and Conciliation Act, 1996 is only for presentation of the suit, but it is not meant for amendment. It is further stated that the necessary amendment can be made even after expiry of limitation provided for filing the suit. The learned District Judge has rejected the said application in the light of the decision taken by the Hon'ble High Court of Bombay in Appeal No.799 of 2004 i.e. Patel Engineering Company Ltd. Versus Konkan Railway Corporation Ltd. He relied upon paragraph 15 of the aforesaid judgment, which is reproduced hereunder:-

"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. It is 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, therefore at the hearing of the petition the petitioner would be able to refer to a specific claims awarded which according to him were contrary to specific clauses of the contract. It 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."

3. Whereas learned counsel for the petitioner submits that Hon'ble Supreme Court in the case of State of Maharashtra versus M/s.Hindustan Construction Company Ltd., reported in 2010 (28) LCD 612 has considered the question of limitation for filing the application for amendment and held as under:-

"25. There is no doubt that application for setting aside an arbitral award under Section 34 of 1996 Act has to be made within time prescribed under sub- section (3) i.e., within three months and a further period of thirty days on sufficient cause being shown and not thereafter. Whether incorporation of additional grounds by way of amendment in the application under Section 34 tantamounts to filing a fresh application in all situations and circumstances. If that were to be treated so, it would follow that no amendment in the application for setting aside the award howsoever material or relevant it may be for consideration by the Court can be added nor existing ground amended after the prescribed period of limitation has expired although application for setting aside the arbitral award has been made in time. This is not and could not have been the intention of Legislature while enacting Section 34. Moreso, Section 34(2)(b) enables the Court to set aside the arbitral award if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force or the arbitral award is in conflict with the public policy of India. The words in Clause (b) 'the Court finds that' do enable the Court, where the application under Section 34 has been made within prescribed time, to grant leave to amend such application if the very peculiar circumstances of the case so warrant and it is so required in the interest of justice. L.J.Leach and Company Ltd. (Supra) and Pirgonda Hongonda Patil (supra), seems to enshrine clearly that courts would, as a rule, decline to allow amendments, if a fresh claim on the proposed amendments would be barred by limitation on the date of application but that would be a factor for consideration in exercise of the discretion as to whether leave to amend should be granted but that does not affect the power of the court to order it, if that is required in the interest of justice. There is no reason why the same rule should not be applied when the Court is called upon to consider the application for amendment of grounds in the application for setting aside the arbitral award or the amendment in the grounds of appeal under Section 37 of 1996 Act."

4. Upon perusal of the contents of application, I find that the petitioner has proposed the amendment in some of the paragraphs, which are minor in nature and almost clerical. So far as the additional grounds, which are proposed to be added with the grounds already on record of challenge of the arbitral award is concerned, I am of the view that through the proposed additional grounds, the petitioner has raised the question of biasness and dishonesty against the Arbitrator, whereas I am of the view that if it was so, it should have been raised at the very first time, therefore, the provisions of Section 34 to permit the amendment cannot be extended in such a manner as to include the frivolous and after thought grounds.

5. Considering the facts and circumstances of the case as well as keeping in view the judgment rendered by the Hon'ble Supreme Court, I hereby allow the petitioner's application for amendment so far as it relates to paragraph 2(a) to (k). So far as sub paragraph (l) of paragraph 2 is concerned, whereby the petitioner has proposed to add new grounds, I hereby allow the same only with respect of sub-ground (xxii) and other proposed grounds, which are mentioned as (xxiii), (xxiv), (xxv) and (xxvi) are hereby rejected. In the aforesaid terms the writ petition is partly allowed and the order dated 12.1.2010, passed by the District Judge, Lucknow is hereby quashed to the extent it rejects the application for amendment proposed through paragraph 2 sub-paragraph (a) to (k) and sub paragraph (l) ground (xxii). However, the order rejecting the application for amendment for the proposed ground Nos.(xxiii), (xxiv), (xxv) and (xxvi) is hereby maintained.