

Equivalent Citation: 2018VIIAD(Delhi)106, 253(2018)DLT219

IN THE HIGH COURT OF DELHI

ARB. P. 143/2018 and IA Nos. 3336-3337/2018

Decided On: 23.07.2018

Appellants: **Golden Chariot Recreations Pvt. Ltd.**

Vs.

Respondent: **Mukesh Panika and Ors.**

Hon'ble Judges/Coram:

Vibhu Bakhru, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Mukal Talwar, Sr. Advocate, Vikram Dhokalia and S. Dhananda

For Respondents/Defendant: Vijay Sharma

Subject: Arbitration

Acts/Rules/Orders:

Arbitration Act, 1940 [repealed] - Section 20, Arbitration Act, 1940 [repealed] - Section 8, Arbitration Act, 1940 [repealed] - Section 8 (2), Arbitration Act, 1940 [repealed] - Section 8(2); Arbitration And Conciliation Act, 1996 - Section 11, Arbitration And Conciliation Act, 1996 - Section 11(4), Arbitration And Conciliation Act, 1996 - Section 11(4)(a), Arbitration And Conciliation Act, 1996 - Section 11(6), Arbitration And Conciliation Act, 1996 - Section 43(1), Arbitration And Conciliation Act, 1996 - Section 9

Cases Referred:

Prasar Bharti vs. Maa Communication [MANU/DE/0394/2010](#); Utkal Commercial Corporation vs. Central Coal Fields Ltd. [MANU/SC/0028/1999](#); J.C. Budhraj vs. Chairman, Orissa Mining Corporation Ltd. and Anr. [MANU/SC/0602/2008](#)

Disposition:

Petition Dismissed

JUDGMENT

Vibhu Bakhru, J.

1. The petitioner has filed the present petition under Section [11](#) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), inter alia, praying that an independent arbitrator be appointed to adjudicate the disputes between the parties. The petitioner relies on an arbitration clause as contained in the Supplementary Deed of Partnership dated 09.07.2012.
2. The petitioner claims to be a constituent partner of a partnership firm named Integration 2020 Developers (hereafter 'the Firm'). It is claimed that the petitioner owns a 50% stake in the Firm and its assets including the property bearing Municipal No. H-5/6 to H-5/10, Municipal Ward No. 1, opposite Qutub Minar, Mehrauli, New Delhi with adjoining land admeasuring 1038 square yards. The said property is located opposite Qutub Minar and is popularly known as 'Qutub Colonnade' (hereafter 'the property').
3. The petitioner claims that respondent no. 2 is a company, which holds the remaining 50% stake in the Firm. Respondent no. 2 - M/s. Furthering Arts Private Limited (hereafter 'FAPL') is in turn held and controlled by respondent no. 1 (hereafter 'Mukesh').
4. The petitioner claims that on 29.11.1994, a firm was constituted by Mr. Georges Mailhot and his wife Bina K. Ramani. The Firm (known as 'Integration 2020 Developers') purchased the property (Qutub Colonnade) by an Agreement to Sell dated 02.03.1995 executed by the owners of the property, namely, Amar Nath and Dewan Chand. The said owners also executed a Power of Attorney and affidavits in favour of the Firm. It is stated that the property was duly mutated in the records of the Municipal Corporation of Delhi in the name of the Firm.
5. The original Partnership Deed dated 29.11.1994 was entered into between Mr. Georges Mailhot and Ms. Bina K. Ramani and was modified by the partners on 23.07.2005 and the Firm was duly registered with the Registrar of Firms, Government of NCT of Delhi. On 20.05.2010, the Partnership Deed dated 29.11.1994 (as amended on 23.07.2005) was further amended and the name of the Firm was changed from Integration 2020 to Integration 2020 Developers ('the Firm').
6. The petitioner claims that sometime in the month of May, 2012, Mukesh approached the petitioner and expressed his interest to acquire the entire stake of the partners in the Firm. It is claimed that Mukesh was interested in opening an art club/art gallery and required the property owned by the Firm for the said purpose.
7. The petitioner claims that they entered into a Loan Agreement with the respondents on 04.06.2012, whereby the petitioner agreed to give a loan of ₹ 5 crores to each of the respondents. It is stated that on the same date, that is, on 04.06.2012, Mr. Georges Mailhot and Ms. Bina K. Ramani

sold half of their respective shares to the respondents. Consequently, Mukesh and FAPL were inducted as partners in the Firm holding 25% stake each. It is claimed that, thereafter, the original partners (Mr. Georges Mailhot and Ms. Bina K. Ramani) retired from the Firm and entered into a Supplementary Partnership Deed.

8. Thereafter, on 11.06.2012, Mukesh offered 50% stake in the Firm to the petitioner and the petitioner paid another sum of ₹ 9.5 crores to the respondents (₹ 5 crores on 14.06.2012 to FAPL and ₹ 4.5 crores on 19.06.2012 to Mukesh).

9. It is claimed that on 20.06.2012, the respondents paid Mr. Georges Mailhot and Ms. Bina K. Ramani a sum of ₹ 10 crores and they deposited the original title deeds with the respondents. The petitioner claims that these Deeds were deposited with the petitioner by Mukesh.

10. On 09.07.2012, the petitioner entered into a Supplementary Deed of Partnership, whereby FAPL transferred its entire share in the Firm to the petitioner against a receipt of ₹ 10 crores. Consequently, both Mukesh and the petitioner now held 50% stake in the said company.

11. The Supplementary Partnership Deed dated 09.07.2012 includes an arbitration clause, which is set out below:-

"13. In the event of any dispute or difference in relation to or arising out of the present Deed, the same shall be settled through arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996. All parties will jointly and mutually nominate and appoint a sole arbitrator. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 and the venue of arbitration shall be New Delhi."

12. It is claimed that, thereafter, on 15.07.2013, the petitioner extended a further loan of ₹ 30 lakhs to Mukesh and in turn Mukesh acknowledged that the petitioner would have the right to sell his stake in the Firm to another party to recover the dues.

13. Since certain disputes had arisen between the parties on 29.09.2014, the petitioner filed a petition (OMP 1198/2014) under Section 9 of the Act. Thereafter, the petitioner also issued a notice dated 14.11.2014 invoking the arbitration clause.

14. Mukesh responded to the said notice by a letter dated 22.12.2014. The petitioner claims that the said response was handed over in Court on 05.02.2015. On the said date, this Court disposed of the petition (OMP 1198/2014) filed by the petitioner.

15. The petitioner states that, thereafter, in July, 2017, the petitioner learned that Mukesh was merging the property with another property, namely, H-5/6 to H-5/10 Kalka Das Marg, Mehrauli, New Delhi and in August, 2017, a complaint in this regard was made to the SHO, Mehrauli.

16. On 10.10.2017, the petitioner sent another notice invoking the arbitration clause under the Supplementary Deed of Partnership dated 09.07.2012. The respondents caused a reply sent to the aforesaid notice through their advocate on 06.11.2017. It was asserted in the said reply that the respondents had never executed the documents referred to by the petitioner, namely, the Supplementary Partnership Deed dated 09.07.2012 or any irrevocable Power of Attorney dated 04.06.2012.

17. Thereafter, on 04.01.2018, the petitioner filed a petition under Section 9 of the Act and this was followed by the present petition, which was filed on 12.02.2018.

18. The present petition was listed for the first time on 23.02.2018 and notice was issued to the respondents. On 19.03.2018, this Court directed the respondents to file an affidavit affirming whether the signatures on the Partnership Deed, as set up by the petitioner were respondents' signatures or not. In compliance with the aforesaid directions, Mukesh has filed an affidavit, inter alia, affirming that the signatures on the Supplementary Deed of Partnership dated 09.07.2012 was that of Mukesh but the contents of the said Deed are denied. It is claimed that the signatures were obtained by the Managing Director of the petitioner on certain blank papers and the same have been misused by creating certain documents and the Supplementary Partnership Deed as set up by the petitioner is one such document.

19. The principal controversy to be addressed in the present petition is whether the present application is barred by limitation.

20. It is relevant to note that the petitioner had filed a petition (OMP 1198/2014) under Section 9 of the Act praying for interim measures of protection. In that petition, the petitioner had averred that it had come to its knowledge that there is "likelihood of sale or creation of third party rights by the respondent in his 50% stake in the partnership firm and resultantly, the partnership property without obtaining the consent of the petitioner". Mukesh had filed his reply to the said petition on 22.12.2014. In his reply, he had affirmed that his and Mr. Jenson Anto signatures on the alleged Loan Agreement had been obtained fraudulently by Mr. Rishi Sehdev, Director of the petitioner company and Mukesh had never executed the said Loan Agreements after understanding the same. He further affirmed that there was no Partnership Deed between the parties and, therefore, there was no right vested with the petitioner to file the petition.

21. Prior to Mukesh filing his reply to the petition under Section 9 of the Act (OMP 1198/2014), the petitioner had issued a notice dated 14.11.2014 invoking the arbitration clause. In the said notice, the petitioner alleged that Mukesh was representing himself as a sole owner of the property in question and, it was further alleged that Mukesh had raised money from various parties on the pretext of selling his stake in the Firm without obtaining the consent of the petitioner. The petitioner also complained that the names of the partners had not been updated on the register of the partners.

22. Mukesh had replied to the aforesaid notice on 22.12.2014. In the said response, he had asserted that the Supplementary Partnership Deed dated 09.07.2014, which was relied upon by the petitioner was "forged document" and there was no Partnership Deed as alleged at any point of time.

23. The petitioner claims that the said reply was received by it in Court for the first time on 05.02.2015.

24. On the said date (that is, 05.02.2015), this Court disposed of the petitioner's petition under Section 9 of the Act (OMP 1198/2014). In its order, this Court noted that the petitioner had already invoked the arbitration clause and Mukesh had already given his statement that there was no question of selling his share in the Firm. The petition was disposed of by directing that the said statement would continue during the pendency of the arbitral proceedings.

25. It is apparent from the above that the right to sue had arisen in favour of the petitioner earlier in 2014 and in any event with the petitioner invoking the arbitration clause by its notice dated 14.11.2014.

26. However, the petitioner did not take any steps for constitution of the Arbitral Tribunal. Mukesh had denied the existence of any arbitration agreement, as on 22.12.2014, in the reply filed to OMP 1198/2014. In any event, the petitioner had received the said reply to its notice by 05.02.2015. However, the petitioner did not take any steps for constitution of the Arbitral Tribunal. The petitioner once again sent a notice on 10.10.2017 invoking the arbitration clause. It is relevant to note that in its notice, the petitioner made a similar allegation to the effect that Mukesh is attempting to dilute the assets of the Firm-the immovable properties in question.

27. The present petition was filed on 12.02.2018, which is admittedly beyond the period of three years from the first notice dated 14.11.2014.

28. Mr. Talwar, learned Senior Counsel appearing for the petitioner contended that since the petitioner had received the response to the first notice on 05.02.2015 (response dated 22.12.2014), the cause of action had arisen on that date. The petitioner had issued the notice invoking the arbitration within a period of three years on 10.10.2017 from that date and, therefore, the present petition was not barred by limitation.

29. The aforesaid contention is unpersuasive. Section 43(1) of the Act expressly mandates that the Limitation Act, 1963 would apply to arbitration as it applies to the proceedings in Court.

30. In *Prasar Bharti v. Maa Communication*: [MANU/DE/0394/2010](#) : AIR 2011 (Delhi) 26, a Division Bench of this Court has observed as under:-

"5. We find that the limitation for filing a petition under Section 8 of the 1940 Act has been the subject matter in *Utkal Commercial Corporation v. Central Coal Fields Ltd.* [MANU/SC/0028/1999](#) : AIR 1999 SC 801 where it was held that in a case under Section 8(2) of the 1940 Act, Article 137 of the Limitation Act, providing limitation of three years, applies and the time for the purpose of limitation begins to run from the date when the right to make an application under Section 8 accrues i.e. upon the failure of the other party to concur in the appointment of the arbitrator within 15 days in spite of notice. It was held by the Supreme Court that in order to be entitled to ask for a reference there must be a notice contemplated under Section 8 and no compliance thereof.

6. The position under the 1996 Act in Section 11 is akin to that under Section 8 and not to that under Section 20 of the 1940 Act. In fact, the procedure as prescribed under Section 20 of the 1940 Act has been totally done away with in the 1996 Act. Under the 1996 Act, a party to an arbitration agreement cannot straightaway approach the court for appointment of the arbitrator, as a party to an arbitration agreement was entitled to under Section 20 of the old Act. Under Section 11 of the new Act, even if there is no named arbitrator, the party is not entitled to approach the court straightaway and is required to first issue notice to the other party proposing the names of the arbitrators and is to approach the court only upon the failure of consensus within 30 days of such notice. The procedure prescribed in Section 11 is mandatory. Thus, the question of a party preferring an application under Section 11(4) or under Section 11(6) to the Chief Justice or his designate does not arise unless the procedure of giving a notice is followed and without such procedure being followed and failure thereof, there would be no cause of action for the petition under Section 11(4) or 11(6) of the Act. Thus, the limitation for filing an application under Section 11(4) or 11(6) of the Act cannot but accrue only upon the failure of the procedure prescribed and can possibly have nothing to do with the limitation for preferring the claim. The Supreme Court in *J.C. Budhraj Vs. Chairman, Orissa Mining Corporation Ltd.* [MANU/SC/0602/2008](#) : (2008) 2 SCC 444, relied by the counsel for the petitioner, has clearly held that the period of limitation for filing a petition under Section 8(2) of the 1940 Act seeking appointment of an arbitrator cannot be confused with the period of limitation for making the claim.

7. We therefore find that the limitation for filing an application under Section 11(4) would commence running only from the expiry of 30 days from the receipt of request mentioned in Section 11(4)(a) or (b) and the limitation for an application under Section 11(6) would commence running from the happening of the contingencies mentioned in sub-clause (a) or (b) or (c) thereof."

31. In view of the above, the petitioner was required to file the present application within a period of three years from the expiry of 30 days of its notice dated 14.11.2014. The contention that the response to the said notice gave a fresh cause of action to issue a fresh notice invoking the arbitration is wholly unmerited. The petitioner had raised a dispute and had accordingly, invoked the arbitration clause. The respondents had unequivocally denied that the parties had entered into a Partnership Deed or that any arbitration agreement existed between the parties. Disputes were crystallized at that stage. There was no requirement for the petitioner to issue a fresh notice for resolution of the said disputes. It was open for the petitioner to file an application for appointment of an arbitrator at that stage. However, the present application has been filed more than three years after this Court had disposed of the petitioner's petition under Section 9 of the Act. In view of the above, the present application is barred under the provisions of Limitation Act, 1963.

32. The petition is, accordingly, dismissed. All the pending applications are also disposed of.