

2022 LiveLaw (SC) 163

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; B.V. NAGARATHNA, JJ.

SPECIAL LEAVE PETITION (CIVIL) No. 1105 of 2022; FEBRUARY 4, 2022

MUTHA CONSTRUCTION

VERSUS

STRATEGIC BRAND SOLUTIONS (I) PVT. LTD.

Arbitration and Conciliation Act, 1996 - Section 34 - The principle that a court while deciding a petition under Section 34 of the Arbitration and Conciliation Act has no jurisdiction to remand the matter to the Arbitrator for a fresh decision would be applicable where the Appellate Court decides the application under Section 34 of the Act on merits - Even in a case where the award is set aside under Section 34 of the Act on whatever the grounds which may be available under Section 34 of the Act, in that case the parties can still agree for the fresh arbitration may be by the same arbitrator - When both the parties agreed to set aside the award and to remit the matter to the learned Sole Arbitrator for fresh reasoned Award, it is not open to contend that the matter may not be and/or ought not to have been remanded to the same sole arbitrator.

(Para 8)

For Petitioner(s) Mr. Nakul Dewan, Sr. Adv. Mr. Ativ Patel, Adv. Ms. Priyanka Vora, Adv. Mr. Siddhant Buxy, AOR Ms. Anushka Shah, Adv. Mr. Rohan Andrew Naik, Adv.

O R D E R

1. Feeling aggrieved and dissatisfied with the impugned order dated 12.01.2022 passed by the High Court of Judicature at Bombay in Interim Application No.2146 of 2019 in Commercial Appeal No.466 of 2019 by which the Division Bench of the High Court has dismissed the said I.A. for restoration of the appeal, the original applicant before the High Court has preferred the present Special Leave Petition.
2. The dispute arose between the parties. Both the parties were in arbitration before the learned Sole Arbitrator, a retired Judge of the Bombay High Court. The learned Arbitrator passed an award dated 17.01.2018. Being aggrieved

by the award, the petitioner preferred the Commercial Arbitration Petition No.511 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). By Order dated 30.04.2019, the learned Single Judge by consent set aside the award and remanded the matter to the learned Sole Arbitrator to pass a fresh reasoned award. The petition under Section 34 of the Act therefore was disposed of accordingly. That thereafter the petitioner moved an application before the learned Single Judge seeking modification of the order dated 30.04.2019 submitting that the consent had not been accorded for the matter being sent to the same learned Sole Arbitrator. According to the learned counsel for the petitioner the said request was rejected by the learned Single Judge. However, as noted by the High Court no order to this effect was found in the court record. That thereafter being aggrieved by the order dated 30.04.2019, on the limited aspect of consent to have the matter heard by the same sole arbitrator, the petitioner filed a Commercial Arbitration Appeal No.466 of 2019. The same was heard by the Division Bench on 17.07.2019 and the appeal came to be dismissed as not pressed, reserving liberty to the petitioner to seek review of the order dated 30.04.2019. That thereafter the petitioner filed a review petition being Review Petition No.39 of 2019 before the learned Single Judge. The learned Single Judge by order dated 22.11.2019 rejected the review petition by observing that the order dated 30.04.2019 was passed by consent. Being aggrieved by the rejection of the review petition, the petitioner preferred the present I.A. No.2146 of 2019 in Commercial Appeal No.466 of 2019 seeking restoration of the said appeal to file. Nobody appeared on behalf of the respondent and therefore the High Court appointed one Shri Rohaan Cama as Amicus Curiae to assist the court in the matter. That by the impugned order the High Court has dismissed the said I.A. and refused to restore the appeal specifically observing that as the order passed by the learned Single Judge dated 30.04.2019 was a consent order, even if the appeal would have been restored no useful purpose would be served and the court is not inclined to allow the appeal on merits if the same be restored.

3. Feeling aggrieved and dissatisfied with the impugned order passed by the Division Bench of the High Court, the original applicant before the High Court has preferred the present Special Leave Petition.

4. Shri Nakul Dewan, learned Senior Advocate appearing on behalf of the petitioner has vehemently submitted that as such the petitioner never consented for remand of the matter to the same learned Sole Arbitrator.
5. It is further submitted by Shri Nakul Dewan, learned Senior Advocate relying upon the decisions of this Court in the case of **Kinnari Mullick and Anr. vs. Ghanshyam Das Damani**, (2018) 11 SCC 328; **Dyna Technologies Private Limited vs. Crompton Greaves Limited**, 2019 SCC OnLine SC 1656; **IPay Clearing Services Private Limited Versus ICICI Bank Limited**, 2022 SCC OnLine SC 4 that in exercise of powers under Section 34 of the Act the Appellate Court cannot set aside the award on the ground that no reasons have been assigned and the matter cannot be remanded to the same Arbitrator to give reasons. Relying upon Section 5 of the Act it is submitted that there shall be no judicial intervention except where so provided in the Arbitration Act. It is submitted that the Arbitration Act under Section 34 of the Act does not provide for that the Appellate Court can set aside the award and remand the matter to the same sole Arbitrator to provide the reasons.
6. Having heard Shri Nakul Dewan, learned Senior Advocate for the petitioner and the impugned order passed by the High Court and the first order passed by the learned Single Judge in Review Application No.39 of 2019 under Section 34 of the Act, we are of the opinion that the Division Bench of the High Court has rightly dismissed the I.A. and has rightly refused to restore the appeal which was filed against the order passed by the learned Single Judge dated 30.04.2019. It is to be noted that the order dated 30.04.2019 was a consent order by which the counsel on behalf of the parties agreed to set aside the award passed by the learned sole Arbitrator and to remand the matter to the learned sole Arbitrator to pass a fresh reasoned Award. When an application was moved before the learned Single Judge that the order dated 30.04.2019 was not a consent order to remand the matter to the same learned Arbitrator the same came to be rejected by the learned Single Judge by specifically observing that the Court does not accept that it was not a consent order to remand the matter to the same learned sole Arbitrator to pass a fresh reasoned Award. Once the learned Single Judge who passed the order dated 30.04.2019 was of the opinion that the order dated 30.04.2019 was a consent order the matter ends there. Because

the very learned Single Judge who passed the order dated 30.04.2019 has given the finding that the order dated 30.04.2019 was a consent order.

7. Even considering the order dated 30.04.2019 there does not appear to be any intention on the part of the parties to set aside the award and remand the matter to another sole arbitrator. In the order dated 30.04.2019 the learned Single has specifically observed that “the parties intend to approach the learned sole arbitrator for a fresh reasoned award”. Learned Single Judge has also observed that “the parties intend to request the learned sole Arbitrator to publish a fresh award as expeditiously as possible”. From the aforesaid wordings the intention of the parties can be culled out that the award be set aside by consent and the matter be remanded to the same learned Sole Arbitrator for a fresh reasoned award.

8. Therefore, once it is held that the order dated 30.04.2019 was a consent order and the parties agreed to set aside the award and remand the matter to the Sole Arbitrator for a fresh reasoned award, the decisions relied upon by the learned counsel on behalf of the petitioner referred to hereinabove shall not be applicable and/or be of any assistance to the petitioner. The principle of law laid down by this Court in the aforesaid decisions would be applicable where the Appellate Court decides the application under Section 34 of the Act on merits. It is to be noted that even in a case where the award is set aside under Section 34 of the Act on whatever the grounds which may be available under Section 34 of the Act, in that case the parties can still agree for the fresh arbitration may be by the same arbitrator. In the present case both the parties agreed to set aside the award and to remit the matter to the learned Sole Arbitrator for fresh reasoned Award. Therefore, once the order was passed by the learned Single Judge on consent, thereafter it was not open for the petitioner to contend that the matter may not be and/or ought not to have been remanded to the same sole arbitrator.

9. The High Court has rightly dismissed the application/appeal. We are in complete agreement with view taken by the High Court. In view the above and the reasons stated hereinabove the present SLP deserves to be dismissed and is accordingly dismissed.