

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde, M.A., LL.M.,
**LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru**

Dated this the 1st day of February 2021

COM.A.S.No.193/2016

Petitioner

M/s. SLR Metaliks Limited,
Survey No.632, 636,
Narayana Devara Kere,
Lokappa Holla,
Near Mariyammana Halli,
Hagaribommanahalli Taluk,
Bellari District,
Karnataka-583 222
Represented by its
Authorised Representative and CAO
Colonel Om Prakash Nehra.

[By Sri.S.S.P, Advocate]

/v e r s u s/

Respondents

1. M/s. Paharpur Cooling Towers Ltd.,
8/1/B, Diamond Harbour Road,
Kolkata, West Bengal-700027
Represented by its Director.

(R.1 by Sri.P.A.B, Advocate)

ORDERS ON I.A.NO.IV

This application U/O.VI Rule 17 R/W Sec.151 of CPC
R/W Rule 10 of the High Court of Karnataka Arbitration
(Proceedings before the courts) Rules 2001, seeking

permission to amend the petition and to add para 83A, 83B, 83C and 47A, 47B and 47C in the petition by amending the petition.

2. In the proposed amendment, question of limitation is sought to be contended with regard to counter claim of the respondent and the point regarding entitlement of plaintiff to damages is sought to be contended and also entitlement of the petitioner for liquidated damages and un-liquidated damages are all sought to be contended by amending the petition. Petitioner filed a memo with drawing proposed insertion of para 47C in the petition.

3. In the affidavit in support of the application it is stated that the counter claim of the respondent made before learned Arbitrator was barred by limitation and it goes to the root of the matter and can be raised even as a matter of oral argument and to determine the real questions in controversy between the parties, additional grounds sought to be introduced are very necessary. It is also stated that to obviate objections on any technical grounds, the amendment is sought to incorporate all such grounds for challenge.

4. The learned counsel for respondent has filed objection stating that the application is filed at belated stage and only with an intention to protract the case and avoiding

an expeditious disposal of the same. It is stated that the case was posted for final arguments on 12/7/2019 and the plaintiff who was required to start the arguments in the matter has been taking repeated adjournments and even argument was addressed and thereafter case was even posted for judgment and at this stage by filing advancement application, these applications are filed to delay the disposal of the matter and is liable to be rejected. It is stated that the plaintiff's application U/S.34 of Arbitration & Conciliation Act is in the nature of an appeal against Arbitral Award and it is not a plaint in an original suit and by Order VI Rule 17 of CPC, plaintiff cannot amend the petition challenging the award. It is stated that by filing this application, plaintiff is trying to do something indirectly which cannot be done directly. It is stated that the plaintiff has filed application after much belated period and if the amendment is considered it will be against Section 34(3). It is also stated that the amendment sought are in the nature of advancing the final arguments and is not in conformity with Order VI Rule 2 of CPC. On all these grounds, application is prayed to be dismissed.

5. Now the point that arise for my consideration are:

1. Whether amendment to the petition as prayed in I.A.No.IV is to be permitted?
2. What order?

6. Heard both the counsels. Perused the records.

7. My answer to the above points are:

Point No.1: In the negative.

Point No.2: As per final order for the following;

REASONS

8. Point No.1: This petition U/S.34 of the Arbitration & Conciliation Act is filed by the petitioner being aggrieved by the Arbitral Award dated 16/9/2016. The petition is filed challenging the award on various grounds as mentioned in the petition on 15/12/2016. The respondent appeared and the case was posted for arguments and ordersheet discloses that even arguments were heard partly. Recently on 19/11/2020, the petitioner by advancing the application has filed this application seeking amendment to the petition. By this amendment, the petitioner intend to add some grounds in the petition for challenging the award. The same is opposed by the respondent.

9. Counsel for respondent has referred to the decision of Division Bench of Hon'ble High Court of Andhra Pradesh in Civil Revision Petition No.5712 of 2009 dated 3/12/2010 in **Satyam Comaputer Services Limited v/s Venture Global Engineering Limited and others**, in which, the Hon'ble High

Court in para 25(6) has clearly held that **“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.”** In this decision the Hon'ble High Court has held that amendment application after expiry of the period mentioned in Section 34(3) of the Act cannot be permitted. Since the award was passed in the year 2016, the period mentioned in Section 34(3) to file petition challenging the award has expired long back. When the period is expired, as per this decision the amendment petition cannot be filed.

10. On the other hand, the learned counsel for petitioner has drawn my attention to the decision of Hon'ble Supreme Court in **(2010) 4 SCC 518 State of Maharashtra v/s Hindustan Construction Company Limited**, in which the Hon'ble Supreme Court in para 30 has held that **“ 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.”** As per this decision if very peculiar circumstances of the case so warrants, the court can grant leave to amend

such petition. However in that case the Hon'ble Supreme Court has not permitted the amendment.

11. It is clear that as per Section 34(3) the petition challenging the award is to be filed within the prescribed period and as per the decision of the Division Bench of Hon'ble High Court referred above, after expiry of such period, the petitioner cannot file application for amendment. As per the decision of Hon'ble Supreme Court referred above, court can grant leave to amend if peculiar circumstances of the case so warrants. Therefore the petitioner is required to make out such special circumstances requiring grant of leave to amend the petition.

12. On looking to the proposed amendment, the amendment is to state that the counter claim of the respondent before the Arbitrator was barred by limitation and also to say about liquidated damages and unliquidated damages to which the petitioner was entitled and on other related aspects. The petition was filed in the year 2016, the arguments were heard earlier. There is a time limit within which petition challenging the award is to be decided. This prescribed time is already lapsed. Now after four years of filing the petition challenging the award, the petitioner is seeking amendment to the petition. On looking to the proposed amendment, it do not appear to be a special

circumstance requiring the court to grant leave to amend the petition. Even in the affidavit in support of the application, no such special reasons are given for not inserting such paragraphs in the petition earlier in time and necessity of adding the same now. On looking to the entire affidavit of the petitioner and the proposed amendment, there is no such special circumstances found which permit this court to grant leave to amend the petition. Therefore the amendment sought in the application is devoid of merits and the same is to be dismissed. Accordingly, point No.1 is answered **in the negative**.

13. Point No.2: In view of the discussion made above, I proceed to pass the following;

ORDER

Application filed under Order VI Rule 17 R/W Sec.151 of CPC, 1908 R/W Rule 10 of the High Court of Karnataka Arbitration (Proceedings before the courts) Rules 2001, by the petitioner is dismissed.

[Dictated to the Judgment Writer; transcript thereof corrected, initialed and then pronounced by me, in the Open Court on this the **1st day of February 2021**]

[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.