

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.13700 OF 2015
(Arising out of SLP(C)No.26955 of 2011)

M/S INDIAN INSTT. OF PLANNING & MGMT.& ANR.
.....APPELLANTS

VERSUS

M/S AK & I ADVERTISING PVT.LTD.
.....RESPONDENT

J U D G M E N T

J.S.KHEHAR, J.

1. Leave granted.

2. The respondent-M/s AK & I Advertising Pvt.Ltd. and the appellants were admittedly in a contractual relationship wherein the respondent was assigned with the responsibility of handling advertisement work of the appellants. According to the agreement between the parties, the payment mechanism settled between the parties required the respondent to raise bills with supporting vouchers within 15 to 30 days of the publication of the advertisement. The bills were to be honoured within 55 days of the date of publication and/or telecast of the advertisement.

It is

also not a matter of dispute, that Clause 11 of the contract

contemplated, that disputes and differences arising between the

parties in connection with their contractual obligations would be

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referred to an arbitrator as agreed to by the parties. And that,
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Satish Kumar Yadav
Date: 2015.11.28
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Reason:

the dispute would be settled in consonance with the provisions of
the Indian Arbitration Act.

3. It is also not a matter of dispute, that consequent upon differences arising between the parties, the contract was eventually terminated by the appellants in December, 2006. After the termination of the contract, the respondent - M/s AK & I Advertising Pvt.Ltd issued a letter requiring the appellants to clear the outstanding dues, which were quantified at Rs.3,17,82,789/-, and in addition thereto, interest on delayed payment till 31.12.2006. After the receipt of the aforesaid communication, the appellants released an amount of Rs.71,58,100/-, and a further amount of Rs.60,00,000/-, totalling in all Rs.1,31,58,100/- (less TDS of Rs.4,12,678/-).

4. For recovering the remaining principal amount claimed by the respondent as also the interest component, the respondent- M/s AK & I Advertising Pvt.Ltd approached the Indian Newspaper Society (hereinafter referred to as 'the INS') for intervening between the parties for settling their dispute. During the course of the negotiations, the appellants, through a communication dated 24.06.2007, offered a full and final settlement of Rs.99,50,000/- (which included Rs.92,00,000/- towards the principal amount and Rs.7,50,100/- towards interest). This offer was made towards a full and final settlement of all pending dues between the parties.

In the ongoing negotiations, a meeting was arranged by the then Deputy Secretary of the INS, where both the parties participated on 10.07.2007. Thereafter, on 23.07.2007, the appellants paid a sum of Rs.92,24,206/- and described the same as - "towards full and final settlement".

5. It is the contention of the learned counsel for the appellants, that on 25.06.2007, the Chairman of the INS advised the

parties to have their dispute amicably settled through arbitration.

And for the said purpose, to nominate an arbitrator.
Even

thereafter, through an another communication dated 06.08.2007, the

Chairman of the INS again sought the consent of the rival parties

for appointment of an arbitrator, with reference to the
above

subject.

6. Since the parties could not agree to settle their dispute

by way of arbitration, the respondent approached the High Court of

Delhi by filing Arbitration Petition No.16 of 2011, under Section

11 of the Arbitration and Conciliation Act, 1996 (herein
after

referred to as 'the Act').

The prayer made in the above petition

was for appointment of an arbitrator with reference to monetary

obligations arising out of their contractual obligations.

This

prayer made before the High Court by the respondent, was accepted

through the impugned order dated 10.05.2011. The High
Court

disposed of the above petition by appointing Mr.Ashwini
Mata,

Senior Advocate, as the sole arbitrator to adjudicate the dispute

between the parties.

While appointing the arbitrator, the High

Court left open all objections including the objections raised by

the appellants, that the claim raised by M/s AK & I Advertising

Pvt.Ltd was barred by limitation. The High Court also determined

the fee payable to the arbitrator.

7. During the course of hearing, learned counsel for the

appellants, relied upon Section 11 of the Act to assai
l the

validity of the impugned order dated 10.05.2011. It wa
s the

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contention of the learned counsel for the appellants, that the

mandate of Sub-section (5) of Section 11 required a party to a

dispute, to enjoin the other party to the contract, to agree to

appoint an arbitrator, to settle their disputes, and only on the

presentation of such request, the other party fails to agree to

appoint an arbitrator within 30 days, the aggrieved party can

approach the jurisdictional High Court under Section 11 of the Act,

with a request to appoint an arbitrator. In order to understand the

claim raised by the appellants, it is necessary to extr

act hereunder Section 11(5) of the Act, as also, Section 2(1) (h)

defining the term "party". The above provisions are reproduc

ed hereunder.:

"2. Definitions.-(1) In this Part, unless the context otherwise requires,-

(h) "party" means a party to an arbitration agreement.

11. Appointment of arbitrators.-

xxx

xxx

xxx

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Chief Justice or any person or institution designated by him."

8. Having given our thoughtful consideration to the

submissions advanced at the hands of the learned counsel for the appellants, we are satisfied to hold, that if the parties fail to agree to appoint an arbitrator within 30 days from the receipt of a request made by one party to the other, then and only then, Section

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11 of the Act can be invoked seeking a direction at the hands of

the High Court, to appoint an Arbitrator. Section 2(1)(a) of the

Act, leaves no room for any doubt, that the term "party" expressed

in Section 11(5) of the Act is referable to a party to an arbitration agreement.

9. During the course of hearing, learned counsel for the appellants emphasised, that no such request had been made by M/s AK & I Advertising Pvt.Ltd for the appointment of an arbitrator, to the appellants, for the settlement of their contractual dispute,

details whereof have been narrated hereinabove. It is the pointed contention of the learned counsel for the appellants, that a request for appointment of an arbitrator was made only by the Indian Newspaper Society and never by M/s AK & I Advertising Pvt.Ltd. It was the submission of the learned counsel for the appellants that the term "party" in Section 2(h) of the Act would include either the appellants before this Court or M/s AK & I Advertising Pvt.Ltd., and not, the Indian Newspaper Society. No document was brought to our notice during the course of hearing by the learned counsel for the respondent, indicating that M/s AK & I Advertising Pvt.Ltd. had ever approached the appellants requiring the appellants to agree to the appointment of an arbitrator, for the settlement of their monetary disputes, emerging out of their contractual relationship, with regard to handling of the advertisement work of the appellants.

10. In the above view of the matter, we are satisfied, that it was not open to the High Court to invoke its jurisdiction under Section 11 of the Act, for nominating/appointing an arbitrator. In

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view of the above, the impugned order passed by the High Court deserves to be set aside, and the same is accordingly hereby set aside.

11. The appeal is accordingly allowed.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(R. BANUMATHI)

NEW DELHI;
NOVEMBER 24, 2015.

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ITEM NO.5

COURT NO.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).26955/2011

(Arising out of impugned final judgment and order dated 10/05/2011
in ARBP No.16/2011 passed by the High Court of Delhi at New Delhi)

M/S INDIAN INSTT. OF PLANNING & MGMT.&AN Petitioner(s)

VERSUS

M/S AK & I ADVERTISING PVT.LTD. Respondent(s)

(With interim relief and office report)
(For final disposal)

Date : 24/11/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr.Arunabh Chowdhury, Adv.
Mr.Vaibhav Tomar, Adv.
Mr.Gurcharan Singh, Adv.
Mr. P. S. Sudheer, Adv.

For Respondent(s) Mr.Pradeep Aggarwal, Adv.
Mr.A.P.Jain, Adv.
Mr.Anurag Jain, Adv.
Mr.Umesh P.Singh, Adv.
Ms. N. Annapoorani, Adv.

Upon hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed judgment .

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
COURT MASTER

(Signed judgment is placed on the file)