

## **Company. However vs Continued To File Multiple Proceedings ... on 11 August, 2020**

IN THE COURT OF THE V ADDL. CITY CIVIL JUDGE,  
AT BENGALURU.

(CCH No. 13)

Present: Sri. C.D. KAROSHI, B.A., LL.M.  
V ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.

Dated this the 11th day of August, 2020.

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BETWEEN

Northern Operating Services Pvt. Ltd.,  
A Company incorporated under  
the Indian Companies Act, 1956,  
Having its office at:-  
2nd Floor, RMZ Ecospace Campus IC  
Sarjapur Outer Ring Road,  
Bellandur Village, Varthur Hobli,  
Bengaluru -103.

Rep. by its Vice President for  
Human Resources  
Mr. Hirendra Badhiye

Plaintiff

( By Sri.JSV.,, Advocate )  
AND

1. Sri. Jaiprakash Krishnaswamy Naidu,  
S/o B.R. Krishnaswamy Naidu,  
No.7/801, Sea Breeze Towers,  
Sector 16, Nerul West,  
Navi Mumbai-706.

2. Sri. B. Shivalinge Gowda,  
Sole Arbitrator,  
District Judge (Retd.,)  
Arbitration Centre- Karnataka,  
Khanija Bhavan, III Floor, East Wing,  
Race Course Road, Bengaluru -01.  
Defendants

( D.1- by Sri SM., Advocate, D.2-Absent)

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-: JUDGMENT :-

The petitioner/plaintiff has filed the present suit under  
Section 34 of the Arbitration and Conciliation Act 1996, with a

prayer to set aside the Award passed by learned arbitrator to the extent of dismissal of the counter claim in A.C.No.117/2015 dated 31/01/2017.

2. The brief facts are as under:-

That, the petitioner is a wholly owned subsidiary or Northern Trust Corporation which is a leading provider of asset servicing, fund administration, asset management, fiduciary and banking solutions for confrontations, institutions, families and individuals worldwide and is committed to a discrimination free work place and provide equal opportunity to its employees. Further it is averred that, 1st respondent joined the petitioner company on 03/05/2010 in the capacity of Divisional Manager in the Operations Department and left the petitioner in the capacity of Vice President - UVRs Division on 16/02/2012, during the employment with the petitioner company, several complaints were made by the 1st respondent's team regarding the work, attitude and behavior of the 1st respondent and same were addressed by the petitioner company through the petitioner's manager and other superiors in the company, the said instances were brought to the attention of the 1st respondent time and again, but no measures were taken by him to address the problems raised. petitioner company also noted several instances of breach of confidentiality and informed the 1st respondent about the same and gave several opportunities to improve in consonance with petitioner's policies and philosophy,

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however the 1st respondent refused to avail these opportunities and stood in breach of several obligations expected of any employee of his rank.

Further, in the light of increasing frequency of complaints, the 1st respondent was called for a meeting on 16/02/2012, informed about the several complaints were being received against him from his team members, 1st respondent stated that he did not want to work in such a team and voluntarily tendered his resignation which was duly and immediately accepted by the petitioner company. However, after the recession of his employment the 1st respondent sought to be reinstated in the company but the same was not accepted by the petitioner company and thus 1st respondent collected his service certificate, relieving letter and as a gesture of goodwill petitioner company paid the 1st respondent two month's pay in full and final settlement of all and any accounts between the petitioner company and the 1st respondent. It is further contended that, despite this gesture, 1st respondent began issuing several legal notices to employees of the petitioner company including many senior and top officials of the parent company in USA, 1st respondent continued to file multiple proceedings against the petitioner company and has approached various forums seeking untenable reliefs and with each forum the 1st respondent's claim have grown bolder and larger, apart from reinstatement the 1st

respondent had additionally sought for future wages, back wages, compensation and damages at different points in time. That apart, the 1st respondent strangely took the plea that he

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was subjected to racial discrimination and his rights under Art. 14 of the Constitution of India, were violated, for which petitioner company have replied by saying that these claims in relation to the alleged violation of Art.14 would not be arbitrable and all the disputes relating to rights in rem are required to be adjudicated by courts and public tribunals and cannot be subject of a private arbitration.

Further, claims made by the 1st respondent were resisted by the petitioner on various grounds including a) that the claims were in violation of Section 14 of the Specific Reliefs Act, b) that the claims were barred by issue estoppel and res-judicata, c) that the question relating to violation of the Constitution, racism and discrimination are not arbitrable, d) that the claims were untenable, frivolous and false, e) that the petitioner has suppressed various material facts and documents and had resorted to unfair means since no dues were owed to the first respondent, f) that the petitioner misrepresented his financial status and played fraud on the tribunal g) that the petitioner has indulged in forum shopping amongst other defenses. Further, the petitioner herein also lodged a counter claim before the Arbitral Tribunal on the ground that 1st respondent herein had committed breach of his agreements and objections and 1st respondent had grossly abused the judicial process and the petitioner was entitled to damages on this account. It is further contended that, upon entering its reference, the arbitral tribunal gave the 1st respondent opportunities to file their respective pleadings and 1st respondent paid his share of the arbitrator's

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charges on the claim, he refused to do so as far as counter claim is concerned by stating that he is very poor financial condition and that the counter claim amounted to economic bullying and refused to pay his share of the Tribunal's fee as such the petitioner then made an application seeking that security is given in the event it succeeds in the arbitration, the 1st respondent offered his apartment at Lake Lucerne, Powai, Bombay, as security claiming that it was his one and only property, later during the course of the proceedings the 1st respondent was confronted with other documents establishing his clear and absolute title over another property in Bengaluru, which he had even rented. Further, 1st respondent resorted to forum shopping and has approached the courts/tribunals with unclean hands. The reasoning of the Arbitral Tribunal as far as the dismissal of the claim is concerned both detailed and cogent and the claims

are barred and not tenable. However, while dealing with the counter claim the arbitral tribunal has taken the views that the petitioner had contended that since the very employment contract does not subsist, the arbitration clause therein also come to an end and hence the claims are beyond the purview of the arbitration proceedings. Further the arbitral tribunal holds that the 1st respondent had breached the company's policy and the employment agreement, but by misapplying and misunderstanding the stand of the petitioner seeks to assail the award only in so far as it relates to the dismissal of the counter claim on the grounds that, the arbitral tribunal ought to have seen that the petitioner company did not contend that the arbitral agreement between the parties as contemplated under Section

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7 of the Arbitration and Conciliation Act,1996 comes to an end on account of termination or cessation of the employment agreement, as such to this extent the award is frivolous and is liable to be set aside as it violates public policy. The contention of the petitioner was that while the majority of the claims put forth were not maintainable or tenable, they were certainly arbitrable. The claims raised by the 1st respondent claimant were not arbitrable since it alleging violation of Art.14, racism and discrimination. This fundamental error in appreciation of the law renders the award unsustainable as far as it relates to the counter claim perverse as such the same is liable to be set aside to this extent. Further the arbitral tribunal also erred in taking the view that the issues raised in the counter claim fall outside the purview of the arbitration clause in the employment agreement. The 1st respondent has committed a breach of policy of the employment agreement and since the counter claim was for those precise breaches, the arbitral tribunal erred in holding that these issues were outside the purview of the arbitral clause and despite holding that the petitioner has proven the breach on the part of the 1st respondent, the tribunal erred in not going into the merits of the counter claim and dismissing it in limine. The reasons given by the Arbitral Tribunal further constitutes a violation of the fundamental policy of India as the stance taken by the tribunal is in violation of the Section 16(1)(a) of the Arbitration and Conciliation Act, 1996 as well as law laid down by superior courts, as such failed to apply a judicial approach and the award is liable to be set aside and non application of mind is a defect fatal to the adjudication of the counter claim. The error

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of the arbitral tribunal constitutes a patent illegality by awarding cost on the counter claim in addition to the costs on the claim, as such liable to be set aside in limine. The counter claim can be treated as a separate claim in itself and it requires reconsideration, as such the petitioner is entitled to counter claim from the 1st respondent and by misleading the contention of the

petitioner the tribunal ought not to have dismissed the counter claim and in doing so, the award of the tribunal in so far as it relates to the counter claim has fallen foul of Section 34(2) and 34(2)(A), a clear ground is made out for reconsideration of the counter claims of the petitioner by the Arbitral Tribunal. On these grounds prayed for setting aside the award relates to the counter claim passed in A.C. No.117/2015 dated 31/01/2017 by the learned arbitrator tribunal by allowing the application.

3. Records reveal that the respondent/defendant No.1 appeared and filed objection statement contending that application filed by the applicant is not maintainable, liable to be dismissed. Averments made by the applicant are denied as false and baseless except those that are specifically admitted. The applicant has failed to disclose even a single ground provided under Section 34 of the Act and the same is after thought and barred by Section 34(3) of the Act. The applicant was not able to justify the basis of their counterclaim sought for during the trial. The applicant evaded facing the process of law for a period of over 3.5 years by dodging different courts and forums after the 1st respondent initiated legal proceedings against forceful eviction. Mr. Hirendra who represents the applicant company

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had joined the organization 40 days prior to forceful eviction of the respondent No.1 and he was on probation at the time of eviction from the company by unfair means, applicant has no cause of action against the 1st respondent who has not committed any breach of policies nor disclosed any confidential information, on the other hand he has been rewarded with increment and bonus along with notice period salary. The applicant has not justified the basis of their counterclaim despite being asked by the arbitrator. The applicant has once again lie before the court that as per Section 7 of the Act the arbitral agreement comes to an end on account of termination of employment agreement, as such application needs to be dismissed with compensatory cost.

Further contend that, the arbitrator overlooked the facts and evidence on record and went ahead by passing an order favouring the applicant which clearly proves beyond reasonable doubt that the order passed by the arbitrator is improper. 1 St respondent sent an e-mail immediately on the next day i.e. on 17/02/2012 to Mr. Arthur Jabolonski highlighting the forced eviction on the previous day was not refuted by Mr. Arthur till this date which itself is admission of the contents of e-mail, he had also sent several e-mails to senior officials of the parent company in the US, prior to initiating legal remedy on unceremonious eviction from the office, but none of the officials except one, responded or refuted the claims made by 1 st

respondent, thereby indirectly admitting the contents of the e-mail. Further contend that Mr. Thomas Mitchell admitted in his

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mail to 1st respondent that the decision to evict him was taken by Mr. Arthur and Mr. Hirendra Bhadiya on 16/02/2012 and he will be paid the notice period salary which was earlier denied. The applicant despite having access to CCTV footage were not able to produce enough evidence to refute the allegations of the 1st respondent and when 1st respondent stated that applicant after forcefully seeking his resignation through coercion was escorted by the HR Manager to the exit gate in full view of other employees thereby humiliating him and the applicant paid notice period salary to the 1st respondent despite allegations made by applicant that he resigned on his own and as per the then prevailing policy, it is the employee who resigns without serving the notice period has to pay the notice period salary. Further contend that, the applicant deliberately gave negative feedback to the prospective employers of 1st respondent in order to prevent him from gainfully employed after forcefully evicting him from the applicant company, a fact which was not denied by the applicant during the arbitration trial. The applicant misdirected the 1st respondent to City Civil Court by making false submission to the Labour Officer in writing, despite being aware of the presence of Arbitration Clause for resolution of disputes. The applicant refused to appoint an arbitrator by mutual consent despite giving an undertaking to the Civil Court forcing the respondent No.1 to approach High Court and the applicant made false allegations against the 1st respondent for approaching different forums, whereas it was the applicant who was instrumental in 1st respondent approaching City Civil Court and later to the High Court despite facing severe financial adversities.

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The applicant made false allegations about breach of company's policies by 1st respondent but were not able to produce concrete evidence to substantiate the same despite having all the records at their disposal. Further the applicant gave bonuses and annual increments to 1st respondent even after forced resignation, despite allegations of poor performance and breach of company's policies by him which was in total contradiction of applicant company's own measurement of performance evaluation by all means. The applicant filed a counter claim for an equivalent amount against the respondent No.1 when all their attempts to stop the respondent No.1 to pursue his claim failed. The applicant was not able to substantiate enough evidence on how their counter claim was calculated and the applicant insisted the 1st respondent to deposit collateral for an equivalent amount of their counter claim, thereby threatened to dislocate the 1st respondent from their only place of stay with scant regard to elderly parent of 90 years who resides with him. Further without

prejudice to the said grounds the applicant is not entitled for any reliefs as per the counter claim and though policy of the applicant claims to be discrimination free work place and to provide equal opportunities to its employees, in reality the applicant has persistently resorted to discriminatory and arbitrary firing of the employees at their India office at slightest pretext amounting to racism. The allegations made in para 5 to 10, 12 to 25 and 30 are denied as false and incorrect. On these grounds prayed for dismissal of the suit/application with heavy compensatory cost.

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4. Heard the learned counsel for parties physically/V.C and perused the written arguments along with the material on record. The learned counsel for petitioner/plaintiff has relied on decisions reported in 1. Ssangyong Engineering & Construction Co. Ltd., Vs. National Highways Authority of India, 2. Associate Builders V. DDA (2015), 3 SCC 49, 3. Enercon Vs. Enercon 2014(5) SCC 1, 4. Ashapura Mine Chem Ltd., Vs. Gujarat Mineral Development Corporation 2015(5) SCALE 379 and 5. State of Goa Vs. Praveen Enterprises (2012) 12 SCC 581. The learned counsel for the respondent/defendant No.1 has relied on the judgments reported in W.P. No.s38303/2017 and 1907-1913/2018 and Civil Appeal No.65/2014.

5. The points that arise for my consideration are :

- 1) Whether the applicant/plaintiff furnishes the proof/establishes the fact that award passed by the learned arbitral tribunal to the extent of dismissal on plea of counter claim is in contravention to the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 ?
- 2) Whether award passed by the arbitral tribunal to the extent of dismissal of the counter claim in A.C. No.117/2015 dated 31/01/2017 is liable to be set aside?
- 3) What order?

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6. My answers to the above points are as under :
- |            |                  |
|------------|------------------|
| Point No.1 | In the Negative. |
| Point No.2 | In the Negative. |

Point No.3 As per final orders for the following:-

-: R E A S O N S :-

7. Point No.1 and 2:- I take these points together for my discussion as the facts overlap and for the sake of convenience.

8. It is worth to note that, admittedly the Vice President for Human Resources of respondent company has filed the above numbered suit against the defendants with a request to set aside the Award passed by the learned arbitrator to the extent of dismissal of the counter claim in A.C.No.117/2015 dated 31/01/2017 based on the grounds urged in the petition/plaint stating that the same is perverse, violation of the fundamental policy of India as the stance taken by the tribunal is in violation of Section 16(1)(a) and section 34 (2-A) of the Arbitration and Conciliation Act, 1996.

9. Per contra the claimant/defendant appeared and filed objection statement contending that plaintiff failed to disclose even a single ground provided under Section 34 of the Act and the same is after thought and barred by Section 34(3) of the Act and also not able to justify the basis of their counterclaim sought for during the trial.

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10. In order to substantiate their case the parties have relied on the evidence of P.W. 1 and the documents at Ex.P.1 to 29 and evidence of R.W.1 and the documents marked at Ex.R.1 to R.26. The said material evidence placed on record by the parties to the arbitration proceedings will have to be appreciated along with the material on record.

11. The learned sole arbitrator for the reasons recorded in the said award held as under:-

- i) The claim petition of the claimant is dismissed with costs.
- ii) The claimant shall pay the respondent all the costs of the proceeding, so far it relates to his claim.
- iii) The counter claim of respondent is dismissed.
- iv) The parties shall bear their own costs of the proceeding, so far it relates to the counter claim.



12. So, on careful perusal of the pleadings, oral and documentary evidence along with written arguments and award passed by the learned sole arbitrator reveal that, so far as in respect of existence of Ex.P.1 offer letter followed by statement of terms of employment having arbitration clause No.24 is concern there is no dispute. The appointment of Mr. Jaiprakash Krishnaswamy Naidu in the defendant company is concern there is no dispute. Further after completion of probation period worked as Vice- President in the said company is also not

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disputed. In the meanwhile he has been evicted from the premises of the said company on the allegations as referred supra in para 2. It is also not in dispute that after termination from the service, the company also paid notice period salary.

13. It is the specific case of the plaintiff company that, the defendant No.1 joined the company on 03/05/2010 in the capacity of Divisional Manager and left in the capacity of Vice president, but during the employment, several complaints were made by company's team regarding work, attitude and behaviour and company also noted several instances of breach of confidentiality and gave the defendant No.1 several opportunities to improve, but he did not turn up, accordingly called a meeting on 16/02/2012 and informed about several complaints being received against him from his team members, for that he stated as he did not want to work in such a team and voluntarily tendered resignation which was duly and immediately accepted by the plaintiff company.

14. In this regard the learned counsel for the plaintiff company has filed detailed written arguments by supporting the impugned award excluding the order of dismissal on plea of counter claim and relying on the decisions referred supra prayed for decreeing the suit.

15. Per contra, it is the case of the defendant No.1 that, during his tenure with the plaintiff company had discharged his duties with high integrity and proficiency as per the policies and job description along with notable achievements, but one

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Mr. Angel Arroyo the then Vice President and Manager-client accounting practice always side tracked the process improvement brought by him for the reasons best known to him and also over looked his contributions during the appraisal process, which was resulted in misunderstanding and communication gap between them. Further when the defendant No.1 had also mentioned about his disappointment in the

appraisal form in the month of January 2012, it was trigger point for the sequence of events that followed him later which resulted in his termination from the service forcefully without giving any opportunity to defend himself or place his arguments and also threatened him of dire consequences.

16. In this regard the learned counsel for the defendant No.1 has also filed detailed written arguments and relying on the decisions referred supra prayed for dismissal of the suit with cost.

17. In the circumstances of the case, this court has to see that, whether the plaintiff has made out any grounds mentioned in Section 34(2) of the Act to set aside the award or not? It is an admitted fact that aggrieved by the same award passed in A.C. No.117/2015 the claimant and respondent have filed separate suits before this court. So the plaintiff /respondent who approached before this court for setting aside the award passed by the arbitral tribunal regarding plea of counter claim has to establish the fact that, said award is in contravention with the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

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18. So in the light of the aforesaid provisions if we carefully go through the arbitration award dated 31/01/2017 we can find that, the claimant/defendant No.1 approached the Hon'ble High Court of Karnataka for appointment of sole arbitrator by filing CMP No.203/2014, accordingly, the sole arbitrator was being appointed by the Hon'ble High Court of Karnataka by order dated 18/09/2015 to resolve the dispute between the parties.

19. It is worth to note that, the application filed under Section 34 of the Act is not an appeal and it is only an application for setting aside the arbitral award. This being the fact as observed by the Hon'ble Apex Court in the case of P.R. Shah, Shares & Stock Brokers (P) Ltd., at Point C {(2012) 1 SCC 594}, this court cannot sit in appeal over award by reassessing or re-appreciating evidence to find out whether different decision could be arrived at against the findings of arbitral tribunal in absence of the grounds stated in Section 34 of the Act.

20. In this connection, Section 34 of the Act provides that,  
(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (1) and sub-section(3).

2) An arbitral award may be set aside by the court only if,

(a) the party making the application furnished proof that,

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon,

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under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this part; or

(b) the court finds that:-

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India

Explanation 1:- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if:-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81 or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions or morality or justice

Explanation 2:- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

[(2-A) An arbitral award arising out of arbitrations other than

international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re appreciation of evidence.

21. So, on perusal of the aforesaid provisions now it is clear that, the applications under Section 34 of the Act are summary proceedings and the scope of enquiry is restricted to consideration whether any one of the grounds mentioned in Section 34(2) of the Act exists for setting aside the award passed by the learned sole arbitrator in A.C. No.117/2015 dated 31/01/2017.

22. The relevant paras 29 and 31 of the findings of the Tribunal on issue No.1 to 6 are as under:-

29. So, I am constrained to hold that the claimant has failed miserably to sustain any of the allegations i.e. of criminal conspiracy, force, duress, coercion, humiliation or undue influence casted against the respondent saying it was to evict him from its Company. The claimant since has also not produced that the respondent had furnished negative information about him to his purported prospective employers and further for the reason also that the employment contract itself since had come to an end by virtue of the claimant from service, the Arbitral Clause therein did not survive any more, he is not entitled to compensation and loss as claimed. Hence my finding on all these issues is against the claimant and negative.

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31. So far as the second fold of contention, the contract of service of the claimant in the respondent-Company was in the nature of personal service. As brought out in the cross-examination of the claimant himself, as per the terms of appointment also, it was no in perpetuity and he had the right to resign and so the respondent had the right to terminate. As stated supra, the claimant was not a

workman instead, was holding the position of a senior officer. The evidence would manifest that the respondent was not satisfactory with the services which the claimant was discharging by holding a high post in the title Vice-President. So, in view of the settled position of law, the claimant cannot ask for specific enforcement of the personal services. Here in the case, it is more so when that contract itself does not subsists. Hence, I hold that the claimant's claim for reinstatement and with back wages though is clearly barred by Section 14 of the Specific Relief Act, but not by resjudicata. This how I answer the issue accordingly.

23. Further findings on Issue No.10 reads thus:-

For the foregoing discussion and finding on the issues, I am of the considered view that the claimant is not entitle to any of the claim sought for against the respondent and consequently it is liable to be dismissed. So also the respondent is not entitled to the counter claim against the claimant and it is liable to be dismissed".

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24. So, the learned arbitrator has come to the overall conclusion that the employment agreement which contains the Arbitration Clause has ceased to exist, accordingly declined to grant the relief claimed by the respondent/present plaintiff. In this regard it was urged on behalf of the plaintiff company that, the conclusion arrived at by the arbitrator in respect of dismissal of counter claim holding as employment agreement which contains the Arbitration Clause has ceased to exist is contrary to Section 16(1)(a) of the Arbitration and Conciliation Act.

25. As could be seen from the perusal of Clause 24 of statement of terms of employment annexed with Ex.P.1 employment offer that, "this agreement is governed and construed in accordance with Indian Laws. Any dispute, controversy or claim arising out of or in connection with the contract of employment shall be finally settled under the rules of Arbitration and Conciliation Act,1996. The seat of

arbitration shall be Bengaluru. The language of the arbitration will be English. If any provision of this contract of employment is held to be invalid or unenforceable, then such provisions shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this contract of employment, but without invalidating any of the remaining provisions of the agreement".

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26. In this regard, a plain reading of provisions of Section 7 of the Arbitration and Conciliation Act, 1996 makes it clear that-

Arbitration Agreement-(1) In this part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in:-

(a) a document signed by the parties

(b) an exchange of letters, telex, telegrams, or other means of telecommunication (including communication through electronic means) which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

27. It may be noted that, for construing an arbitration agreement, the intention of the parties must be looked into. In the present case the intention of the parties, as appearing from

the correspondence viz., Ex.P.8 to 17 which are e-mails, notice, reply and letters as well as Ex.R.5 to 7, 12 to 20 and 23 to 25 viz., endorsements, e-mails and letters which can safely be inferred that there had been a meeting of minds between the parties to the terms of Ex.P.1 agreement which contained the forum of dispute resolution before the arbitral tribunal at Bengaluru itself.

28. This being the fact arbitration agreement/ Ex.P.1 the document having arbitration clause has to be interpreted in such a manner as to give effect to the agreement rather than invalidate it or ceased to exist as on the date of reference of dispute to the arbitral tribunal as observed by the Tribunal. But in this regard, learned arbitral tribunal has observed in para 33 of its award that, 'the claim of the respondent under issue No.8 and 9 do not come within the purview of arbitral clause in the employment agreement and further that very agreement itself has ceased to exist', accordingly declined to grant the relief claimed under counter claim.

29. With regard to plea of counterclaim is concern the learned counsel for the plaintiff company relying on the decision (2012) 12 SCC 581 urged that, the arbitrator is empowered to decide all disputes i.e. claim and counterclaims as set up by the parties. But as discussed supra the tribunal observed that, it does not come within the purview of arbitral clause in the employment agreement. In the aforesaid decision at Point-C observed that though arbitrator is empowered to decide all disputes raised in pleadings, both claims and counterclaims if all

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disputed are referred, but he cannot entertain any additional claims or counterclaims which were not part of disputes specifically referred to arbitration.

30. In the light of aforesaid principle, if we go through the provisions of Section 23 (2-A) of the Act as inserted by Act No.3 of 2016 it is clear that, "the respondent, in support of his case, may also submit a counter-claim or plead a set-off, which shall be adjudicated upon by the Arbitral Tribunal, if such counter-claim or set off falls within the scope of the arbitration agreement".

31. It is worth to note that, admittedly the plea of counter claim as set up by the defendant company before the Tribunal had neither fallen within the scope of the arbitration agreement as required under section 23-A of the Act nor been covered by the reference or the company has requested this court to pass an order so as to resume the arbitral proceedings with fresh reference on the said plea as required under section 34 (4) of

the Act along with claim of the claimant, as such the findings of the Tribunal that plea of counter claim was outside the scope of the reference and not within the purview of arbitration is correct and proper one. This fact has also been supported by the proposition of law laid down by the Hon'ble Apex Court in the case of Punj Sons (P) Ltd., (AIR 1999 SC 1547).

32. In the decisions (2019) 7 SCC 236 and (2015) 3 SCC 49 referred by the learned counsel for respondent No.1 the Hon'ble Apex Court observed that 'an arbitral tribunal must

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decide in accordance with the terms of the contract and if construes a term of the contract in a reasonable manner then award cannot be set aside and it is only when arbitral award is in conflict with public policy of India as per Section 34(2)(b)(ii), that merits of an arbitral award are to be looked into under certain specified circumstances/heads of public policy. The material on record shows that, the award passed by the Tribunal by rejecting plea of counter claim set up by the company is not contravention of the Arbitration Act and terms of the contract which are two important sub-heads of public policy of India. As such, it cannot be said that the findings of fact recorded by the Tribunal would be regarded as a patent illegality or violation of the provisions of Arbitration and Conciliation Act.

33. With regard to point of limitation is concern the plaintiff has stated in para 30 of the plaint as the petition is filed in time, but there is no explanation to the effect as to when he received the arbitral award. Further the plaintiff has neither shown sufficient cause for having prevented to make application within the stipulated period of three months from the date of receipt of award so as to entertain the application within a further period of 30 days as required under Section 34(3) of the Act. The arbitral tribunal has passed award on 31/01/2017. The plaintiff has filed the above numbered suit on 29/05/2017, which indicates that as rightly urged by the other side the application/suit of the plaintiff is also barred by time.

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A.S. No.56/2017

34. Wherefore having regard to the facts and circumstances of the case I am of the opinion that award passed by the learned arbitrator in respect of dismissal of plea of counter claim does not require interference of this court. Accordingly the arguments/written arguments filed by the learned counsel for the defendant No.1 holds good. On the other hand arguments/written arguments filed by the learned counsel for



plaintiff do not have weight and cannot be accepted.  
Consequently, arbitration suit filed by the plaintiff company is  
liable to be dismissed without cost. Hence I answer Point No.1  
and 2 are in the negative.

35.Point No.3 :- For the foregoing reasons I proceed to  
pass the following:

ORDER

The arbitration suit/petition filed under Section 34 of the Arbitration and Conciliation Act 1996 by  
the plaintiff/respondent Company is hereby dismissed.

Parties to bear their own costs.

Draw decree accordingly.

Office to return common records in A.C.No.117/2015 to the concerned Tribunal forthwith.

[ Dictated to the Stenographer directly on computer, typed by her, corrected by me and then passed  
in the office on 11th day of August 2020].

[ C.D. KAROSHI ] V ADDL. CITY CIVIL & SESSIONS JUDGE, BENGALURU.

A.S. No.56/2017 Above numbered case was reserved for Judgment after hearing on merits only. So,  
in view of the general instructions of the Hon'ble High Court of Karnataka dated 03/05/2020 and  
29/05/2020(VC) and as per the Circular of the Office of City Civil court dated 23/05/2020, the said  
case is taken for pronouncement of judgment.

Today is non-sitting day. Accordingly, the Judgment is signed and passed in this office with prior  
intimation/consent of the counsel for parties vide separate order:-

A.S. No.56/2017 ORDER The arbitration suit/petition filed under Section 34 of the  
Arbitration and Conciliation Act 1996 by the plaintiff/respondent Company is hereby  
dismissed.

Parties to bear their own costs. Draw decree accordingly. Office to return common  
records in A.C.No.117/2015 to the concerned Tribunal forthwith.

( C.D.KAROSHI ) V ADDL.CITY CIVIL & SESSIONS JUDGE BENGALURU