

## Was Appointed As Divisional Manager On ... vs Officials Also Gave Negative Feedback ... 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

Mr. Jaiprakash Krishnaswamy Naidu,  
With Address at B1-1302, Suncoast,  
Sector 15, CBD Belapur,  
Navi Mumbai-14.  
( By Sri.MI, Advocate )

Plaintiff

AND

1. Northern Operating Services Pvt. Ltd.,  
A Private Limited Company with its office at  
2nd Floor, RMZ Ecospace Campus IC  
Sarjapur Outer Ring Road,  
Bellandur Village, Varthur Hobli,  
Bengaluru -37.

Rep. by its Chief Executive Officer

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

( D.1- by Sri CKN advocate, D.2-Absent)

-: JUDGMENT :-

The applicant/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 the defendant No.2/sole  
arbitrator in A.C.No.117/2015 dated 31/01/2017.

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2. The brief facts are as under:-

That, the 1st respondent is a company engaged in

investment management asset and fund administration, fiduciary and banking solutions and allied services being a wholly owned subsidiary of Northern Trust Corporation USA. The applicant was appointed as Divisional Manager on 23/03/2010 with an official title as Vice President after successful completion of his probation for six months. Further it is arrayed that, the responsibilities and functions of the applicant are to manage unitized valuation and reporting services smoothly, hiring the right candidates/talent for the process and build diversity, retain talent and bring stability to the processes by process improvements and eliminating errors, accordingly during his tenure with the respondent company had discharged the said duties with high integrity and proficiency as per the policies and job description along with notable achievements. But one Mr. Angel Arroyo the then Vice President and Manager-client accounting practice always side tracked the process improvement brought in by the applicant for the reasons best known to him and also over looked the contributions of the applicant during the appraisal process. He was always on a fault finding spree and rated the applicant at lower three which was not in commensurate to the efforts put by the applicant, being hurt by the same applicant had a meeting with him, during which the applicant narrated regarding his achievements, but it was ignored by the said Angel Arroyo which was resulted in misunderstanding and communication gap between them.

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The applicant had also mentioned about his disappointment in the appraisal form in the month of January 2012, which was trigger point for the sequence of events that followed later with the applicant. Further during a meeting Mr. Hirendra Badhiy informed that after certain investigations the company had found the applicant having committed grave violations and decided to terminate the services of the applicant, but applicant was not given any opportunity to defend himself or place his arguments and also threatened him of dire consequences. The said Mr. Arthur and Hirendra compelled the applicant and undue influence to write his resignation letter, but they refused to accept the same stating that they wanted an unconditional resignation letter or in the alternative will issue termination letter, then he re-wrote resignation letter as per their instructions, then after surrendering the official assets like mobile etc., was escorted out the premises of the respondent. The respondent's official have colluded and criminally conspired to oust the applicant from the company by fabricating some issues which had no roots and also colluded with some team members of the applicant. The said acts are illegal and greatly affected the interest of the applicant, thereby applicant continued to have serious health issues and has been victimized and discriminated. The respondent's officials also gave negative feedback to the prospective employers of the applicant. Respondent company has not issued show cause notice to the applicant and thereby

violated the principles of natural justice. Accordingly on 15/05/2012 the applicant got issued legal notice to the then CEO India Operations of respondent and Mr. Frederick.H.- Northern

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Trust canvassing the injustice meted out to the applicant and for reinstatement along with monetary compensation and reliefs for which the respondents sent an untenable reply with counter allegations. The efforts made for amicable settlement also went in vain. The applicant again issued legal notice dated 07/12/2012 for the similar relief, but there was no response from the side of respondent company. Accordingly he filed O.S. No.1440/2013 before this court for the relief of declaration and reinstatement with full pay as per the employment agreement dated 23/03/2010. The respondent company has taken a stand with respect to clause 24 of the agreement regarding settlement under the Arbitration and Conciliation Act. Further it is averred that after issuing legal notice dated 14/05/2014 the applicant had communicated the respondent about appointment of arbitrator for resolution of the said dispute through arbitration proceedings, but the said request was refused by the respondent, accordingly applicant filed CMP No.203/2014 before the Hon'ble High Court, wherein the matter was referred to the arbitrator for adjudication.

Further it is averred that, after constitution of arbitration tribunal the applicant filed the claim petition with the disputes and claims against the respondent i.e. a) the respondents' act of terminating the services of the applicant on 16/02/2012 through forced resignation is illegal, null and void and against the principles of natural justice, b) the applicant demands reinstatement of his service, along with back date pay with full honours, or in the alternative to pay full compensation of pay (CTC) from the date of forced resignation till the remaining part

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of the services i.e. until his date of retirement, after factoring the annual increment in accordance with the average increase paid by the respondent to the applicant's grade during the period, c) to pay a compensation sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) towards damages for illegal termination, victimization, reputational damage, humiliation, defamation, discrimination and racism and d) to pay a compensation sum of Rs.40,00,000/- (Rupees forty lakhs only) for the financial losses incurred in liquidating the assets to make ends meet and towards counsel fees, mental agony, torture and trauma. On receipt of the notice the respondent appeared and filed their objection to the claim petition along with the counter claim against the applicant seeking to pay a sum of Rs.2 Crores towards gross abuse of judicial process and Rs.1 crore towards damages suffered by the respondent for breach of agreement

and policy of the company. After recording evidence on both the side the learned arbitrator passed the award dated 31/01/2017 in A.C. No.117/2015 by dismissing the claim of the applicant with cost, which suffers from patent infirmities as the same is contrary to the basic notions of morality and justice, accordingly the same is liable to be set aside on the grounds that, the award is contrary to the public policy of the country and suffers from patent errors apparent on the face of the record. The impugned award has been passed in a mechanical manner without considering the pleadings and material on record and thereby resulted in grave miscarriage of justice. The decision of the arbitrator is perverse and liable to be set aside as he has not appreciated the well settled principles of law in proper

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perspective. The arbitrator failed to consider that it was fair to protect employees from wrongful termination especially during uncertain economic conditions and applicant would be difficult in seeking another employment. The arbitrator failed to take into account that a wrongful termination can injure the applicant's career. The respondent had not issued any show cause notice or initiated disciplinary action, but the arbitrator erred and failed to take into account that the relief of reinstatement with continuity of services can be granted where the termination by way of forced resignation is found to be invalid and the said wrongful termination make the family of the applicant suffers from grave adversities. The order of the arbitrator is biased, attitude towards the applicant by over looking the evidence and arguments placed before the tribunal. The arbitrator did not go into the genuineness of the documentary evidence produced by the applicant. The arbitrator also failed to take into account the applicant had an unblemished track record of over 35 years in previous organization and the respondent had hired the applicant based on his good past track record after conducting series of interviews and his good performance with reward of bonus in the service even after forced eviction. The respondent No.1 has indirectly admitted the contents of e-mail dated 17/02/2012. The learned arbitrator failed to recognize that 1 st respondent paid the notice period salary only after the applicant raised the issue in his aforesaid e-mail as if forcibly evicted then to pay the notice period salary as per their own policy. Further failed to take notice of another mail dated 05/03/2012 of Mr. Thomas in response to mail of the applicant dated

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23/02/2012. Further though the applicant had not accepted the notice period salary, but the respondents have violated their own policies by disclosing confidential information alleging that applicant had resigned voluntarily. The applicant had approached the labour officer only to mediate between the applicant and respondent No.1 to avoid lengthy and expensive

legal battle and the said officer has not passed any adverse order. The arbitrator has grossly erred by stating that the applicant did not record that he was reserving right to claim for reinstatement or for damages etc., The arbitrator erred in para 22 of the award by stating that the applicant should have filed report in police station due to criminal acts of the respondent company though police had no role to play in breach of employment terms. The arbitrator failed to ask for CCTV footage from the respondent company about the incident reported by the applicant of being forcefully asked to resign. The arbitrator has seriously erred by stating that the applicant had suppressed the fact regarding the receipt of notice period salary. The arbitrator also erred when the respondent No.1 failed to bring on record the employee hand book stating that it was confidential, but it was an open document where the employees are supposed to retain its copy. The arbitrator committed grave error of law and failed to consider that what remedy the aggrieved applicant had with them to address his grievances in case of injustice caused due to forceful termination if he cannot approach the court or invoke arbitration clause. The arbitrator has erroneously observed that statement of accounts and cheques as per Ex.R.5 and 6 received by the applicant as full and final settlement

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though applicant was forced to resign and not voluntarily. The arbitrator has erroneously held that applicant has violated the policies of respondent company on the basis of Ex.R.12 to 14 and 17 to 20 which are the mail exchanges between the applicant and his team members and said exhibits do not disclose any violations as per employment agreement at Ex.P.1 or confidentiality agreement at Ex.R.1. The arbitrator has erroneously held that the claim of the applicant is barred by Section 14 of the Specific Relief Act and also erred that claim of the applicant is beyond the purview of arbitral proceedings. The finding of the arbitrator in para 14 of the award that submission of resignation letter dated 16/02/2012 is an undisputed material fact is wrong and the 1st respondent had taken a stand of voluntary resignation for the first time only. The findings of the arbitrator in para 15, 20 and 21 of the award is also wrong and incorrect. The finding of the arbitrator in para 27 of the award are purely based on presumptions only. The reasons assigned by the respondent No.2 arbitrator in awarding cost of the proceedings against the applicant in relation to the claim are totally in correct and violation of public policy. The applicant is nearing the retirement age and 1st respondent has deliberately tried to avoid the applicant being reinstated back in employment. On these grounds prayed for setting aside the award passed in A.C. No.117/2015 dated 31/01/2017 by the learned arbitral tribunal.

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3. Records reveal that the respondent/defendant No.1 appeared and filed objection statement contending that suit filed by the plaintiff is bad in law and liable to be dismissed. The 1<sup>st</sup> respondent has also filed application under Section 34 in A.S. No.56/2017. The plaintiff has failed to make out a case under Section 34 of the Act and he is guilty of suppressing several material facts, as such not entitle to any discretionary relief from this court. Further none of the grounds available under Section 34 of the Act have been attracted under the facts and circumstances of the present appeal. The impugned award is not contrary to public policy of India and cannot be set aside. The jurisdiction under Section 34 is limited and finding of fact is not to be interfered with when the arbitrator has decided such controversy. The arbitrator has passed a reasoned award with respect to the counter claim, but petitioner has filed this case solely owing to the fact that he was directed to pay the cost of the proceedings, as such conduct of the petitioner is malafide from the beginning itself and this court cannot exercise/re-appreciate the evidence on the factual matrix. The petitioner continues to abuse the legal process and file frivolous proceedings as he has a history of forum shopping. Without prejudice to the above the impugned award dated 31/01/2017 passed by the learned arbitrator is a cogent and well reasoned award, as per Ex.P.1 employment agreement the petitioner was employed for the post of vice president, as such he is not entitled to protection under Indian Labour Laws. In para 15, the arbitrator has elaborately considered the issue of whether the petitioner is entitle to the rights attributed to a person of the

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labour class or not? In Ex.P.1 appointment letter of the claimant clause 13 specifically states that all property will be returned on resignation. The claimant in his affidavit and before the arbitrator has stated that if the respondent succeeds in the counter claim, he under takes to honour the final order of the arbitrator by disposing of his only property bearing No.A-1601, Powai, Mumbai-76 wherein his family members are residing.

Further contend that, the 1<sup>st</sup> respondent is a wholly owned subsidiary of Northern Trust Corporation is a leading provider of Asset Servicing, fund administration, asset management, fiduciary and banking solutions for corporations etc., worldwide. The petitioner joined the 1<sup>st</sup> respondent 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 1<sup>st</sup> respondent's team regarding work, attitude and behaviour. The company also noted several instances of breach of confidentiality and gave the petitioner several opportunities to improve, but he did not turn up. Accordingly the petitioner was called for a meeting on 16/02/2012 and informed about several complaints being received against him from his team member 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 respondent company. However, after recession of his employment the petitioner sought to be reinstated in the company, but that request was not acceptable and as gesture of good will, 1st respondent company paid two months pay in full and final settlement of all and any accounts. Despite this

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gesture, the petitioner began issuing several legal notices to the employees of the 1st respondent company and continued to file multiple proceedings by approaching various forums seeking untenable reliefs, as such question of violation of Art.14 does not arise. The claims made by the petitioner were resisted by the 1st respondent 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. The 1st respondent also lodged a counter claim before the arbitral tribunal on the ground that a) the petitioner herein had committed breach of his agreements and obligations, b) that the petitioner had grossly abused the judicial process and the first respondent was entitled to damages on this account. By its award dated 31/01/2017 the Arbitral Tribunal was pleased to (a) dismiss the claim petition of the claimant (petitioner herein) with costs, b) direct that the claimant shall pay the first respondent herein all the costs of the proceedings in so far it relates to this claim, c) dismissed the counter claim of the 1st respondent herein and d) direct that the party shall bear their costs in so far as it relates to the counter claim. The reasoning of the Arbitral

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Tribunal as far as the dismissal of the claim is concerned is both detailed and cogent. It takes into account the fact that the claims are barred and not tenable. It also takes note of the categorical admission of the petitioner during his cross-examination. It takes into account some other relevant documentary evidence and holds clearly that the petitioner has completely failed to prove his case. However, while dealing with the counter claim, the Arbitral Tribunal has taken the views that the 1st respondent had contended that since the very employment contract does not subsist, the arbitration clause there in also come to an end and hence the claims are beyond the purview of the arbitration proceedings. The Arbitral Tribunal further holds that the petitioner

is in breach of the company's policy and the employment agreement and does not quantify the damage or award compensation. The averments made in re-paras of the petition are misleading and denied as false. This court does not have the power to sit in appeal over the award passed on the merits of the case. The applicant cannot question the correctness of the findings of the arbitrator before this court. On these grounds prayed for dismissal of the suit/application with cost.

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 applicant/plaintiff has relied on the decisions reported in 1. (2005) 8 SCC 618, 2. MANU/SC/0942/2013, 3. MANU/UP/0205/1953 and 4. MANU/SC/0513/2013. The learned counsel for respondent/defendant No.1 has relied on decisions:-

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1. Paras Kente Collieries Ltd., Vs. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) SCC Online SC 741. 2. Ssangyong Engineering & Construction Co. Ltd., Vs. National Highways Authority of India (2019) SCC Online SC 677, 3. Associate Builders Vs. DDA (2015) 3 SCC 49, 4. Rashtriya Ispat Nigam Ltd., Vs. Chand Ram Saran (2012) 5 SCC 306, 5. U.P. State Electricity Board Vs. Searsole Chemicals Ltd., (2001) 3 SCC 397, 6. M/s Pearlite Liners Pvt. Ltd., Vs. Manorama Sirsi (2004) 3 SCC 172, 7. Executive Committee of Vaish Degree College, Shamli Vs. Lakshmi Narain (1976) 2 SCC 58, 8. Union Public Service Commission Vs. Girish Jayanti Lal Verghela and others (2006) 2 SCC 482.

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 is in contravention to the provisions of Section 34 of the Arbitration and Conciliation Act, 1996 ?
- 2) Whether award passed by the arbitral tribunal 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 Affirmative
- Point No.2 In the Affirmative
- 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 claimant/plaintiff has filed the above numbered suit against the respondent/defendants with a request to set aside the award passed by the learned sole arbitrator, Arbitration Center Karnataka (Domestic and International), Bengaluru in A.C. No.117/2015 dated 31/01/2017 based on the grounds urged in the petition/plaint stating that the same suffers from arbitrariness, against the principles of natural justice and opposed to public policy.

9. Per contra, the respondent/defendant No.1 appeared and filed objection statement by partly supporting the award passed by the learned arbitrator contending that the plaintiff has filed the false case only to prolong the proceedings and to cause hardship to the defendant company.

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10. In order to substantiate their case the claimant relied on the evidence of P.W. 1 and the documents at Ex.P.1 to 29. The respondent/defendant No.1 in rebuttal of the same relied on the 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 that:-

- 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 the plaintiff Mr. Jaiprakash Krishnaswamy Naidu in the defendant No.1 company is concern there is no dispute. Further after completion of

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probation period the plaintiff also worked as Vice- President in the said company is also not 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 of the plaintiff from the service, the defendant No.1 company also paid notice period salary.

13. It is the specific case of the plaintiff that, during his tenure with the respondent company had discharged his duties with high integrity and proficiency as per the policies and job description along with notable achievements, but one 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 plaintiff 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.

14. In this regard the learned counsel for the plaintiff has filed detailed written arguments and also urged by relying on the decisions referred supra and prayed for setting aside the award.

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15. Per contra, it is the case of the defendant No.1 company that, the plaintiff 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 plaintiff several opportunities to improve, but he did not turn up, accordingly the plaintiff was called for 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 respondent company.

16. In this regard the learned counsel for the defendant No.1 company has also filed detailed written arguments by supporting the impugned award excluding the order of dismissal on plea of counter claim and 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 the claimant and respondent have filed separate suits before this court aggrieved by the same award passed in A.C. No.117/2015. The plaintiff/claimant who approached before this court for setting aside the award

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passed by the arbitral tribunal has to establish the fact that, said award is in contravention with the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

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/plaintiff 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. Admittedly, 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 which 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, 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

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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.

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20. 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.

21. 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.

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

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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.

22. It is also worth to note that, if we go through the reasons assigned by the learned arbitrator while dealing with Issue No.7 in para 32 of its award we can find that based on submissions made by the learned counsel for the claimant and respondent company observed as under:-

" Issue No.7:- True, it was so, but the law is not always logic. It is based on facts and reasons. Merely because the respondent contended so in the civil action of the claimant or that, it did not raise the objection before the Hon'ble High Court in the proceeding initiated for appointment of Arbitrator, by that itself and against the facts it cannot be held that the claims of the claimant are still available for Arbitration when the very employment agreement which contains the Arbitration Clause has ceased to exist. Therefore, I have no option, but to answer the issue No.7 against the claimant and in negative".

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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".

23. The learned arbitrator has come to the overall conclusion that the employment agreement which contains the Arbitration Clause has ceased to exist and does not survive by

virtue of claimant relieved from the service, accordingly declined to grant the relief claimed by the claimant, the said conclusion appears to be with inadequacy of reasons. In this regard a reading of Section 16(1)(b) of the Arbitration and Conciliation Act along with ratio laid down by the Hon'ble Apex Court in the decision MANU/SC/0513/2013 referred at Sl.No.4 supra it can be held that, arbitration clause as available in Ex.P.1 continues to be enforceable one.

24. 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

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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".

25. 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.

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(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.

26. On perusal of Ex.P.18 reveals that, before approaching the arbitral tribunal the plaintiff filed O.S. No.1440/2013 before this court as against the defendant company and in view of arbitration clause available to the parties the suit came to be dismissed on 05/12/2013 based on I.A. No.I filed under Order VII Rule 11 CPC with a direction to the parties to approach the arbitral tribunal as claimed in I.A. No.II as per Section 8 of the Act. So now it is clear that, in view of the aforesaid clause the claimant has not only made efforts to make reference of the dispute, but has also got issued legal notice as per Ex.P.10 calling upon the respondent company for immediate compliance to reinstate into the service with back dated wages and full honours or alternatively and to pay CTC for remaining part of services till his date of retirement as per the orders of the Hon'ble High Court passed in CMP No.203/2014 dated 18/09/2015, for that the respondent company has also replied as per Ex.P.11.

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

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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. Clause 12 of statement of terms of employment provides for issuance of one month prior notice in case of termination of contract of employment. Further it says that,



Northern will not be liable to pay for the notice period if employee resigns from its services with request that he be relieved with immediate effect.

29. In this connection, the Hon'ble Apex Court has held in the decision (MANU/SC/0942/2013) referred at Sl.No.2 supra that, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is normal rule. In the case on hand, It is not in dispute that, the defendant company has paid notice period salary to the plaintiff and he has received the same. In this regard it was urged on behalf of the defendant company and also observed in para 24 of the Award that the plaintiff has received the notice period salary without any protest or demur, as such the very employment contract itself does not subsists. But, contents of Ex.P.8 e-mail dated 17/02/2012 and Ex.R.16 another e-mail dated 23/02/2012 reflects the fact under which circumstances plaintiff has received the said salary and thereafter he has also seriously disputed the termination alleging that the same is not voluntary but it is forcible one. Then what prevented the defendant company to issue prior notice of

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termination of employment? Further, the dispute regarding termination of claimant is forcible or voluntary one is the very subject matter for reference of parties to arbitration. This being the fact without there being a specific plea and proof regarding termination of 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.

30. It is to be noticed that even otherwise, as held by the Hon'ble Apex Court in the case of Branch Manager, Magma, Leasing and Finance Ltd., and another Vs Potluri Madhavi Latha and another reported in (2009) 10 SCC page 103 , Arbitration and Conciliation Act 1996 - Sec.7, 2(1)(b) and (8) - Contract Act, 1872 Sec.39 and 28 exception-1- merely because the contract has come to an end by its termination due to breach, the arbitration clause does not perish nor is rendered inoperative, rather it survives for resolution of disputes arising "in respect of " or "with regard to" or "under" the Contract Act."

31. It is relevant to point out that, Section 5 of the Act also makes it clear about the fact that, what extent of judicial intervention can be made in such a case. Though the learned arbitrator has observed that claim of the claimant is barred by res-judicata and hit by the provisions of Section 14 of the Specific Relief Act, but none of these facts in issue have been finally heard and decided by the court or any authority.

The Hon'ble Apex Court has held in (2004) 3 SCC 172 that a contract of personal service cannot be specifically enforced and a court will not give a declaration that the contract subsists and the employee continues to be in service against the Will and consent of the employer. So, though, such contracts which cannot be specifically enforced by the court, but not barred by the Arbitral Tribunal based on arbitration agreement.

32. It is pertinent to note here that, as observed supra the 1996 Act was enacted to replace the 1940 Arbitration Act in order to provide for an arbitral procedure which is clear, efficient and capable of meeting the needs of arbitration and to provide that the tribunal gives reasons for an arbitral award so as to minimize the supervisory roles of courts in the arbitral process. 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 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 appears to be contravention of the Arbitration Act and terms of the contract which are two important sub-heads of public policy of India. As such, a contravention of the Arbitration Act for want of proper reasons

and contravention of the terms of the Act and agreement/Ex.P.1 itself would be regarded as a patent illegality i.e. award in contravention of Section 28(3), 31(3) r/w Section 34(2) (v) of the Arbitration and Conciliation Act, 1996 Act.

33. The Hon'ble Apex Court has observed in 2019 SCC Online SC 677 that, according to Section 34(2A) of the Act - an award shall not be set aside merely on the ground of an erroneous application of law or by re-appreciating evidence. 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 per view of arbitration is correct and proper one.

34. Wherefore having regard to the facts and circumstances of the case I am of the opinion that award passed by the learned arbitrator requires interference to the extent of claim of claimant/Plaintiff only. Accordingly the arguments/written arguments filed by the learned counsel for the plaintiff holds good. On the other hand arguments/written arguments filed by the learned counsel for defendant No.1 Company do not have weight and cannot be accepted. Consequently the award

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passed by the learned arbitral tribunal to the extent of dismissal of claim of the claimant is liable to be set aside. In the result arbitration suit filed by the plaintiff deserves to be decreed without cost. Hence I answer Point No.1 and 2 are in the affirmative.

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

#### ORDER

The arbitration application/suit filed under Section 34 of the Arbitration and Conciliation Act 1996 by the Claimant/Plaintiff is hereby allowed/decreed.

Consequently, the award passed by the learned arbitrator tribunal in A.C. No.117/2015 dated 31/01/2017 to the extent of dismissal of plaintiffs claim is hereby set aside. 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.55/2017 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.55/2017 ORDER The arbitration application/suit filed under Section 34 of the Arbitration and Conciliation Act 1996 by the Claimant/Plaintiff is hereby allowed/decreed.

Consequently, the award passed by the learned arbitrator tribunal in A.C. No.117/2015 dated 31/01/2017 to the extent of dismissal of plaintiffs claim is hereby set aside.

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.

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