[2025] 1 S.C.R. 151 : 2025 INSC 26

Serosoft Solutions Pvt. Ltd.
v.
Dexter Capital Advisors Pvt. Ltd.

(Civil Appeal No(s). 51-52 of 2025)

03 January 2025

[Pamidighantam Sri Narasimha* and Manoj Misra, JJ.]

Issue for Consideration

Whether the High Court has correctly exercised its supervisory jurisdiction under Article 227 in granting the respondent/claimant one more opportunity to cross-examine appellant/respondent's witness, despite the Arbitral Tribunal rejecting such a prayer.

Headnotes†

Constitution of India – Art.227 – Arbitration and Conciliation Act, 1996 – ss.18, 29A – The respondent/claimant cross-examined RW-1 – The unrestrained cross-examination of RW-1 by the respondent/claimant already exceeded 12 hours, however, the respondent/claimant was unsatisfied and sought more opportunity to cross-examine – Arbitral Tribunal rejected such prayer – However, the High Court granted further opportunity to the respondent/claimant to cross-examine RW-1 – Correctness:

Held: It is evident that the cross-examination of the appellant/ respondent's witness RW-1 commenced on 09.12.2023 when the respondent/claimant's counsel asked 9 questions on that very day and the cross was adjourned for 10.02.2024 – On 10.02.2024, the record shows that the cross-examination commenced at 11 am and concluded by 7 pm during which time the respondent/ claimant's counsel asked as many as 104 questions to the said witness – After a long lapse of almost 8 months, during which period the mandate of the Arbitral Tribunal was exhausted, the cross-examination commenced on 01.10.2024 – Even on that day the cross-examination was commenced at 5.35 pm and concluded at 7.40 pm, which is more than two hours – The Arbitral Tribunal seems to have given full opportunity to all parties, which is amply evident from the record – There is statutory obligation,

* Author

which is imposed on the judicial authorities – That is the statutory incorporation of judicial restraint in interfering with matters governed under Part I of the Act relating to arbitration agreement, composition and jurisdiction of Arbitral Tribunal, coupled with the conduct of the proceedings and making, challenge and enforcement of the award – In the instant case, the High Court should have restrained itself from interfering – The High Court has not indicated under what circumstances the order passed by the Tribunal was perverse – There is no justification in the order passed by the High Court in interfering with the directions of the Arbitral Tribunal holding that full and sufficient opportunity to cross-examine RW-1 has already been given and no further extension of time is warranted – For the reasons stated, the order passed by the High Court is set aside. [Paras 10, 12, 13, 14, 17]

Case Law Cited

Kelvin Air Conditioning and Ventilation System Pvt. Ltd. v. Triumph Reality Pvt. Ltd., **2024 SCC Online Del 7137 – referred to.**

List of Acts

Constitution of India; Arbitration and Conciliation Act, 1996.

List of Keywords

Article 227 of Constitution; Section 29A of Arbitration and Conciliation Act, 1996; Supervisory jurisdiction; Cross-examination; More opportunity to cross-examine; Statutory obligation; Judicial restraint.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 51-52 of 2025

From the Judgment and Order dated 25.10.2024 of the High Court of Delhi at New Delhi in CMM No. 3711 of 2024 and CMA No. 63047 of 2024

Appearances for Parties

Jayant Mehta, Sr. Adv., M/s. Plr Chambers And Co., Suhaan Mukerji, Harsh Gursahani, Adarsh Kumar, Sayandeep Pahari, Tanmay Sinha, Ms. Jasleen Virk, Advs. for the Appellant.

Serosoft Solutions Pvt. Ltd. v.
Dexter Capital Advisors Pvt. Ltd.

M.A. Niyazi, Advait Ghosh, Dawneesh Shaktivats, Tamjeed Ahmad, Ms. Mrinal, F.A. Khan, Ms. Anamika Ghai Niyazi, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi, Arqam Ali, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Pamidighantam Sri Narasimha, J.

1. Leave granted.

2. The appellant and the respondent are parties in a pending arbitration. The question for consideration is whether the High Court has correctly exercised its supervisory jurisdiction under Article 227 in granting the respondent/claimant one more opportunity to cross- examine appellant/respondent's witness, despite the Arbitral Tribunal rejecting such a prayer.

3. The brief facts leading to the present appeals are as follows. The appellant/respondent, a startup company providing educational software and related services, and the respondent/claimant, a provider of capital advisory services to various companies, entered into a Client Service Agreement. Under this agreement, the respondent/ claimant was to provide advisory services to the appellant/respondent. Disputes arose between the parties with respect to non-payment of fee for the services rendered by respondent/claimant to appellant/ respondent company,prompting respondent/claimant to invoke dispute resolution mechanism through arbitration.

4. Following the constitution of the Arbitral Tribunal, proceedings commenced, and parties submitted their respective statements of claim and defence. The Tribunal, by its order dated 06.09.2023 formulated the specific issues for consideration that needed to be addressed,by the parties to proceedings. Following the said order, respondent/claimant side produced two witnesses CW-1 and CW-2. The counsel for the appellant/respondent cross-examined CW-1 on 17.11.2023 and asked about 22 questions on that day. However, due to time constraints, the cross-examination was deferred and rescheduled for 21.11.2023. On that date, the cross-examination of CW-1 was completed. On that very day cross of CW-2 was taken up and completed over the course of two sessions.

5. After the cross-examination of respondent/claimant's witnesses got concluded, cross-examination of appellant/respondent's witness RW-1 commenced. This is where the trouble began.

6. On 09.12.2023 a total of 9 questions were put to RW-1, as is evident from the record of proceedings of the Tribunal. The cross-examination of RW-1 was then deferred to 10.02.2024.

   6.1 On 10.02.2024, though the cross commenced at 11 am and continued till 07:00 p.m.,respondent/claimant's counsel sought permission of the Tribunal to defer the cross-examination of RW-1 to some other day and sought an additional hour for completing the cross-examination of RW-1. By its order dated 10.02.2024 the Tribunal acceded to respondent/claimant's request for additional one hour of cross-examination. The Tribunal's order notes that the case was reluctantly adjourned to 06.04.2024 for conclusion of the cross.

7. It is alleged that, due to various applications for discoveries and interrogatories filed by the respondent/claimant, the cross-examination of RW-1 was cancelled on 06.04.2024. The proceedings kept on being delayed and the parties consensually extended the mandate of the Tribunal by 6 months which was due to expire on 16.05.2024 as per Section 29A of the Act. Ultimately, the proceedings resumed with cross-examination of RW-1 on 01.10.2024, where a total 28 questions were put to him. The Tribunal in the record of proceedings noted that the cross-examination of RW-1 stands concluded and accordingly, the witness was discharged.

8. After two days, i.e. on 03.10.2024, respondent/claimant moved an Interlocutory Application before the Tribunal seeking extension of time for cross-examination of RW-1. Tribunal heard the parties on the said application and by its order dated 09.10.2024 noted that arbitral proceedings were time bound and in fact the extended mandate was also to expire soon. The Tribunal also noted that despite exhausting twice the allotted time for cross-examination of RW-1, the respondent/claimant's approach reflected lack of preparedness and a non-serious attitude. With this view of the matter the Tribunal rejected the application and directed that final arguments should conclude by November 2024, so that there is sufficient time for preparation and making of the award. Respondent/claimant challenged the above referred order of the Arbitral Tribunal by filing a petition

under Article 227 of the Constitution and sought a direction to the Tribunal for providing further opportunity to cross-examine RW-1. By the order impugned before us the High Court noted that judicial interference in such type of matter was least warranted, but came to the conclusion that in view of the exceptional circumstances there can be a direction to the Tribunal to grant further opportunity to the respondent/claimant to cross-examine RW-1 on the date and time fixed by the Tribunal. Questioning the above referred order the appellant/respondent is before us.

9. Heard learned counsel for both the parties.

10. We may recapitulate that the Section 11 application was allowed by the High Court on 08.05.2023 leading to the constitution of the Tribunal which held the first hearing on 19.05.2023. It is evident that the cross-examination of the appellant/respondent's witness RW-1 commenced on 09.12.2023 when the respondent/claimant's counsel asked 9 questions on that very day and the cross was adjourned for 10.02.2024. On 10.02.2024, the record shows that the cross-examination commenced at 11 am and concluded by 7 pm during which time the respondent/claimant's counsel asked as many as 104 questions to the said witness. After a long lapse of almost 8 months, during which period the mandate of the Arbitral Tribunal was exhausted,the cross-examination commenced on 01.10.2024. Even on that day the cross-examination was commenced at 5.35 pm and concluded at 7.40 pm, which is more than two hours.

11. It is in the above referred background that the legality and the propriety of the respondent/claimant's application for further time to cross-examine RW-1 was to be considered by the Arbitral Tribunal.

12. The first principle that governs '*conduct of arbitral proceedings*' under Chapter V of the Act is the obligation of equal treatment of parties. Under Section 18 of the Act, it is the statutory duty of the Arbitral Tribunal to ensure that the parties are treated with equality and each party is given full opportunity to present its case. At the same time, there is yet another statutory obligation, which is imposed on the judicial authorities. That is the statutory incorporation of judicial restraint in interfering with matters governed under Part I of the Act relating to arbitration agreement, composition and jurisdiction of Arbitral Tribunal, coupled with the conduct of the proceedings and making, challenge and enforcement of the award.

This objection of restraint on the judicial authority is overriding and notwithstanding anything contained in any other law for the time being in force.

13. Having looked into the matter, we are of the opinion that the Arbitral Tribunal seems to have given full opportunity to all parties, which is amply evident from the record. On the other hand, the unrestrained cross-examination of RW-1 by the respondent/claimant has already exceeded 12 hours, but the respondent/claimant does not seem to be satisfied with it.

14. In any event of the matter when the Arbitral Tribunal by its order dated 09.10.2024 held -'that far and no further', to the respondent/claimant's endeavour to cross-examine RW-1, the High Court should have restrained itself from interfering. In order to justify its interference and extension of time, the High Court has referred to and relied on a judgment of the same Court[1]. Certain conditions for exercising jurisdiction under Articles 226/227 are mentioned in the judgment. Conditions (v) and (vi) of the said judgment could have provided sufficient guidance for the High Court to consider whether interference is warranted or not. The relevant portion of the said order is as under:-

> *"(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.*
>
> *(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.*
>
> *(vii) Excessive judicial interference in the arbitral process is not encouraged.*
>
> *(viii) It is prudent not to exercise jurisdiction under Articles 226/227.*
>
> *(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.*
>
> *(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."*

1 *Kelvin Air Conditioning and Ventilation System Pvt. Ltd.* v. *Triumph Reality Pvt. Ltd.;* 2024 SCC Online Del 7137.

15. It is evident from the above that even as per the quote hereinabove interference under Article 226/227 is '*permissible only if the order is completely perverse i.e. that the perversity must stare in the face.'* Condition (vi) to (x) underscores the reason why High Courts ought not to interfere with orders passed by the Arbitral Tribunals for more than one reason.

16. We looked into the other parts to see if the High Court has in fact found any perversity in the decision of the Tribunal. We found none. The High Court has not bothered to indicate under what circumstances the order passed by the Tribunal is perverse. All that the High Court has said is that cross-examination is one of the most valuable and effective means of discovering the truth. This is a normative statement, and nobody disputes the said principle. The only enquiry required was whether there is denial of opportunity for an effective cross-examination of the witness. There is absolutely no discretion about this aspect of the matter, except to say that in the facts and circumstances of the case and as an exceptional circumstance as well, the request of the respondent/claimant is excessive.

17. Having considered the matter in detail, we find no justification in the order passed by the High Court in interfering with the directions of the Arbitral Tribunal holding that full and sufficient opportunity to cross-examine RW-1 has already been given and no further extension of time is warranted. For the reasons stated, we allow the appeals and set aside the orders passed by the High Court in CM(M) 3711/2004 and CM Appl. 63047/2024 dated 25.10.2024.

18. In the facts and circumstances, we further direct that the Arbitral Tribunal shall resume the proceedings and conclude the same as expeditiously as possible.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Ankit Gyan