

Case No. 72

2003 (3) CTC 148

**IN THE HIGH COURT OF MADRAS**

A.K. Rajan, J

Original Petition No. 507 of 2002 and APP. No. 2925 of 2002 & 1614 of 2003  
17.6.2003

Novel Granits Ltd, Rep by Its Managing Director, Mr. Errabbli  
Vijaya Kumar Rao, Having Its Office At H.No. 10-3-31/6  
(Near Dena Bank) Behind Naveen Super Market, East Marredpally,  
Secunderabad- 500 026 And another. Petitioners

Vs

Lakshmi General Finance Ltd., rep by Its Deputy Manager,  
(Legal) Mr. S.L.Mohan ,No.47, Whites Road, Chennai-14 and another Respondents

**Whether same arbitrator can be appointed for more than one dispute - Appointment of arbitrator - no prohibition in the Act to have a panel of arbitrators - such procedure not illegal - bias cannot be imputed to the arbitrator.**

**CASES REFERRED**

Konkan Railway Corpn Ltd. , And Others V. Mehul Construction Co .2000 (3) CTC686: 2000 (7) SCC 201.

Mr. V.Radhakrishnan, Advocate For Petitioners.

Mr. M.S.Krishnan For Saravabhuman Associates For Respondents

O.P.DISMISSED.

It is an application to vacate the interim stay granted in application No.2925 of 20002 in O.P.No.507 of 2002. The O.P.has been filed to declare the appointment of the second respondent as an arbitrator as arbitrary and also to remove the present arbitrator and to appoint a retired judge of the High Court to act as an arbitrator.

2. The petitioner in his affidavit has stated that the first petitioner has entered into a lease agreement on 17.3.1994 with the first respondent branch office at

Pondichery for the lease of 1994 Stanford Eder Hydraulic Excavator with Ashok Leyland, ALU 411 engine and all other implements and to purchase a machinery for a sum of Rs, 53,76,000. Thereafter at the instance of the first petitioner, the lease agreement was converted into a Hire Purchase agreement dated 31.12.1998. There was some default in payment of the amount. Due to the alleged default committed by the first petitioner, the first respondent issued a legal notice on 22.9.2001. In the meantime, he invoked the Arbitration Clause in the Hire Purchase Agreement and appointed the second respondent as the sole Arbitrator. Thereafter, the second respondent sent a notice to the first petitioner fixing date of arbitration. The petitioner attended the hearings before the second respondent through counsel. One of the principal contention of the first respondent was that he ought to have repossessed the equipment long before and ought to have adjusted the amounts against the dues. The first petitioner in fact sent letters dated 13.5.2000 and 20.5.2000 asking the first respondent to sell the equipment. However, on the date of hearing held on 27.5.2000, the second respondent ignored the letters of the first petitioner and passed an order as if the first petitioner's counsel agreed for the surrender of the equipment. On 22.7.2000, the first petitioner engaged a new counsel to appear before the second respondent. The new counsel filed a petition asking for case papers and further time to study the same. The second respondent refused to accept the same. After furnishing copies of the case papers, the second respondent arbitrarily fixed the next hearing on 2.8.2000 though it was resisted stating that the time was inadequate for preparation. The pre-emptory and high handed manner in which the second respondent conducted the arbitration proceedings made the petitioner suspicious of the independency and impartiality of the second respondent as an Arbitrator. Further, he has stated that on enquiry he came to know that the second respondent was a standing Arbitrator for the first respondent in a number of cases and he has also passed awards in favour of the first respondent. Therefore, the first petitioner has apprehension that the Arbitrator is not genuine. Hence, if the second respondent is continued as an Arbitrator it will lead to miscarriage of Justice. Therefore, he filed this petition for the prayer as stated therein.

3. In the counter affidavit, it is stated that from the inception of the contract, the first petitioner was a chronic defaulter in payment of the hire purchase instalments and had remitted only eight instalments. In spite of repeated demand, he has not come forward to pay their outstandings. Therefore, a legal notice was issued calling upon him to settle the amount or surrender the equipment. Thereafter, the sole Arbitrator was appointed as per the clause 17(a) of the agreement and he had issued legal notice to the parties on 30.11.2001. The petitioners 1 and 2 entered

appearance and the first petitioner filed their counter in the month of February 2002. In their counter they have stated that they were always ready and willing to surrender the machinery. Thereafter the proceedings were adjourned to 1.7.82 for surrendering the machinery or to get along with the case, which was ripe for trial. Instead, they sought time and at their request, the matter was adjourned to 2.8.82. In the meanwhile respondents rushed to the Court with the above O.P. and it is an attempt to protract and prolong the arbitration proceedings. The only allegation of the petitioners is that the 2<sup>nd</sup> respondent, Arbitrator is biased and therefore, the mandate should be terminated. The remedy to petitioners 1 and 2 was only by way of a challenge under Section 13 of the Act within 15 days of becoming aware of any such circumstances, which are likely to give rise to doubt as to his independence and impartiality. The above petition is an abuse of process of Court and deserves to be dismissed in limine.

4. Learned counsel Mr. M. S. Krishnan appearing for the first respondent in the main O.P. submitted that the appointment of an Arbitrator can be challenged only in the circumstances provided under sub-sections (3) and (4) of Section 12 of the Arbitration Act which states as under:

(3) An Arbitrator may be challenged only if:

- (a) Circumstances exist that give rise to justifiable doubts as to his independency or impartiality: or
- (b) He does not possess the qualifications agreed to by the parties.

4. A party, may challenge an arbitrator appointed by him or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

The learned counsel further submitted that such a challenge shall be made with 15 days from the date he became aware of the circumstances referred to under sub-sections (3) and (4) of Section 12 as provided under Section 13(2) of the said Act which is as follows:

Section 13(2) of the said Act states:

“Failing any agreement referred to in sub-section (1) - a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitu-

tion of the arbitral tribunal or after becoming aware of any circumstances referred to in sub- section (3) of Section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.”

5. in this case, the learned counsel submitted that the petitioner has not come forward within 15 days after becoming aware of the doubtful circumstances. Therefore, no case is made out to remove the Arbitrator.

6. Learned counsel for the petitioner has submitted that the second respondent. Arbitrator, has become de jure unable to perform his functions for the reason that he has been appointed as an arbitrator by the first respondent in more than one case and he had received remuneration from the first respondent and therefore, he becomes disqualified to continue as an Arbitrator.

7. This argument of the counsel for the petitioner is not acceptable. There is no prohibition under the Act, that a person cannot be appointed as the sole Arbitrator in more than one disputes by a company or a person. All that is required is that Arbitrators- shall be appointed as per the terms of the agreement. There is no prohibition for the Companies to have a panel of Arbitrators who would be appointed in turn as an arbitrators as and when necessary. Such procedure cannot be said to be contrary to the provisions of Arbitration Act. Merely, because one person has been appointed as an Arbitrator in more than one dispute by the Company, it cannot be said that he has become biased in favour of the Company.

8. if for any reason the petitioner had exercised doubt on the independence or impartiality of the Arbitrator, then the petitioner should have challenged such appointment of Arbitrator within 15 days, from the date of appointment or from the date on which he became aware of the such circumstances that lead to doubt the impartiality. The petitioner has not taken any steps in this regard within the time specified under sub- section (2) to section 13. Therefore, the petitioner cannot challenge the appointment of the Arbitrator after 15 days. In the present case the petitioner had, in fact, participated in the arbitral proceedings. Therefore, the belated challenge cannot be entertained.

9. In this regard, the counsel for the Respondent also referred to the judgment of the Supreme Court in **Konkan Railway Corpn. Ltd. and others v. Mehul Construction Co** 2000 (3) CTC 686: 2000 (7) SCC 201 Wherein the Supreme Court has held in Para 4 as hereunder:

‘A bare reading of Section 13 and 16 of the Act makes it crystal clear that question with regard to the qualifications, independence and impartiality of the arbitrator , and in respect of the jurisdiction of the arbitrator could be raised before the arbitrator who would decide the same. Section 13(1) provides that a party would be free to agree on a procedure for challenging an arbitrator. Sub-Section (2) of the said Section provides that failing any such agreement a party intending to challenge an arbitrator, either on grounds of independence or within 15 days of becoming aware of the constitution of the Tribunal sent a written statement for the challenge to the Tribunal itself. Section 13(3) provides that unless the arbitrator withdraws or the other party agrees to the challenge, the Tribunal shall decide on the challenge itself. Sub-Section (4) of Section 13 mandates an arbitrator to continue the arbitral proceedings and to make an award Section 16 empowers the Arbitral Tribunal to rule on its own as well as on objections: with respect to the existence or validity of the arbitration agreement. Conferment of such power on the arbitrator under the 1996 Act indicates intention of the legislature a anxiety to see that the arbitral is set in motion.”

From the above passage of the judgment, the petitioner should have raised the issue before the Arbitrator. But the petitioner had not done so. The petitioner can not approach the Court for this purpose. Hence the petition is not maintainable before this Court.

10. In as much as there is no prohibition for a company to have a panel of persons for appointing as arbitrators to the disputes between that company with other individuals, there cannot be any objection for appointing a person from such panel as an arbitrator in any number of disputes. Therefore, there is no illegality in the appointment of Arbitrator and hence, the Arbitration proceedings can continue. The interim stay granted by this Court is liable to be vacated and is vacated. This application is allowed.

11. In view of the above order, there is no merit in the main Original petition and hence, the same is also dismissed.