

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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

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

VERSUS

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

J U D G M E N T

J.S.KHEHAR, J.

1. Leave granted.
2. The respondent-M/s AK & I Advertising Pvt.Ltd. and the appellants were admittedly in a contractual relationship wherein the respondent was assigned with the responsibility of handling advertisement work of the appellants. According to the agreement between the parties, the payment mechanism settled between the parties required the respondent to raise bills with supporting vouchers within 15 to 30 days of the publication of the advertisement. The bills were to be honoured within 55 days of the date of publication and/or telecast of the advertisement. It is also not a matter of dispute, that Clause 11 of the contract contemplated, that disputes and differences arising between the parties in connection with their contractual obligations would be referred to an arbitrator as agreed to by the parties. And that, the dispute would be settled in consonance with the provisions of the Indian Arbitration Act.

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

4. For recovering the remaining principal amount claimed by the respondent as also the interest component, the respondent- M/s AK & I Advertising Pvt.Ltd approached the Indian Newspaper Society (hereinafter referred to as 'the INS') for intervening between the parties for settling their dispute. During the course of the negotiations, the appellants, through a communication dated 24.06.2007, offered a full and final settlement of Rs.99,50,000/- (which included Rs.92,00,000/- towards the principal amount and Rs.7,50,100/- towards interest). This offer was made towards a full and final settlement of all pending dues between the parties. In the ongoing negotiations, a meeting was arranged by the then Deputy Secretary of the INS, where both the parties participated on 10.07.2007. Thereafter, on 23.07.2007, the appellants paid a sum of Rs.92,24,206/- and described the same as - "towards full and final settlement".

5. It is the contention of the learned counsel for the appellants, that on 25.06.2007, the Chairman of the INS advised the parties to have their dispute amicably settled through arbitration. And for the said purpose, to nominate an arbitrator. Even thereafter, through an another communication dated 06.08.2007, the Chairman of the INS again sought the consent of the rival parties for appointment of an arbitrator, with reference to the above subject.

6. Since the parties could not agree to settle their dispute by way of arbitration, the respondent approached the High Court of Delhi by filing Arbitration Petition No.16 of 2011, under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). The prayer made in the above petition was for appointment of an arbitrator with reference to monetary obligations arising out of their contractual obligations. This prayer made before the High Court by the respondent, was accepted through the impugned order dated 10.05.2011. The High Court disposed of the above petition by appointing Mr.Ashwini Mata, Senior Advocate, as the sole arbitrator to adjudicate the dispute between the parties. While appointing the arbitrator, the High Court left open all objections including the objections raised by the appellants, that the claim raised by M/s AK & I Advertising Pvt.Ltd was barred by limitation. The High Court also determined the fee payable to the arbitrator.

7. During the course of hearing, learned counsel for the appellants, relied upon Section 11 of the Act to assail the validity of the impugned order dated 10.05.2011. It was the

contention of the learned counsel for the appellants, that the mandate of Sub-section (5) of Section 11 required a party to a dispute, to enjoin the other party to the contract, to agree to appoint an arbitrator, to settle their disputes, and only on the presentation of such request, the other party fails to agree to appoint an arbitrator within 30 days, the aggrieved party can approach the jurisdictional High Court under Section 11 of the Act, with a request to appoint an arbitrator. In order to understand the claim raised by the appellants, it is necessary to extract hereunder Section 11(5) of the Act, as also, Section 2(1)(h) defining the term "party". The above provisions are reproduced hereunder.:

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

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

11. Appointment of arbitrators.-

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xxx

xxx

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

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

11 of the Act can be invoked seeking a direction at the hands of the High Court, to appoint an Arbitrator. Section 2(1)(a) of the Act, leaves no room for any doubt, that the term "party" expressed in Section 11(5) of the Act is referable to a party to an arbitration agreement.

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

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

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

11. The appeal is accordingly allowed.

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

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

NEW DELHI;
NOVEMBER 24, 2015.



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT