

CASE NO.:

Appeal (civil) 4356 of 2002

Appeal (civil) 4357 of 2002

PETITIONER:

PRADEEP ANAND

Vs.

RESPONDENT:

I.T.C.LTD. & ORS.

DATE OF JUDGMENT: 29/07/2002

BENCH:

D.P.MOHAPATRA & BRIJESH KUMAR.

JUDGMENT:

D.P.MOHAPATRA, J.

Leave granted in both the SLPs.

These appeals filed by Shri Pradeep Anand, son of late Shri C.L.Anand are directed against the orders passed by the High Court of Delhi on the interim application No.7558/98 in OMPNo.197/98 by the learned single Judge and the order passed by the Division Bench in FAO (OS) No.134/99 dismissing the appeal. In the former order the learned single Judge granted stay of further proceedings before the arbitrator appointed by the International Chamber of Commerce in Arbitration Case No.8080/BGD/OLG till decision of the objections to the award dated 28.4.1998 rendered by the arbitrator in the matter. M/s.ITC Ltd., a 'company' within the meaning of the Companies Act, 1956 is the main contesting party in the case.

On 11.9.1990 an agreement styled as 'co-operation agreement' was made in Tokyo (Japan) between M/s.Toshiba Corporation (hereinafter called 'Toshiba'), M/s.Toshiba Battery Co. Ltd. (hereinafter called 'TABCL'), M/s.ITC Ltd.(hereinafter called 'ITC') having its registered office at 37, Chowringhee, Calcutta, M/s.Toshiba Anand Batteries Ltd. (hereinafter called 'Toshiba Anand') having its registered office at M.G.Road, Ernakulam, Kerala and Shri C.L.Anand (hereinafter called 'Shri Anand') representing his family and his associated companies. The terms of the agreement were set out under Articles 1 to 12 of the document. In Article 5 of the agreement the following stipulation was made: "It is agreed to release all personal guarantees given by Shri Anand and Shri Pradeep Anand to the bankers and financial institutions on behalf of Toshiba Anand with assistance and cooperation by ITC or its associates or by its friends and/or by Toshiba and/or by TBCL as soon as possible but not later than 31st March, 1991". Under Article 8 of the agreement it was stipulated that "Shri Anand agrees that he will not raise nor cause his associates including subsidiaries to raise any claim against Toshiba and/or TBCL in any manner

whatsoever in connection with his share transfer, his resignation from Chairman of Toshiba Anand, or any other matter as contemplated herein". Under Article 10 dealing with 'Specific Performance' it was stipulated that : "The parties hereto shall be entitled to specific performance of the terms of this Agreement and their respective obligations including the use of their voting right and also the exercise of their powers as set out in article 9 of this Agreement." Article 11 in which was dealt with 'Duration' of the agreement, it was stated : "(a) Toshiba Anand is wound up or otherwise than for amalgamation or reconstruction approved by the parties hereto, or (b) This agreement is terminated by mutual agreement in writing of the parties hereto." In Article 12 of the agreement certain general provisions were made. Clause (b) thereof provided that : "Any unresolved dispute arising in connection with this Agreement shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those rules and the arbitration shall be held at Bombay, India. The award of the arbitrator(s) shall be final and binding upon the parties hereto."

In course of implementation of the agreement certain disputes arose between the parties particularly relating to release of personal guarantees given by Shri Anand and Shri Pradeep Anand as provided under Article 5 of the agreement. On the application filed by Shri Anand the ICC appointed Mr. Datuk George K.S. Seah as Arbitrator by the order dated 30th August, 1995. In course of the arbitration proceedings Shri Anand died when the terms of reference had come into effect and before the arbitration could be set down for hearing in Mumbai. The Arbitrator allowed the application filed by Shri Pradeep Anand, Son of the deceased to be substituted as claimant and to continue with the arbitration proceedings. Vide an interim order dated 20th March, 1997, ITC Ltd., Toshiba Corporation, TBCL and Toshiba Anand were arraigned as defendants 1 to 4 respectively in the arbitration proceedings. The arbitrator after considering the case set out by the parties passed the partial award on 24th April, 1998 at Mumbai.

The terms of reference as quoted in the judgment of the learned single Judge reads as follows :

"4.12. In the foregoing circumstances, the Claimant prays the arbitral tribunal may be pleased to take steps for settling the disputes and make the undermentioned Award directing the Defendants;

(a) Jointly and severally to take immediate and appropriate steps to ensure that all personal guarantees given by the Claimant SHRI C.L. ANAND and his son, PRADEEP ANAND to the Banks and Financial Institutions are returned to the Claimant duly discharged and cancelled;

(b) Alternatively to award to the Claimant the amounts that he and his son, PRADEEP ANAND are called upon to reimburse to the Banks and Financial Institutions in respect of the said personal guarantees;

(c) Alternatively, to hold the Defendants liable for all losses and consequences arising to the Claimant and his son, PRADEEP ANAND, as a result of any legal actions taken by the Banks and Financial

Institutions pursuant to the personal guarantees;

(d) To award costs of this Reference to Arbitration, and

(e) Any other relief, as may be prayed for, from time to time, in the circumstances of the case."

Summarising his answers to the issues contained in Clause 13 of the reference the Arbitrator in paragraph 54.1.1 stated as follows:-

54.2.1 Clause 13.1(a)

No

54.2.2 Clause 13.1(b)

Not applicable

54.2.3 Clause 13.2(a)(i)

Yes

54.2.4 Clause 13.2(a)(ii)

Yes

54.2.5 Clause 13.2(a)(iii)

No

54.2.6 Clause 13.2(a)(iv)

No

54.2.7 Clause 13.2(b)

Not applicable

54.2.8 Clause 13.3(a)

According to Claimant

54.2.9 Clause 13.3(b)

Not applicable

54.2.10 Clause 13.4(a)

No

54.2.11 Clause 13.4(b)

No

54.2.12 Clause 13.5(a)

Would not debar of estop the 1st Defendant, ITC Limited from raising the same pleas, contentions or defences before the Arbitrator in this Reference.

54.2.13 Clause 13.5(b)

No

54.2.14 Clause 13.6(a)

Declaratory relief to the Claimant for compensation for breach of Article 5 of the Co-operation Agreement dated 11.09.1990 against 1st, 2nd and 3rd Defendants, jointly and severally, damages to be assessed.

54.2.15 Clause 13.6(b)

The Claimant, Shri C.L.Anand was representing his family members and associated companies when he signed the Co-operation Agreement dated

11.09.1990 and also in this Reference. The answer is therefore Yes.

54.2.16 Clause 13.7(a)

No

54.2.17 Clause 13.7(b)

Only 1st Defendant, ITC Limited committed breach of Article 1 of the Co-operation Agreement dated

11.09.1990. Claimant is entitled to claim against 2nd and 3rd Defendants, Toshiba Corporation and Toshiba Battery Company Ltd. in this Reference under Article 5 of the Co-operation Agreement.

The Extracts from the Partial Award noted by the learned single Judge read as follows :

50.11.2 Having regard to the abovenamed factors I decline to order specific performance in terms of clause 4.12(a) of the Terms of Reference, in the exercise of my discretion.

50.11.3 In my opinion, an Arbitrator should not direct specific performance when the contract was no longer in existence.

50.11.4 Another reason for refusing, specific performance of clause 4.12(a) of the TOR is that, if granted, it would indirectly involve the Banks and Financial Institutions to hand over the personal guarantees to the Claimant duly discharged and cancelled when both the Banks and Financial Institutions have not been made parties to this Reference.

50.12.1 I now pass to consider clause 4.12(b) of the TOR.

50.12.2 I am inclined to agree with the contention of Counsel for ITC that this relief claimed by the Claimant is premature in as much as no court action has been taken by the Banks and Financial Institutions against the Claimant and his son, SHRI PRADEEP ANAND in respect of the said personal guarantees.

50.12.3 In short, the Claimant is asking the Arbitrator to make an award on matter which did not exist yet.

50.12.4 For this reason I refuse to make an award in terms of the relief claimed in clause 4.12(b) of the TOR.

50.13.1 I turn to deal with clause 4.12(c) of the TOR and sub-section 2 of the section 21 of the Specific Relief Act of the 1963 may be relevant and it reads :

50.13.2 "21(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3)

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act 1872 (9 of 1872).

(5)

50.13.3 And section 73 of the 1872 Act is in the following terms:

"When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

50.13.4 Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

50.14.1 Counsel for ITC has further argues that section 73 of the Contract Act 1872 imposes on the Claimant a duty of taking all reasonable steps to mitigate the loss consequent on the breach of contract and debars the Claimant from claiming any part of the damage which is due to his neglect to take such steps.

50.14.2 Counsel also submits that it is well settled that the loss to be ascertained is the loss as on the date of the breach (see KAS Jamal Vs.Moolla Dawood Sons & Co. (1915) AC 175) in terms of Article 5 of the Co-operation Agreement dated 11.09.1990 the personal guarantees given by the Claimant and his son, Shri Pradeep Anand to the Banks and Financial Institutions were required to be discharged by

31.03.1991.

50.15.1 I have already held and adjudged based on the documents produced before me in this Reference ITC had committed a breach of Article 5 of the Co-operation Agreement dated 11.09.1990 in that ITC had failed to arrange for the release of all Personal guarantees given by Shri C.L.Anand and his son, Shri Pradeep Anand to the Banks and Financial Institutions on behalf of TOSHIBA ANAND BATTERIES LTD. (TABL) as agreed.

50.15.2 And I have also held and adjudged that ITC had refused to assist and co-operate with the release of the said personal guarantees when the Consortium Banks proposed that ITC gave corporate guarantee instead in order to secure the discharge of the said personal guarantees given by Shri C.L.Anand and his son, Shri Pradeep Anand to the said Banks.

50.16.1 In my opinion, the appropriate relief to be awarded to the Claimant for breach of Article 5 of the Co-operation Agreement dated 11.09.1990 is for compensation for breach of contract, with damages to be assessed under section 21(2) of the Indian Specific Relief Act, 1963.

50.16.2 I hereby reserve powers to make a Final Award on the quantum of monetary compensation (if any) to be awarded to the Claimant after having invited and received further submissions from the parties and/or their Counsel in this regard at a later date.

50.17.1 Since ITC, TOSHIBA and TABL had agreed under Article 5 of the said Co-operation Agreement to assist and Co-operate to release all personal guarantees given by Shri C.L.Anand and his son, Shri Pradeep Anand to the Banks on behalf of TOSHIBA ANAND BATTERIES LTD. (TABL) in my opinion, it is fair and equitable that all three parties should be held jointly and severally, liable to the Claimant. I have therefore so held and adjudged.

50.70.2 To avoid any doubt I have to make it clear that I am granting to the Claimant declaration relief under clause 4.12(c) of the Terms of Reference for breach of Article 5 of the Co-operation Agreement dated 11.09.1990. The relief is for

compensation for breach of contract, with damages to be assessed under section 21(2) of the Indian Specific Relief Act, 1963 at a later date."

On receipt of the notice of the Award made by the arbitrator ITC Ltd. (respondent no.1 herein) filed a suit, Suit No.1084-A of 1998 under Section 14 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') for a direction to the arbitrator (respondent no.5 herein) and ICC (respondent no.6 herein) to file the Award (partial Award) dated 24.4.1998 in ICC arbitration Case and on 1.8.1998 filed an application for stay of the arbitration proceedings.

Considering the application for stay in IA No.3658 of 1997 in OMP No.10 of 1996 filed by Toshiba (respondent no.2 herein) and TBCL (respondent no.3 herein), the learned single Judge passed the order to the effect that though the arbitration proceedings may go on no final award shall be passed till the next date of hearing which was fixed on 16th July, 1998. Against the said order the appellant moved the Division Bench an appeal, FAO (OS) No.146 of 1998 in which the Division Bench vide order dated 29.5.1998 granted stay of operation of the order dated 22.5.1998. The said order was disposed of by a consent order on 22.7.1998 to the effect that the final award may be passed but the same shall not be implemented till the disposal of the I.A. filed by respondents 2 and 3 which was pending before the learned single Judge. The arbitrator on being informed about the order passed by the Division Bench proceeded further in the arbitration proceedings and called upon the parties to send their witness statements, documentary evidence etc.

While Suit No.1084-A of 1998 filed by respondent no.1 was pending the said respondent filed OMP No.197 of 1998 under Sections 30 and 33 of the Act inter alia challenging the legality and validity of the 'Co-operation Agreement' dated 11.9.1990. Both the suit and the OMP are pending before the High Court. It is relevant to note here that previously when the ICC had decided that the arbitration shall be conducted by the sole arbitrator but the arbitrator had not entered upon the reference, the respondent no.1 had filed Suit No.50 of 1995 and OMP No.16 of 1995 in the Delhi High Court challenging the legality and validity of the 'Co-operation Agreement' dated 11.9.1990 as well as the legality and validity of the arbitration clause in the said agreement and had prayed for a declaration that the same were illegal and null and void. Respondent no.1 had sought stay of further proceedings in the petition OMP No.16 of 1995. When Suit No.50 of 1995 and OMP No.16 of 1995 were pending for trial the respondent no.1 filed an application under Order 23 Rule 1 of the Code of Civil Procedure, unconditionally withdrawing the said two proceedings. By the order dated 17.10.1995 passed by the High Court the suit and the OMP were dismissed as withdrawn. The respondent no.1 also filed IA No.7558 of 1998 seeking stay of further arbitration proceedings alleging certain illegalities in the procedure followed by the arbitrator which, according to it had vitiated the award passed by the arbitrator. The respondent no.1 also questioned the jurisdiction of the arbitrator to award monetary compensation in the case in favour of the appellant. The validity of the Co-operation Agreement was also challenged by the said respondent. The appellant herein refuted the allegations and contentions raised on behalf of the respondent no.1 in the counter affidavit.

The learned single Judge after hearing the counsel appearing for the parties and considering the contentions raised on their behalf took the view that the validity of the impugned partial award should first be decided and only after it was found

to be in order and valid, further proceedings for making the final award be undertaken. In support of the view the learned Judge noted that according to him the petitioner had prima facie case as, prima facie, the grounds of challenge to the impugned partial award were not, on the face of the same, devoid of merits; rather the same appeared to have substance and were required to be heard and decided in proper proceedings.

Thereafter the learned Judge proceeded to give reasons in support of his finding that the balance of convenience lies in favour of the respondent no.1 herein. It appears from the discussions in the order the learned Judge took exception as the arbitrator had not filed the partial award in court promptly despite a direction by the court and proceeded to quantify the damages on the basis of the partial award in which a declaratory order was made. From this the learned single Judge inferred that the respondent no.1 was rendered remediless and thus gagged.

However, the learned Judge himself observed in the order:

"However, the situation has changed because before the application under consideration for stay could be decided, the Arbitrator filed the award in S.No.1084A/98, though very late, and also authorised the petitioner to file its copy on his behalf." The learned single Judge has discussed in detail the merits of the partial award; the further steps being taken by the arbitrator in the proceeding for quantification of damages; inconvenience likely to be created to the respondent no.1 if the proceeding continued since he will have to bear the burden of expenditure, passed the order of stay on following terms :

"Thus after having found prima facie case and the balance of convenience in favour of the petitioner and also having come to a prima facie view that presently respondent no.1 is not going to be prejudiced by grant of stay, I allow the application and direct that further arbitration proceedings for making final award shall remain stayed till the impugned partial award is made rule of the Court.

Before parting with the order, it is made clear that any observations made in this order shall not affect the merits of the respective contentions of the parties relating to the impugned partial award dated 24.4.1998."

Being aggrieved by the stay order passed by the learned single Judge, the appellant filed the appeal FAO (OS) No.134/99 which was decided by a Division Bench of the High Court vide the judgment dated 13th March, 2000. From the discussions in the judgment it is clear that the Division Bench, considering the contention raised on behalf of the respondents against maintainability of the petition for stay filed before the learned single Judge and the appeal assailing the stay order, opined that the application for stay was maintainable and the order passed on the application was an order under the Arbitration Act ('the Act' for short). Regarding the question of maintainability of the appeal the Division Bench held that the order under challenge being not one of the orders specified in Section 39 of the Act the appeal was not maintainable. The Division Bench further observed that having held the appeal to be not maintainable it was not necessary for the Court to go into the questions as to whether the learned single Judge was right in passing the order staying the proceedings before the arbitrator; however, as the matter was fully argued by the parties the Division Bench proceeded to consider the matter on merits. In

that regard the Division Bench made the following observations :

"It is not in dispute that the Arbitrator had written a letter on 21st November, 1997 informing the parties that he had prepared the draft final Award and sent the same to the ICC International Court for its scrutiny. It is also not in dispute that the Secretariat of the ICC in its letter dated 5th February, 1998 had informed the parties that the draft final Award was under the scrutiny process of the ICC Court of Arbitration. It is also not in dispute that ultimately the Award which was sent to the parties was described as a partial Award. The question, therefore, naturally coming to the mind of the court is how the draft final Award prepared by the Arbitrator and sent to the ICC Court of Arbitration was changed to partial Award. The other question which comes to the mind of the Court is as to how and under which provision of law the Arbitrator can send the Award for scrutiny or approval to another forum which has nothing to do with Arbitration. It is admitted between the parties that Indian laws were applicable to the Arbitration proceedings. It is well settled that under the Indian laws the Award of the Arbitrator leaving a matter in dispute to be decided by a third person is invalid as it is not open to the Arbitrators to delegate their authority to a stranger. Even a partial delegation of authority vitiates the Award if the defective part cannot be separated from the rest. Delegation of his authority and functions by an Arbitrator amounts to judicial misconduct. Such an Award suffers for a serious infirmity and as such is liable to be set aside. In this case, it is not denied that the Arbitrator did send the Award for scrutiny to the International Court of Arbitration.

In our view, therefore, prima facie, it appears to us that the whole approach of the Arbitrator in sending the Award to the ICC Court of Arbitration amounted to delegation of authority to a third party. Prima facie, the Award is suffering from serious infirmity. At the time of deciding this Application for stay, it cannot be said whether or not the Arbitrator has committed mis-conduct by sending the Award to a third party. It may also not be possible for this Court to decide at this stage as to how and in what circumstances the final Award was changed to a partial Award. There is nothing before the Court also to find out as to what was written in the draft final Award sent to the International Court of Arbitration for scrutiny and to what extent this draft final Award was changed so as to be described as a partial Award. All these questions have to be gone into during the hearing of the main petition."

Proceeding further the Division Bench also took exception to the conduct of the arbitrator in not filing the depositions and

documents before the Court on the ground of confidentiality and claim of privilege. The Division Bench observed:

"The objections filed by the ITC to the Award described as a partial Award cannot be decided without such deposition and documents before the Court. It is, therefore, but natural that it was incumbent upon the Arbitrator to file the same on being so required either by the parties or by the Court. Non-filing of the depositions and documents and claiming privilege and confidentiality about the same, prima facie, show that the Arbitrator is being influenced by the opinion of a third party, may be in the present case the International Court of Arbitration. That being the position, in our view, the Arbitrator could not be permitted to continue with the Arbitration proceedings till such time the objections to the partial Award were decided by the Court. In our opinion, therefore, there was a prima facie case for the stay of further proceedings before the Arbitrator. We are, therefore, in complete agreement with the view of the learned Single Judge that in the interest of justice, further proceedings before the Arbitrator should be stayed."

Finally, the Division Bench dismissed the appeal holding that it was devoid of merit and clarified that any observation made in the order shall not have any bearing on the merits of the objections under Sections 30, 31 and 33 of the Act pending before the learned Single Judge.

From the discussions made in the foregoing paragraphs, it is manifest that the disputes raised in the proceeding arises from and relates to the Cooperation Agreement dated 11.9.1990 entered into between the parties. In the said agreement it was agreed by the parties under Article 12 that 'any unresolved dispute' arising in connection with this Agreement shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with those rules and the arbitration shall be held at Bombay, India. The arbitration proceeding was initiated in pursuance of the express provision made in the agreement and the arbitrator was appointed by the ICC under the stipulation in the agreement. On the materials on record the position has to be accepted, prima facie, that the Indian law is applicable to the proceeding. The proceeding is to be conducted and decided in accordance with the provisions of the Arbitration Act, 1940. We make it clear that our observation in this regard will not prevent any of the parties to raise the question, at the appropriate stage of the proceedings before the Court and if such contention is raised the Court will decide the same in accordance with law. The Arbitration Act, 1940 is fairly comprehensive and contains provisions from the stage of appointment of arbitrator till the award being made rule of the Court where after it becomes a decree of the Court and executable as such. In Section 34 of the Act power is vested in the Court to order stay of legal proceedings, where there is an arbitration agreement therein. It is laid down therein that :

"Where any party to an arbitration agreement or any person claiming under him commences

any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings."

From the provision in the section it is clear that in case there is an arbitration agreement entered between the parties, they should ordinarily be held by their agreement and should not be permitted to initiate any legal proceeding other than arbitration proceeding relating to any dispute coming within the arbitration clause. This principle was taken note of by this Court in Uttar Pradesh Co-operative Federation Ltd. vs. M/s.Sunder Brothers of Delhi, 1966 Supp. SCR 215, in which it was observed inter alia that :

"It is, of course, the normal duty of the court to hold the parties to the contract and to make them present their disputes to the forum of their choice, but the strict principle of sanctity of contract is subject to the discretion of the Court under s.34 of the Indian Arbitration Act. A party may be released from the bargain if he can show that the selected arbitrator is likely to show bias or there is sufficient reason to suspect that he will act unfairly or that he has been guilty of unreasonable conduct."

This position is also clear from the provision in Section 18 of the Act in which it is laid down inter alia that :

"Power of Court to pass interim orders

(1)Notwithstanding anything contained in Section 17, at any time after the filing of the award, whether notice of the filing has been served or not, upon being satisfied by affidavit or otherwise that a party has taken or is about to take steps to defeat, delay or obstruct the execution of any decree that may be passed upon the award, or that speedy execution of the award is just and necessary, the Court may pass such interim orders as it deems necessary.

(2)Any person against whom such interim orders have been passed may show cause against such orders, and the Court, after hearing the parties, may pass such further orders as it deems necessary, and just. "

These provisions, in our view show that the legislative policy is to ensure proper enforcement of an arbitration award and to assist a

party who apprehends that he may face serious difficulties in execution of the award passed in his favour on account of the conduct of the other party. Be it noted here that different provisions of the Arbitration Act leaves little scope for doubt that an arbitration proceeding is to be conducted by the arbitrator with reasonable dispatch and after the award is passed the Court should also dispose of the proceedings and decide the question whether the award should be made a rule of Court expeditiously so that the party in whose favour the award has been passed gets the benefit of the arbitration clause. In the present case the order passed by the learned single Judge gives rise to a converse situation. The Court has intervened to stay further proceedings in a proceeding which is continuing before the arbitrator giving the reason inter alia that the petitioner applying for stay may be put to unnecessary expenses in defending the proceeding before the arbitrator. As noted earlier, the respondent no.1 herein, has initiated proceedings before the Court to direct the arbitrator to file the Partial Award and has also filed an application under Sections 30 and 33 of the Act challenging the validity of the award and has also raised the question of validity of the agreement itself in the petition. The said proceedings are pending in the Court. The questions raised therein will be decided by the Court on merit after hearing the parties. In such circumstances, the view taken by the High Court that the arbitrator should not proceed further in the arbitration proceeding is unnecessary, uncalled for and erroneous. The observation of the learned single Judge that 'since the arbitrator did not file the Partial Award in Court immediately on being directed by the Court the respondent no.1 was made remediless and was 'gagged', is equally uncalled for and erroneous. It may be noted here that no party will be entitled to get any benefit in any final award passed by the arbitrator until the same is made rule of the Court and before this is done the Court is duty-bound to give notice to the parties and consider objections if any raised by any of the parties against the award.

On perusal of the judgment/order passed by the learned single Judge, we are constrained to observe that the learned Judge travelled beyond the limited jurisdiction vested in him in deciding the question of stay and has discussed the merits of the case and made observations which may prejudice the parties of any of them in a proceeding before the arbitrator and at subsequent stages in the proceeding before the Court.

The judgment of the Division Bench, we are constrained to observe, suffers from similar error of approach as the learned Single Judge. Being aware of the position that the respondent no.1 has challenged the partial Award by filing objections under Sections 30, 31 and 33 of the Act and proceeding is pending before the trial Court, the Division Bench thought it appropriate to make observations regarding the alleged misconduct of the Arbitrator in sending the draft Award to the ICC International Court of Arbitration for advice and also in declining to send up the depositions and the documents to the Court on certain grounds the Division Bench appears to have lost sight of the fact that all these questions may come up for decision before the trial Court in the proceeding under Sections 30 and 33 of the Act and parties will have opportunity to have their say in the matter. The Division Bench failed to appreciate that in the context of facts of the case it is in the interest of the parties that the Arbitration proceeding should be concluded and the challenge against the draft Award/final Award should be decided as expeditiously as possible. The observations made by the Division bench in the judgment are not only unnecessary but also uncalled for keeping in view the limited question that came up for consideration before it i.e. whether the further proceeding

before the Arbitrator should be stayed or it should continue. Any observation touching upon the merits of the case particularly, the allegations relating to alleged misconduct of the Arbitrator at the stage of consideration of the application for interim order of stay does not commend us. It appears from the record that the respondent no.1 has also filed an application before the Court for removal of the Arbitrator and the same is also pending. We are conscious of the position that grant of stay is a matter of discretion of the Court and if the Trial Court on consideration passes the order of stay the Appellate Court should be slow to interfere with the same. But that does not mean that if the order of stay passed by the Trial Court is based on non-judicial consideration such order is not liable to be interfered with by the Appellate Court. However, since the Division Bench held that the appeal was not maintainable we need say no further on merits of the observations/findings in the judgment.

On consideration of the entire matter, we are not persuaded to maintain the order granting stay of further proceedings before the arbitrator passed by the learned single Judge, which was confirmed in appeal by the Division Bench. The judgment/order dated 22.4.1999 passed by the learned single Judge which was confirmed by the Division Bench in the judgment/order dated 13th March, 2000 in FAO (OS) No.134 of 1999 are set aside and accordingly, the appeals are allowed with costs. Hearing fee is assessed at Rs.25,000/-.