

SUPREME COURT OF INDIA

M/s. GAIL (I) Ltd.

Vs.

Bal Kishan Agarwal Glass Industries Ltd.

C.A.No.4918 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

07.08.2008

JUDGMENT

Dr. Arijit Pasayat. J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Allahabad High Court disposing of appeal (FAFO No. 1339-D of 2007) which was preferred by the appellant against the order dated 31.8.2007 passed by learned Judge of Small Causes Court/Civil Judge (Senior Division) Agra, in SuitNo. 285 of 2007. By the said order the application for interim mandatory injunction was disposed of with certain directions.

3. Background facts as projected by the appellant giving rise to the appeal in a nutshell are as follows: On 17.9.1996 an agreement was entered into between the appellant and the respondent for supply of gas. The agreement was valid upto 31.3.2002 and was further extended from time to time upto 31.3.2006. On 3.12.2004 officials of the appellant inspected the factory premises of the respondent and found that gas supply has been tampered with. Similar incidents were noticed on 15.1.2005 and 17.3.2005. Therefore on 28.5.2005 gas supply was discontinued. Respondent filed writ petition No. 44679 of 2005 before the Allahabad High Court. By order dated 18.7.2005 the High Court dismissed the writ petition on the ground that alternative remedy of arbitration was available under Section 9 of the *Arbitration and Conciliation Act, 1996* (in short the 'Arbitration Act'). The order was not challenged by the respondent. On 10.8.2005 proposal was given for restoration of gas supply on the respondent furnishing undertakings, which was in fact done. Thereafter gas supply was reconnected on 22.2.2006. It was again found that the gas meter was tampered with, which lead to disconnection on 28.2.2006. On 27.3.2006 an order was passed by the District Judge, Agra to continue gas supply till 31.3.2006. On 3.4.2006 gas supply was stopped. Again a writ petition was filed by the respondent i.e. Writ petition No. 2283 of 2006. By order dated 1.11.2006 the Allahabad High Court disposed of the writ petition holding that the proper remedy for the respondent was to make a representation to the appellant since no mandamus can be issued for extension of contract or for giving benefit to any proposed

contract. On 29.3.2007 appellant indicated the terms for re-connection namely deposit of 50% of the outstanding amount of Rs.8,10,79,057/- and security for balance through mortgage of immovable property and clearance of all outstanding dues in respect of the gas supply. Civil Suit No.285 of 2007 was filed by the respondent with inter alia a prayer for directing the appellant to execute the deed of renewal of gas supply without demanding any payment or security. An application was filed by the appellant in terms of Order VII Rule 11 of the *Code of Criminal Procedure, 1908* (in short the `CPC') and Section 8 of the Arbitration Act. Learned Civil Judge directed that the fresh proposal dated 9.2.2006 should be given effect to without any further terms and conditions. As noted above an appeal was preferred which was disposed of by the impugned order dated 18.9.2007 on certain terms. The terms read as follows:

- “1. The Plaintiff-Respondent shall deposit a sum of two crores with the respondent and a security to the tune of six crores in the form of second charge of the immovable property along with bond for payment with the Defendant-Appellant.
 2. Out of two crores, the plaintiff-respondent shall deposit a sum of Rs.50 lac with the defendant- appellant within a period of one month. The security to the tune of six crore will also be deposited within a month.
 3. They will further continue to deposit a sum of Rs.5 lac per month with the plaintiff-respondent in the first week of every month till entire Rs. two crores are deposited. The first installment of Rs.5 lac will start from the month of November, 2007 i.e., the first installment of 5 lac has to be paid by 7th of November, 2007. These deposits will be in addition to the charges of the gas to be supplied to the Plaintiff-Respondent. They will be kept by the Defendant-Appellant in fixed deposit in any nationalised bank and will abide the Arbitration proceedings and subject to final decision of the case.
 4. The Defendant-Appellant will resume gas supply of the Plaintiff-Respondent after deposit of Rs. 50 lac and the security for 6 crores.
 5. It will be open to the Defendant-Appellant to stop the gas supply in case of default in depositing the payment within the above stipulated time.
 6. Defendant-Appellant will also be entitled to inspect the meters and any if tampering in meter is found, it will be open to the Defendant-Appellant to stop the supply of gas after giving notice to the Plaintiff- Respondent.”
4. According to Mr. G.E. Vahanvati learned Solicitor General what in essence the respondent sought for in the suit is relief in terms of Section 10 of the *Specific Relief Act, 1963* (in short the `Act'). In order to bring application of the said provision there must be a contract. Section 39 of the said Act relates to an obligation flowing from a contract upon mutually agreed upon terms. There was no question of any automatic renewal. As a matter

of fact the extension of the period of contract is not automatic and has to be done on mutually agreed upon terms. In the instant case, there was no contract in existence, and therefore there is no question of granting any relief in the suit. Additionally, there was a specific clause relating to arbitration. It is pointed out that the civil court was aware of the earlier order of the High Court. It is, therefore, submitted that the learned Civil judge could not have passed the order which was impugned before the High Court. Unfortunately the High Court disposed of the appeal before it without taking note of the fact that earlier in Writ Petition No. 44679 of 2005, the court had dismissed the writ petition on the ground of alternative remedy. The said order was not challenged. It is accepted that an arbitrator has in fact been appointed.

5. Mr. T.R. Andhyarujina, Learned Senior Counsel appearing for the respondent on the other hand submitted that the appellant's conduct was not above board. Initially, it had suggested certain terms for reconnection. But backed out of it and even it was not keen on the early disposal of the proceeding before the arbitrator. The question whether any amount is payable as penalty as claimed by the appellant can be the subject matter of adjudication by the arbitrator. Since unreasonable terms were indicated for resumption of gas supply, the respondent had no alternative but to avail the civil suit. It was suffering huge losses and there were human problems like unemployment of a large number of employees who earn their livelihood from their employment in the respondent's factory. A proposal has also been filed by the respondent during the hearing of the appeal.

6. Mr. Vahanvati, submitted that since the matter is pending before the Arbitrator, the Civil Court should not have passed any order and the High Court was not justified in practically affirming the order of the trial court except variation of certain conditions.

7. Undisputedly, the proceedings are pending before the arbitrator. Under Section 17 of the Act, interim orders can be passed by the Arbitrator.

8. In the circumstances we dispose of the appeal with the following directions:

“1. Within a period of ten days from today the respondent shall make an appropriate application for interim arrangement before the Arbitrator;

2. Within a period of three days from the date of receipt of copy of the application, the appellant shall file the response/objection, if any;

3. Within a period of ten days thereafter the Arbitrator is requested to dispose of the application in accordance with law. It is open to the respondent to place the proposal which was filed in the Court. Needless to say, the Arbitrator shall consider the matter in proper perspective.”

9. We make it clear that we have not expressed any opinion on the terms of the conditions, if any, which can be imposed and/or whether any interim order is called for in the matter. The appeal is accordingly disposed of without any order as to costs.