

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: January 31, 2013*

+ **OMP No.700/2012**

M/S CANON INDIA PVT LTD Petitioner
Through Mr.Amar Gupta, Adv. with
Mr.Divyam Agarwal, Adv.

versus

M/S K.T.HOLIDAYS PVT LT D& ANR Respondents
Through Mr.Aaditya Vijay Kumar, Adv.

+ **OMP No.701/2012**

M/S CANON INDIA PVT LTD Petitioner
Through Mr.Amar Gupta, Adv. with
Mr.Divyam Agarwal, Adv.

versus

M/S K.T.HOLIDAYS PVT LT D& ANR Respondents
Through Mr.Aaditya Vijay Kumar, Adv.

+ **OMP No.702/2012**

M/S CANON INDIA PVT LTD Petitioner
Through Mr.Amar Gupta, Adv. with
Mr.Divyam Agarwal, Adv.

versus

M/S K.T.HOLIDAYS PVT LT D& ANR Respondents
Through Mr.Aaditya Vijay Kumar, Adv.

+

OMP No.703/2012

M/S CANON INDIA PVT LTD Petitioner
Through Mr.Amar Gupta, Adv. with
Mr.Divyam Agarwal, Adv.

versus

M/S K.T.HOLIDAYS PVT LT D& ANR Respondents
Through Mr.Aaditya Vijay Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner, M/s Canon India Pvt. Ltd. has filed the abovementioned applications under Section 27(5) of the Arbitration and Conciliation Act, 1996 praying to initiate proceedings against respondents No.1 & 2 under the said provision and also to close the respondents' right to cross-examine the petitioner's witnesses in the arbitration proceedings.
2. Admittedly, the learned Arbitrator was appointed by this Court pursuant to the joint application filed by the petitioner and respondent No.1 which is a company, namely, M/s K.T.Holidays Pvt. Ltd. Respondent No.2, Mr.Gautam Sapra is the Director of the said Company.
3. The respondents sought extensions on various dates for filing its pleadings, documents, list of witnesses and evidence. Despite granting 13 opportunities, the respondents did not file the same rather they started sending various letters and emails to the learned Arbitrator.
4. It is unfortunate that an irresponsible and intemperate language is used in the said emails/communications which were totally baseless, unwarranted and defamatory in nature.

5. The learned Arbitrator expressed his anguish and displeasure on the said language used by respondent No.2 in his letters and emails who stated in his last order dated 9th May, 2012 that until and unless the conduct of the respondents is brought to the notice of this Court, he would not wish to continue the arbitration.

6. Notice of these applications was issued to the respondent. Reply has also been filed by the respondents.

7. It is stated in the applications that prestigious time has been wasted due to malafide conduct of the respondents. The petitioner will suffer an irreparable loss and injury if the arbitration proceedings are not continued by the learned Arbitrator. Difficulty is also alleged that in case, a new Arbitrator is appointed in the proceedings, the same would start afresh which would cause the petitioner undue hardships and losses.

8. I have gone through the orders passed by the learned sole Arbitrator as well as the emails and letters sent by respondent No.2 on behalf of respondent No.1. I am of the considered view that said communication is contemptuous in nature. Respondent No.2, Mr.Gautam Sapra ought to have upheld the sanctity of the arbitration proceedings. He has no business to use such language in the letters and emails. A paragraph from the aforesaid email has been reproduced in the petition to draw the attention of this Court to the allegations levelled by respondent No.2. The same reads as under:

“Again we really find it strange that why the email sent to you today is again being forwarded to the respondent before the arbitration date, should we understand again from this that the learned arbitrator wants the respondents advocate to again decide the further course of action on our letter as the arbitrator is unable to take a fair decisionor has the arbitrator unofficially appointed the respondents advocate as the arbitrator.....such arbitration

proceedings as very clear apparent being carried by the Arbitrator are totally biased towards the respondent & against the claimant in terms of natural justice.....we very clearly state that time & again the actions of the arbitrator are biased towards the respondent for reasons not known to us.....We once again hope the arbitrator shall be fair to us in the interest of justice or else it is very difficult to attend proceedings where the arbitrator is unfair & biased.” (Emphasis supplied)

9. When the matter is taken up today, learned counsel appearing on behalf of the respondents stated that respondent No.2 himself as well as on behalf of respondent No.1-Company shall tender unconditional apology to the learned Arbitrator and he undertakes to cooperate with the proceedings and they would not take unnecessary adjournment from the learned Arbitrator. He states that the respondents be allowed to produce the evidence, as the right of evidence of the respondents has been closed by the learned Arbitrator.

10. As far as the evidence part is concerned, it is now not in my domain to pass such order; it is for the respondents to take the necessary steps in this regard by filing appropriate application before the learned Arbitrator who will deal with the same as its own.

11. As regards tendering of apology by the respondents, I direct that the respondents through Mr.Gautam Sapra shall tender unconditional apology before the learned Arbitrator by personally or through affidavit. The respondents shall also ensure to the learned Arbitrator to cooperate with the proceedings and they would not ask for any unnecessary adjournment. However, in view of the conduct of Mr.Sapra mentioned above, I am of the view that he has to be burdened with cost for non-cooperation and his behaviour. He is directed to deposit a sum of ₹30,000/- as cost with the

Delhi High Court Mediation and Conciliation Centre within two weeks from today.

12. In case, the learned Arbitrator is satisfied with the above, he may resume the arbitration proceedings in accordance with the undertaking offered by the respondents to his satisfaction.

13. All the petitions are disposed of.

14. Copies of this order be given *Dasti* to the learned counsels for the parties. A copy of the same be also communicated to the learned Arbitrator.

(MANMOHAN SINGH)
JUDGE

JANUARY 31, 2013/ka