

(For Condonation Of 13 Days' Delay In ... vs Vodafone Group Plc & Anr on 14 August, 2020)

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

\$~VC-6 & 7

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ RFA(OS) 38/2018, C.M. No.23348/2018 (stay) & C.M.No.519/2020
(for condonation of 13 days' delay in filing reply
to C.M.No.49319/2019), C.M. No.49319/2019 (of the respondents for
withdrawal of oral statement) and C.M.No.14469/2020 (for directions)

UNION OF INDIA Appellant
Through: Mr.Chetan Sharma, ASG with
Mr.Kirtiman Singh, CGSC, Mr.Amit
Gupta, Mr.RVPrabhat, Mr.SahajGarg
and Mr.Anish Roy, Advocates

Versus

VODAFONE GROUP PLC & ANR. Respondents
Through: Mr. Harish Salve, Senior Advocate
with Ms. AnuradhaDutt,
Ms.FereshteSethna, Ms.EktaKapil,
Ms.GayatriGoswami,
Mr.HaarisFazili, Mr.KunalDutt and
Mr.ShobhitAhuja, Advocates

+ RFA (OS) 45/2018
VODAFONE GROUP PLC UNITED KINGDOM & ANR.

..... Appellants
Through: Mr. Harish Salve, Senior Advocate
with Ms. AnuradhaDutt,
Ms.FereshteSethna, Ms.EktaKapil,
Ms.GayatriGoswami,
Mr.HaarisFazili, Mr.KunalDutt and
Mr.ShobhitAhuja, Advocates

Versus

UNION OF INDIA Respondent
Through: Mr.Chetan Sharma, ASG with
Mr.Kirtiman Singh, CGSC, Mr.Amit,
Mr.RVPrabhat, Mr.SahajGarg and
Mr.Anish Roy, Advocates

RFA (OS) 38/2018 & 45/2018

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CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 14.08.2020

1. We have heard the Additional Solicitor General (ASG) for close to two hours.

2. We may record, (A) that we have informed the senior counsel for Vodafone that the ASG had mentioned this matter yesterday, stating that these appeals as well as the appeal pending against the decision in *Bina Modi Vs Lalit Modi*, 2020 SCC OnLine Del 901 authored by one of us (Justice Rajiv Sahai Endlaw) sitting singly, should be heard together, since they entail the same question; (B) the senior counsel for Vodafone has stated that Bina Modi supprturned on Section 5 of the Arbitration and Conciliation Act, 1996, which is not applicable here, thus he would not be referring to Bina Modi supra at all;

(C) it is the contention of the ASG that the cause of action for the arbitration invoked under the Netherlands Bilateral Treaty and the arbitration invoked under the U.K. Treaty, is the same; (D) the senior counsel for Vodafone has confirmed that he is not disputing that the cause of action is the same; he has however explained that the second arbitration was invoked only because it was the plea of Union of India that the Netherlands Treaty excludes taxation disputes and though Vodafone disputes the same, has invoked the U.K. Treaty, by way of abundant caution.

3. As per our understanding, the impugned judgment adjudicates two controversies i.e. (i) whether with respect to arbitration provided in investment treaties between two sovereign States, an anti-arbitration suit lies in domestic courts of one country; and, (ii) if the suit is maintainable, whether in the facts of the present case, anti-arbitration injunction was to be granted. While the Single Judge has held the suit to be maintainable, injunction sought by Union of India has been denied. The ASG today has apprised us of the factual scenario leading to the filing of the suit. We request him to, on the next date, address us on the legal issue of maintainability of the suit and if so, why the Single Judge has erred in denying the injunction.

4. The ASG, on enquiry states that he needs four hours more to conclude his arguments.

5. The counsel for Vodafone states that they need about 2-3 hours for their arguments.

6. List for further hearing on 1st September, 2020; 7th September, 2020 and 14th September, 2020.

RAJIV SAHAI ENDLAW, J ASHA MENON, J AUGUST 14, 2020/s