

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2015

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MRS. JUSTICE PUSHPA SATHYANARAYANA

O.S.A.No.246 of 2015
and M.P.No.1 of 2015

1.Prime Technologies
A Division of Hindustan Ferro and Industries Ltd.,
represented by its Director
Mr.A.K.Dalmia, having its registered Office at
No.3/190, Vishnupuri,
Kanpur 208002.

2.26-B Camac Street,
Calcutta 700016.

3.No.3, Chowringee Approach,
Calcutta 700 016. ... Appellants

versus

M/s.Hamsa Watch Glass Pvt., Ltd.,
No.24, Dewan Rama Road, Purasaiwalkam
Chennai 84. ... Respondent

Appeal filed under Order XXXVI Rule 9 of Original Side
Rules read with Clause 15 of the Letters Patent Act, against the
order dated 09.03.2015 passed in A.No.8033 of 2014 in E.P.No.60
of 2013, on the file of this Court.

A.No.8033/2014: Application praying that this Hon'ble court be
pleased to set aside the order in E.P.No.60/2013 dated
08/10/2014.

EP No.60/2013: Petition praying that the execution of the Award
passed in OP No.MSEFC/CR.04/2004 under order XXI Rule 43, 64 and
66 of CPC.

For Appellant .. Mr.A.J.Jawad

For Respondents .. Mr.V.Vedachalam
Counsel for the Caveator

J U D G M E N T

(Judgement of the Court was delivered by The Hon'ble Chief Justice)

An award has been passed under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter called 'the said Act') dated 29.04.2011. The appellant chose not to file any objections qua the award and it is at the stage of execution that a plea is sought to be raised that the award is not executable being a nullity. The procedure prescribed in respect of the awards passed under Sections 18 and 19 of Chapter-V of the said Act reads as under:

"18. Reference to Micro and Small Enterprises Facilitation Council -- (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services of such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate

dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such reference.

19. Application for setting aside decree, award or order - No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any Court unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such Court:

Provided that pending disposal of the application to set aside the decree, award or order, the Court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.'

2. Learned counsel for the appellant contends that sub-section (1) of Section 18 of the said Act only envisages reference and the award has to be made under sub-section (3) and thus, the award which purports to be under sub-section (1) is erroneous.

3. In our view, this is at best, a typographical/technical error as it is quite obvious that an award can only be made under sub-section (3).

4. The real bone of contention is that under sub-section (2), on receipt of reference, conciliation proceedings should be held, the failure of which gives rise to Arbitration proceedings. The allegation is that no conciliation proceedings were held, which was mandatory requirement as a prelude to the Arbitration proceedings. In this behalf, learned counsel referred to the Judgment of a learned Single Judge of the Andhra Pradesh High Court in The Indur District Co-operative Marketing Society Ltd., vs. M/s. Microplex (India) and Another reported in (CDJ 2015 APHC 938) and submits that under similar

circumstances, the Andhra Pradesh High Court, taking into account a Division Bench Judgment of the Bombay High Court in M/s.Steel Authority of India Ltd., vs. The Micro, Small Enterprises Facilitation Council and Another reported in (CDJ 2010 BHC 2883), came to a conclusion that conciliation was mandatory as that is the procedure prescribed. The observations of the learned Single Judge are as under:

'Thus, the preponderance of judicial thought is also inclined towards holding the procedure prescribed in Section 18(2) of the Act of 2006 to be mandatory. It was therefore not open to the Council to deviate from the said statutory procedure and take recourse to arbitration directly without first initiating conciliation between the parties. The object of the Act and its scheme clearly indicate that the thrust thereof is to promote facilitation between the parties rather than force adjudication upon them. The Council therefore transgressed its jurisdiction in adopting its own procedure in violation of the prescribed procedure. The orders under challenge in W.P.Nos.35872 and 35879 of 2012, being in violation of the prescribed procedure, are therefore without jurisdiction and are accordingly set aside. W.P.Nos.35872 and 35879 of 2012 are allowed. In the light of the finding rendered by this Court to the effect that the first respondent companies in W.P.Nos.39497 and 39504 of 2012 also fall within the definition of a 'supplier' under Section 2(n) of the Act of 2006, the prayer of the petitioner societies therein for writs of prohibition interdicting the Council from proceeding with their cases must necessarily fail.'

5. A reading of the aforesaid Judgment shows that the parties approached the Court to interdict the Arbitration proceedings as the procedure prescribed had not been followed. In the present case, we are faced with a situation where the award had already been delivered. Thus, the principle that a party should not be made to go through the ordeal of arbitration without endeavouring conciliation really would not apply because the arbitration process is also over. We may also note that the consequences of the conciliation not being successful arise in sub-section (3) of Section 18, where the arbitration proceedings would commence. Be that as it may, the most important factor in the present case is that neither are we considering a situation where the parties are trying to interdict the arbitration proceedings without going in for conciliation nor are we dealing with the objections to an award. The appellant in his wisdom, failed to file any objection under Section 19 of the said Act.

6. In our view, to entertain the objections of the appellant at the stage of execution of the decree would amount to going behind the decree in execution proceedings, a course of action not permissible. We are fortified in our view by a catena of judgments of the Hon'ble Supreme Court as well as High Courts to the effect that the executing court cannot examine the validity or otherwise, or go behind the terms of a decree passed by a court of competent jurisdiction unless of course it is shown to be void ab initio or without jurisdiction - vide Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman, (1971) 1 SCR 66; C.Gangacharan v. C.Narayanan, (2000) 1 SCC 459; Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises, AIR 1999 SC 246; Revur Venkatasuba Rao v. Gurijala Venkataramanayya, (1948) 61 LW 80 (Mad); Govindarjan v. S.Muruganandam, 1986 - 99 LW 674 (Mad); and Madras and Southern Mahratta Railway v. Rupchand Jitaji and Co., ILR 1950 Bom 185.

7. Thus, we are not persuaded by the arguments of the learned counsel that the learned single Judge fell into an error by rejecting the aforesaid plea of the learned counsel and concurring with the view of the learned Master in the impugned orders dated 09.03.2015 and 08.10.2014 respectively.

The Original Side Appeal accordingly stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ksr

To

The Sub Asst.Registrar,
Original Side Section,
High Court, Madras.

+1 cc to M/s.V.Vedachalam, Advocate, sr.64139

O.S.A.Nos.246 of 2015

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