

In the High Court of Judicature at Madras

Reserved on : 29.09.2015

Delivered on : 05.10.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

O.S.A.No.198 of 2015

M/s.Belair Corporation Pvt. Ltd.,
rep. by Arvind Srinivasan,
Managing Director,
No.94, Luz Church Road,
Mylapore, Chennai-600 004. Appellant

Vs.

1.Maria Grace Suganthi

2.P.J.George

3.P.Bernath

4.P.S.Prema,
Presiding Arbitrator,
M/s.National Stock Exchange,
VIII Floor, Arihant Nitco Park,
No.90, Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.

5.Sridharan Krishnamurthy,
Arbitrator,
M/s.National Stock Exchange,
VIII Floor, Arihant Nitco Park,
No.90, Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.

6.G.Sivaprakash,
Arbitrator,
M/s.National Stock Exchange,
VIII Floor, Arihant Nitco Park,
No.90, Dr.Radhakrishnan Road,
Mylapore, Chennai-600 004.

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side r/w. Clause 15 of Letters Patent against the order dated 13.07.2015 in O.P.No.355 of 2015.

For Appellant : Mrs.R.Revathy
for M/s.Black N Red Law Ass.

For Respondent : Mr.Amalraj S. Penikillapatti
Nos.1 to 3 (Caveator)

J U D G M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellant/Petitioner has preferred the instant Original Side Appeal as against the order dated 13.07.2015 in O.P.No.355 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the impugned order on 13.07.2015 in O.P.No.355 of 2015 (filed by the Appellant/Petitioner) at paragraph 19 had observed the following:

"19.In respect of an award passed in which the parties are different and the award is different, the appellant should have filed three different appeals, but has chosen to file a single appeal. Even this curable defect can be ordered to be cured by directing the appellant to pay separate court fees in respect of each of the appeals and to file necessary additional papers. But, there are no merits in the grounds of appeal etc."

and ultimately, considering the totality of the circumstances, was not inclined to entertain the Original Petition and rejected the same.

3.Being dissatisfied with the order dated 13.07.2015 in O.P.No.355 of 2015 passed by the Learned Single Judge in rejecting the Petition, the Appellant/Petitioner has filed the present Original Side appeal before this Court.

4.The Learned counsel for the Appellant/Corporation contends that the Learned Single Judge had committed an error in dismissing the O.P.No.355 of 2015 on a frivolous ground that the Appellant should have filed separate Arbitration Original Petitions with regard to each 'Arbitral Award'.

5.The Learned counsel for the Appellant urges before this Court that the Learned Single Judge had failed to appreciate

that in view of the 'Hacking of the Server', the Appellant could not produce the 'Contract Notes' and other 'Documents' due to which, both the Arbitral Award and the Appellate Order are vitiated by the vice of violation of Principles of Natural Justice.

6.The Learned counsel for the Appellant proceeds to take a plea that the Learned Single Judge should have considered the fact at the time of passing the impugned order in the Original Petition that neither the 'Sole Arbitrator' nor the 'Appellate Panel' address the queries raised by the Appellant.

7.Lastly, the Learned counsel for the Appellant submits that the Learned Single Judge should have considered that the 'Server Breakdown' could not be resolved inspite of genuine effects of the Appellant and in reality, ought to have issued necessary directions for finding out through an alternative method.

8.At this stage, this Court very pertinently points out that the ambit and boundaries of Courts jurisdiction to 'Review' an 'Arbitration Award' were demarcated by the Privic Council in the decision Champsey Bhara & Co. V. Jivraj Ballo ASG & WVG Co. Ltd., reported in AIR 1923 PC at page 66. As a matter of fact, a 'Reviewing Court' cannot substitute its own evaluation and come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties.

9.It is the well settled proposition of Law that the 'Arbitral Tribunal' is the final arbiter of both the questions of fact and law referred to it. There is no second opinion of an important fact that an 'Arbitrator' is the Master of the Facts and the Law. As such, the findings of the fact, recorded by the Arbitral Tribunal are conclusive and final. Undoubtedly, the Reviewing Court does not sit in Appeal over the award and review the reasons as per decision of the Hon'ble Supreme Court in Indian Oil Corporation Ltd., V. Indian Carbon Ltd., [1988 (3) SCC at page 36]. But a Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous as per decision of the Hon'ble Supreme Court in State of Rajasthan V. Puri Construction Co. Ltd., reported in 1995 (1) Arb LR 1 SC.

10.It is to be remembered that a Court of Law should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by terming it an 'illegal' one, in the considered opinion of this Court. As such, it is not open to the Court to re-assess evidence to find if the Arbitral Tribunal has committed any error or to decide

the question of adequacy or sufficiency of such evidence as per decision Eastern and North East Frontier Railway Co-op. Bank Ltd., V. B Guha and Co., reported in AIR 1986 (Cal) at page 146 as per the ingredients of the Section 34 of the Arbitration and Conciliation Act, 1996.

11.Suffice it for this Court to point out that an award can be challenged only under the grounds specified in Section 34(2) of the Arbitration and Conciliation Act, 1996 as per decision P.R.Shah, Shares and Stock Brokers Pvt. Ltd., V. B.H.H. Securities Pvt. Ltd., and others reported in 2012 (1) Supreme Court Cases at page 594. Also that in an Appeal against an order passed under Section 34, which is appealable under Section 37(1) (b) of the Arbitration and Conciliation Act, 1996, the powers of the Appellate Court are limited to the consideration of the grounds mentioned in Section 34 of the Act.

12.At this juncture, a mere running of the eye in regard to the cause title of the Original Petition No.355 of 2015 filed by the Appellant (as Petitioner in Arbitration Appeal No.CM/C.0003, 4 & 5 of 2014) shows that the First Claimant was one Mrs.Maria Grace Suganthi of Chennai-4, Second Claimant being one Mr.P.J.George of Chennai-4 and Third Claimant being one Mr.P.Bernath, Chennai-4. The Respondents 4 to 6 in O.P.No.355 of 2015 were mentioned as 'Presiding Arbitrators' and as 'Arbitrator'. In fact, the Appellant/Petitioner had filed the O.P.No.355 of 2015 in Arbitration Appeal No.CM/C-0003, 4 & 5 of 2014 under Section 34 of the Arbitration and Conciliation Act, 1996 praying for passing of an order by this Court to set aside the order of the Arbitration Appellate Tribunal in Arbitration Appeal in Case No.APP CM/C-0003, 4 & 5 of 2014 of the National Stock Exchange of India Limited dated 19.11.2014.

13.Admittedly, in O.P.No.355 of 2015 in Arbitration Appeal No.CM/C-0003, 4 & 5 of 2014, the Appellant/Petitioner/Corporation had paid a Court fee of Rs.5000/-. In this connection, this Court aptly points out that before numbering of O.P.No.355 of 2015 (filed by the Appellant/Petitioner), the office of the Registry in O.P.D.No.46555/2014 had rejected the Original Petition inter-alia stating that a)Deficit Court Fee of Rs.4990/- should be paid in S.No.3 b)Process Fee of Rs.120/- to be paid along with memo in S.No.4 c)Rs.5/- Court Fee should be affixed on the copy of the Award as per Original Side Rules etc., in S.No.15.

14.The Learned counsel for the Appellant/Petitioner on 04.02.2015 had complied with the aforesaid returns along with other returns. However on 06.02.2015, the office of the Registry in S.No.31 in O.P.D.No.46555 of 2014 had mentioned that previous returns should be complied i.e., on 24.12.2014 and in

S.No.32 had raised a query stating that 'how this Single Petition was maintainable when the Respondents were different'. To these returns/defects, the Learned counsel for the Appellant/Petitioner had replied that a) Respondents 1 to 3 are family members and the Appeal Arbitration was taken by the same Arbitrators at the same time.

15.It is to be borne in mind that as per Schedule II Art. (m) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 for an Application under the Arbitration and Conciliation Act, 1996, the proper fee to be paid by a party/litigant is one percent of the value of the subject matter, subject to a maximum of Rs.5000/-. In the instant case, the Appellant/Petitioner in O.P.No.355 of 2015 in Arbitration Appeal No.CM/C.0003, 4 & 5 of 2014 (filed under Section 34 of the Arbitration and Conciliation Act, 1996) had remitted only the Court fee of Rs.5000/-.

16.It transpires that in Arbitration Appeal No.CM/C-0003 of 2014, the Respondent/Constituent was one Mr.P.J.George of Chennai. The said Arbitration Appeal was filed against the Award of the sole Arbitrator dated 16.06.2015 in CM./C.0003 of 2014. Ultimately on 19.11.2014, Appeal of the Appellant filed against the Arbitral Award dated 16.06.2014 was dismissed and the Award was upheld. Similarly, in Arbitration Appeal No.CM/C.0004 of 2014 (filed by the Appellant/Corporation) the Respondent/Constituent was one Mr.P.Bernath of Chennai. Likewise, in Arbitration Appeal No.CM/C-0005 of 2014, the Respondent/Constituent was one Mrs.Maria Grace Suganthi of Chennai.

17.In respect of the Awards in Arbitration Appeal No.CM/C-0003, C-0004 & C-0005 of 2014, (all the Awards dated 19.11.2014), the Litigants/Parties/Constituents/Applicants as well as the Award amounts are different.

18.It cannot be gainsaid that the Appellant/Petitioner/Corporation ought to have preferred three separate Original Petitions by paying the necessary Court fee of Rs.5000/- as per Schedule II Art.(m) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. But the Appellant/Petitioner/Corporation filed single O.P.No.355 of 2015 on the file of this Court mentioning Constituents as Respondents 1 to 3. Apart from that, the Appellant/Corporation filed the present OSA.No.198 of 2015 before this Court being aggrieved against the order passed by this Court in O.P.No.355 of 2015 dated 13.07.2015 (arising out of Arbitration Appeal No.APP CM/C-0003, 4 & 5 of 2014), by arraying Applicants/Constituents as Respondents 1 to 3 and by further arraying the 'Presiding Arbitrator/ Arbitrators' by their names as Respondents 4 to 6. The Appellant/Corporation had paid a Court fee of Rs.5000/- in O.S.A.No.198 of 2015.

19.Be that as it may, in view of the fact that the O.P.No.355 of 2015 filed by the Appellant/Petitioner/Corporation against the Awards of Arbitration Appeal No.CM/C-0003, 4 & 5 of 2014 before the Learned Single Judge is not per se maintainable in the eye of Law, since no separate Arbitration Original Petitions were filed in regard to each Appellate Arbitral Award and on the same line/view, this Court comes to an inevitable and inescapable conclusion that the present O.S.A.No.198 of 2015 is not legally maintainable in the eye of Law. Consequently, the Original Side Appeal on the short point of question of maintainability itself fails.

20.In the result, the Original Side Appeal is dismissed.
No costs.

-s/d-

Assistant Registrar(CSIII)

dt:15/10/2015

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Sub-Assistant Registrar

DP

To

The Sub Assistant Registrar
Original Side
High court Madras

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