

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 13TH DAY OF JULY 2015

THE HON'BLE MRS. JUSTICE S.VIMALA

O.P.No.355 of 2015

Arbitration Appeal No.1pp
CM/C-0003, 4 and 5 OF 2014

M/s.Belair Corporation Pvt., Ltd.,
Rep. By its Managing Director -Arvind Srinivasan,
No.No.94, O.No.140-A Luz Church Road,
Mylaproe, Chennai-600 004.
Petitioner/Appellant

-Vs.-

1.Mrs.Maria Grace Suganthi,
No.22/2, Muthukrishnan Street,
Mylapore, Chennai-600 004.1st Claimant

2.Mr.P.J.George,
No.22/2, Muthukrishnan Street,
Mylapore, Chennai-600 004.2nd Claimant

3.Mr.P.Bernath
No.27/2, Muthukrishnan Street,
Mylapore, Chennai-600 004.3rd Claimant

4.Mrs.P.S.Prema,
Presiding Arbitrator, M/s.National Stock Exchange,
8th Floor, Arhant Nitco Park,
No.90, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

5.Mr.Sridharan Krishnamurthy,
Arbitrator, M/s.National Stock Exchange,
8th Floor, Arhant Nitco Park
No.90, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

6.Mr.G.Sivaprakash,
Arbitrator, M/s.National Stock Exchange,
8th Floor, Arhant Nitco Park,
No.90, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004. ..Respondents/Respondents

Original Petition praying that this Hon'ble Court may be pleased to set aside the order given by the Arbitration Appellate Tribunal in Arbitration Appeal in Case No.APP CM/C-0003, 4 and 5 of 2014 of the National Stock Exchange of India Limited dated 19/11/2014.

This original Petition coming on this day before this court for hearing the court made the following order:

In a dispute between the applicant **Mrs.Maria Grace Suganthi** and the respondent Belair Corporation Pvt. Ltd., there was an award dated 16.06.2014 by the arbitrator directing the respondent to pay the applicant a sum of Rs.10 lakhs with interest at 12% p.a. from 06.08.2013 within a period of one month from the date of award and thereafter, with interest at 18% p.a. till payment.

2. The appeal filed by Belair Corporation Pvt. Ltd. before the Appellate Arbitrator - National Stock Exchange of India Limited was dismissed by order dated 18.11.2014 both on the grounds of time limit and merits.

3. In a dispute between the applicant **P.J.George** and the respondent Belair Corporation Pvt. Ltd., there was an award dated 16.06.2014 directing the respondent to pay the applicant a sum of Rs.2.5 lakh with interest at 12% p.a. from 28.08.2013 within a period of one month from the date of award and thereafter, with interest at 18% p.a. till payment.

4. The appeal filed by Belair Corporation Pvt. Ltd before the Appellate Arbitrator - National Stock Exchange of India Limited was dismissed by order dated 19.11.2014 both on the grounds of time limit and merits.

5. In a dispute between the applicant **P.Bernath** and the respondent Belair Corporation Pvt. Ltd., there was an award dated 20.06.2014 directing the respondent to pay the applicant a sum of Rs.9.25 lakh with interest at 12% p.a. From 06.08.2013 within a period of one month from the date of award and thereafter, with interest at 18% p.a. till payment.

6. The appeal filed by Belair Corporation Pvt. Ltd. before the Appellate Arbitrator - National Stock Exchange

of India Limited was dismissed by order dated 19.11.2014 both on the grounds of time limit and merits.

7. In all the three cases, referred to above, the applicants were different but the respondent was the same.

8. Challenging the dismissal of the Appeal in all the above three cases, the Belair Corporation Pvt. Ltd has filed a single petition (and not three petitions) as against the three award passed.

9.Hence, the maintainability of the single petition, where there are three different respondents (in the appeal) and three different award (amount varying in each award) has been raised as the main issue.

10.At the time of scrutiny of the petition, the Office has raised a query with regard to maintainability of the single petition, when there are three different respondents.

11.The Petition has been re-presented giving the following reasons

(i) The respondents 1 to 3 are family members

(ii) The appeal challenging the arbitral award are taken by the same arbitrator at the same time.

Whether these two reasons can be the grounds for maintaining a single petition is the issue to be considered.

12. A perusal of the records reveal that, in the cause title, it is mentioned as O.P. in Arbitration Appeal and in the relief portion it is claimed that order passed by the Arbitration Appellate Tribunal in Arbitration Appeal in Case No.APP CM/C-0003, 4 and 5 of 2014 of the National Stock Exchange of India Limited, dated 19.11.2014, should be set-aside, in the grounds of Appeal, the award, dated 16.06.2014, of the learned sole Arbitrator is under challenge.

13. At the time of hearing of the case regarding maintainability, this Court, at the outset felt that the procedural law should not be a tyrant, but a servant and that it should be a lubricant and not a resistant in the administration of justice as pointed out by the Hon'ble Supreme Court in several cases, still on a perusal of the complete records, it is clear that even if further opportunity is given, the appellant will not be in a position to substantiate his case.

14. From the grounds of Appeal, it is not clear whether the petitioner intends to challenge the award passed by the sole Arbitrator or the award passed in the Arbitration Appeal.

15. Both the learned Arbitrator as well as the Arbitration Appellate Tribunal have commented upon the conduct of the Petitioner/Appellant in not producing the relevant records and their inability to restore the crashed server of the computer. The observation of the Appellate Tribunal runs as under:-

"The status quo in this case - crashing of server and non-restoration - continues. The appellant is not in a position to submit any documents to substantiate his contentions. He expects the Respondent to get "Bought and Sold data from NSE" to enable them to rework the trading account..... The server has crashed in August 2013 and the Appellant has not been able to get repaired even after 1 year and 2 months. This shows either the Server is beyond repair or the Appellant is not taking sufficient steps to get it repaired. Investors cannot be made to wait with their claim indefinitely till the Appellant get the data restored".

16. Moreover, award under Section 34 of the Act can be challenged only on the following grounds:-

"The grounds available under Section 34 (2) (a) (i)-party to the award was under some incapacity to enter into the arbitration agreement on which the award is passed; 34 (2) (a) (ii) arbitration agreement is not valid under the law to which it is subjected to or the law in force; 34(2) (a) (iii) - non-compliance with procedural with due process (i) not given proper notice of the appointment of the arbitrator (ii) he was otherwise unable to present his case; 34(2) (a) (iv) - **Ultra petita**, i.e. when a dispute is not contemplated by or not falling within the terms of the submission to arbitration or **extra petita**, i.e. it contains decision on matters beyond the scope of the submission to arbitration; 34(2) (a) (v) - if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties; under Section 34(2) (b) - (i) the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, i.e. subject matter of the dispute is not arbitrable or (b) the arbitral award is in conflict with the public policy of India."

17. The learned counsel for the petitioner/Appellant

is not able to point out, as to whether the grounds taken in the Appeal would be within the parameters of Section 34 of the Arbitration and Conciliation Act.

18. None of the permissible grounds under Section 34 of the Act have been raised in the grounds of appeal.

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. Considering the totality of the circumstances, this Court is not inclined to entertain the petition and the petition itself is rejected.

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sd/.S.V.J

13.07.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/31.07.2015

COURT OFFICER

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