

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2016
Delivered on : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Original Side Appeal Nos.316 and 56 of 2009

D.K.RavichandranAppellant in OSA.316 of 2009
UmaAppellant in OSA.56 of 2009

Vs

1. Cream Investment and Trading
Company Limited,
rep.by its Director Mr.S.V.Arumugam,
252, Mettupalayam Road,
Coimbatore-641 043
2. National Stock Exchange of India Limited,
rep.by its Manager Mr.Raj Kumar,
7th Floor, Arihant Nitco Park,
No.90, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004Respondents in both the OSAs

Prayer:- Original Side Appeals preferred under Order 36 Rule 1 of the Original Side Rules, read with Clause 15 of the Letters Patent read with Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 11.7.2008 in Tr.O.P.Nos.633 and 634 of 2006, passed by the learned single Judge.

For Appellants : Mr.K.Ramanraj in both the OSAs
For Respondents : Mr.Karthik Seshadri for
M/s.Iyer and Thomas for R1
No appearance for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

These Original Side Appeals are directed against the common order, dated 11.07.2008, passed in Transfer Original Petition Nos.633 and 634 of 2006, by the learned Single Judge

2. The appellants herein, as petitioners, have filed Transfer Original Petition Nos.633 and 634 of 2006, on the file of this Court, praying to set aside the award dated 27.11.2002, passed by the Arbitrator. In both the petitions it is averred that the petitioners have become constituent of the first respondent/trading member. The first respondent is having its registered office at Mumbai and Administrative Office in Coimbatore. The first respondent is a member of National Stock Exchange of India Ltd., (NSE). The petitioners have transferred some shares to the first respondent on 22.5.2000 and 23.5.2000. The first respondent has settled the dues of Rs.7,257.85. The petitioners have decided to sell the shares of Karnataka Bank Ltd., and ITC Badrachalam Limited and approached the first respondent, on 11.10.2000. The first respondent has suggested that since Karnataka Bank Shares are in physical form and not dematerialised, can be transferred through one M/s.Bhavana Enterprises and the same has also carried on its business in the precincts of the first respondent's office. The petitioners have acted upon the suggestion put forth by the first respondent and transferred 500 shares of ITC Badrachalam Limited and 1500 shares of Karnataka Bank Ltd., to the said M/s.Bhavana Enterprises. After sometime, the petitioners have not received the due amounts. For settling the claim of the petitioners, a reference has been made to an Arbitrator.

3. In the counter filed on the side of the first respondent, it is stated that the Arbitrator is not having jurisdiction to entertain the claim of the petitioners and further, the first respondent has had no privity of contract with M/s.Bhavana Enterprises and therefore, the claim of the petitioners is liable to be rejected.

4. The Arbitrator, after considering the divergent contentions raised on either side, has rejected the claim of each petitioner by way of passing a common award and in order to set aside the same, Transfer Original Petition Nos.633 and 634 of 2006 have been filed on the file of this Court.

5. The learned Single Judge, after considering the rival contentions put forth on either side, has dismissed both Transfer Original Petition Nos.633 and 634 of 2006, by way of passing the impugned common order and the same is being challenged in the present Original Side Appeals.

6. The learned counsel appearing for the appellants/petitioners has contended to the effect that only on the basis of suggestion given by the first respondent, the shares in question have been routed through M/s.Bhavana Enterprises. But the first respondent has simply disowned its liability and the Arbitrator, without considering the

contention put forth on the side of the appellants/petitioners, has erroneously rejected their claim and further, the Arbitrator has no legal authority to conduct Arbitration proceedings, since the company of the Arbitrator has become defunct and the learned Single Judge, without considering the vital contentions put forth on the side of the appellants/petitioners, has erroneously dismissed Transfer Original Petition Nos.633 and 634 of 2006 and therefore, the common order passed by the learned Single Judge is liable to be set aside.

7. The learned counsel appearing for the first respondent has sparingly contended that Transfer Original Petition Nos.633 and 634 of 2006 have been filed under Section 34 of the Arbitration and Conciliation Act, 1996. The contentions put forth on the side of the petitioners are not within the purview of the said Section 34 and further, even though an abortive attempt has been made on the side of the appellants/petitioners to the effect that the Arbitrator is nothing but a disqualified person, the same has not been put forth by way of invoking Section 12 of the said Act and the learned Single Judge, after considering the contentions raised on the side of the appellants/petitioners, has rightly dismissed both the petitions and therefore, the common order passed by the learned Single Judge does not call for any interference.

8. It is an admitted fact the the Transfer Original Petition Nos.633 and 634 of 2006 have been filed under Section 34 of the Arbitrator and Conciliation Act, 1996. It is well known principle of law that for setting aside an arbitral award, any one of the grounds mentioned in the said Section must be in existence. In fact, this Court has perused the entire contentions put forth on the side of the appellants/petitioners and the same do not come within the contour of the said Section. Under the said circumstances, the arbitral award in question cannot be challenged.

9. The second contention put forth on the side of the appellants/petitioners is that the Arbitrator is nothing but a disqualified person. As rightly pointed out on the side of the first respondent, the appellants/petitioners have failed to invoke Section 12 of the Arbitration and Conciliation Act, 1996. It is also a well known principle of law that if any disqualification exists on the part of an Arbitrator, the parties to Arbitration proceedings can very well invoke the said Section. But in the instant case, nothing has been done on the side of the appellants/petitioners.

10. The learned counsel appearing for the first respondent has befittingly relied upon the decision reported in (2015) 3 Supreme Court Cases 49 - Associate Builders vs.

Delhi Development Authority, wherein the Hon'ble Supreme Court has clinchingly held that it is only when arbitral award is in conflict with public policy of India as per Section 34(2) (b) (ii) that merits of an arbitral award are to be looked into under certain specified circumstances.

11. In the instant case, it has already been pointed out that the contentions put forth on the side of the appellants/petitioners do not come within the purview of Section 34 of the Arbitration and Conciliation Act, 1996. Since, the contentions put forth on the side of the appellants/petitioners do not come within the purview of the said Section and since the appellants/petitioners have failed to invoke Section 12 of the said Act, it is needless to say that the relief sought in Transfer Original Petition Nos.633 and 634 of 2006 cannot be granted.

12. The learned Single Judge, after considering all the contentions raised on either side, has rightly dismissed both the Transfer Original Petitions. In view of the discussion made earlier, this Court has not found any error or illegality in the common order passed by the learned Single Judge and altogether these Original Side Appeals are liable to be dismissed.

In fine, these Original Side Appeals are dismissed without cost. The common order passed in Transfer Original Petition Nos.633 and 634 of 2006, by the learned single Judge, is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

msk

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.Ramanraj, Advocate, S.R.No.44848
+2cc's to Mr.Karthik Seshadri, Advocate, S.R.No.45014

Original Side Appeal Nos.316
and 56 of 2009

MG(CO)
CA(31/08/2016)