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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2016
DELIVERED ON : 30.06.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR. JUSTICE P.KALAIYARASAN

O.S.A.No.9 of 2009
and
M.P.No.1 of 2009

M/s.TVS Finance and Services Ltd.,
(formerly known as M/s.Harita Finance Limited)
Jayalakshmi Estate, No.8, Haddows Road
Chennai 6

... Appellant

Vs.

1. M/s.Kwality Spinning Mills
Rep.by its Managing Director Mr.Meyappan
Udumalpet Road, Pollachi
Coimbatore 624 003
2. M.Meyappan
Managing Director
M/s.Kwality Spinning Mills
Udumalpet Road, Pollachi
Coimbatore 624 003
3. Y.K.Rajagopal
Arbitrator.

... Respondents

This Appeal is preferred under Order XXXVI Rule 1 of O.S.Rules r/w Clause 15 of the Letters Patent Act against the order of this Court dated 29.9.2008 in O.P.No.625 of 2006.

For Appellant : Mr.Abdul Hameed for
M/s.Anand, Abdul & Vinodh Associates

For Respondents : Mrs.Chitra Sampath,
Senior Counsel for Mr.T.S.Baskaran
for R1 & R2
R3- given up



JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY A.SELVAM, J.)

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This Original Side Appeal has been directed against the order dated 29-09-2008 passed in O.P.No.625 of 2006 by the learned Single Judge of this Court.

2. The appellant herein, as petitioner, has invoked arbitration proceedings under the Arbitration and Conciliation Act, 1996, wherein the first respondent herein has been shown as first respondent. The arbitrator, after considering the rival contentions raised on either side, has allowed the same in part to the tune of Rs.1,07,88,075.59 by way of passing the impugned award. Against the award passed by the arbitrator, the respondents one and two herein, as petitioners, have filed Original Petition No.625 of 2006 on the file of this Court.

3. It is averred in the petition that the first respondent is a finance company. The first respondent and the petitioners have entered into a hire purchase agreement dated 28.3.1997, wherein the first respondent has agreed to let machinery on hire to the first petitioner and subsequently, a supplementary agreement has been executed on 28.3.1997 and thereby, the first petitioner has agreed to honour the terms and conditions of the hire purchase agreement. The second petitioner has stood as a guarantor for the amount payable to the first respondent. A letter of guarantee dated 28.3.1997 has also been executed in favour of the first respondent. In the hire purchase agreement, it has been agreed to pay the entire amounts, within a period of 34 months, commencing from 1.6.1997. Since the petitioners have failed to pay the amount as per agreement, a notice dated 7.1.1998 has been issued to them by the first respondent and thereby called upon to pay a sum of Rs.21,84,486 as on 31.12.1997, within a period of 21 days of receipt of the notice and subsequently a Memorandum of Understanding dated 1.4.1998 has come into existence and subsequently a deed of assignment dated 23.7.1998 has been entered into betwixt parties. Thereafter, an Application No.316 of 2003 has been filed, wherein an Advocate Commissioner has been appointed for taking possession of machinery. Subsequently various proceedings have come into existence and finally, the first respondent, as petitioner, has invoked arbitration proceedings before the second respondent herein, wherein the impugned award has been passed in favour of the first respondent and in order to quash the same, present petition has been filed at the instance of the petitioners.

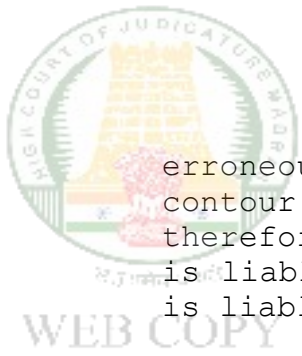


4. The learned Single Judge, after contemplating the rival submissions made on either side, has allowed O.P.No.625 of 2006 and thereby set aside the award passed by the arbitrator. Against the order passed by the learned Single Judge, the present Original Side Appeal has been preferred at the instance of the first respondent as appellant.

5. Before analyzing the rival submissions made on either side, for better adjudication, the Court has to narrate the following admitted factual aspects.

It is an admitted fact that in between the appellant herein and the first respondent, a hire purchase agreement has come into existence on 28.3.1997. The second respondent herein has stood as a guarantor. In the hire purchase agreement, it has been agreed that the first respondent herein should pay the entire amount to the appellant, within a period of 34 months. Since the first respondent herein has failed to pay the amount, a legal notice has been issued and subsequently a Deed of Assignment has also come into existence betwixt parties on 23.7.1998 and thereafter various legal proceedings have become emanated and finally, the appellant, as petitioner, has invoked Arbitration and Conciliation Act, 1996, wherein the third respondent has been appointed as an arbitrator. The third respondent, after considering the divergent contentions raised on either side, has partly allowed the arbitration petition and thereby passed an award in favour of the appellant herein and the same has been challenged in Original Petition No.625 of 2006 by the respondents 1 and 2 herein, as petitioners and the learned Single Judge has allowed the Original Petition No.625 of 2006 and thereby set aside the award passed by the arbitrator. It is also equally an admitted fact that the entire award passed by the arbitrator has been set aside by the learned Single Judge only on the basis of limitation by way of following Article 137 of the Limitation Act, 1963.

6. The learned counsel appearing for the appellant/first respondent has laconically contended that a Deed of Assignment has come into existence on 23.7.1998 betwixt the parties, wherein under Clause 22, it has been specifically stated that immediately on default of two instalments, arbitration proceedings can be initiated, but the last installment falls only in the month of June 2003 and the appellant/first respondent has filed arbitration proceedings on 16.6.2003. Under the said circumstances, Article 55 of the Limitation Act, 1963 would squarely apply to the present case, but the learned Single Judge, without considering Article 55 of the said Act and also without considering Clause 22 of the Deed of Assignment has



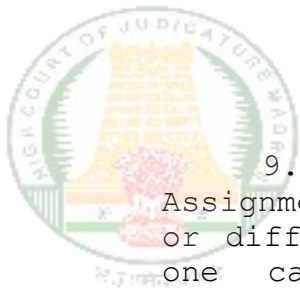
erroneously found that the present case would come within the contour of Article 137 of the Limitation Act, 1963 and therefore, the conclusion arrived at by the learned Single Judge is liable to be set aside and the award passed by the arbitrator is liable to be restored.

7. The learned counsel appearing for the respondents/petitioners has also equally advanced a wee bit specious argument to the effect that as per Clause 22 of Deed of Assignment, arbitration proceedings have to be initiated immediately on default of two instalments, but the appellant/first respondent has initiated arbitration proceedings on 16.6.2003. Under such circumstances, as per Article 137 of the Limitation Act, 1963, the entire arbitration proceedings are barred by limitation and the arbitrator, without considering the plea of limitation raised on the respondents 1 and 2/petitioners has erroneously passed the impugned award and the learned Single Judge, after perfecting the plea of limitation raised on the side of the respondents 1 and 2/petitioners has rightly set aside the award passed by the arbitrator and therefore, the order passed by the learned Single Judge is not liable to be set aside.

8. Before considering the rival submissions made on either side, it is apropos to narrate and also analyze Clause 22 of Deed of Assignment and the same reads as follows:

"22. All parties agree to refer any dispute, difference of difficulty arising out of, relating to or touching upon of the said agreement of Lease/HP/Loan/Hypothecation, supplementary agreement, deed of guarantee or this deed of assignment shall be referred to the arbitration of a sole arbitrator appointed by the mutual consent of the assignor and the assignee. The Arbitration proceedings will commence immediately on default of two instalments at any point of time and the award passed by the arbitrator so constituted shall be final and binding on the parties. The proceedings shall follow the provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendment thereof that may be in force from time to time.

The courts in the city of Chennai only shall have the jurisdiction. any notice by and to the Assignor, Assignee, First confirming party and second confirming party shall be in writing, posted to Assignee/Assignor/First confirming party/second confirming party at their last known address. Posting of the cover containing the notice shall be deemed as proof of service thereof on the parties."



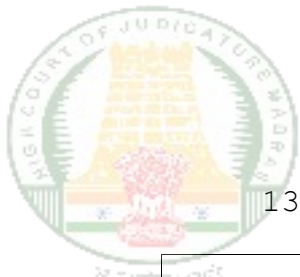
9. From a bare perusal of Clause 22 of the Deed of Assignment, it is made clear that if any dispute or difference or difficulty arises at any point of time betwixt the parties, one can invoke the arbitration proceedings under the Arbitration and Conciliation Act, 1996. Further, it is stated that if there is a default of two consecutive instalments at any point of time, arbitration proceedings can be invoked. Therefore, it is pellucid that as per Clause 22 of the Deed of Assignment, arbitration proceedings can be invoked at two stages. The first stage is that if any dispute or difference or difficulty arises betwixt the parties, arbitration proceedings can be invoked. The second stage is that if there is a failure of payment of two consecutive instalments at any point of time, the same can be invoked. Further simply because in Clause 22 of the Deed of Assignment, it is stated to the effect that arbitration proceedings will commence immediately on default of two consecutive instalments at any point of time, the Court cannot come to a conclusion that a cul-de-sac is created therein to invoke arbitration proceedings except at the stage of default of two installments. Therefore, it is quite clear that apart from invoking arbitration proceedings on the default of two consecutive instalments at any point of time, if there is any dispute or difference or difficulty arises betwixt parties, arbitration proceedings can very well be invoked.

10. The main contention put forth on the side of the appellant/first respondent is that since the last installment falls due during June 2003 and arbitration proceedings have been initiated on 16.6.2003, the period of limitation has to be counted as per Article 55 of the Limitation Act, 1963.

11. The specific contention put forth on the side of the respondents 1 and 2/petitioners is that a limitation starts from default of two installments. Under such circumstances, Article 137 of the Act is squarely applicable to the facts of the case.

12. Article 55 of the Limitation Act, 1963 reads as follows:

	Description of suit	Period of limitation	Time from which period begins to run
55	For compensation for the breach of any contract, express or implied not herein specially provided for	Three years	When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases



13. Article 137 of the said Act reads as follows:

	Description of application	Period of limitation	Time from which period begins to run
137	Any other application for which no period of limitation is provided elsewhere in this division	Three years	When the right to apply accrues

14. The only point that has now winched to the fore is as to whether as per Clause 22 of the Deed of Assignment, Article 55 of the Limitation Act would apply or Article 137 of the said Act would apply?

15. The learned counsel appearing for the appellant has befittingly drawn the attention of the Court to the following decisions:

(I) A.I.R. (33) 1946 Calcutta 50 (Khetsidas Gangaram v. First Land Acquisition Collector, Calcutta, wherein at paragraph 7, it is observed as follows:

"7. As would be borne out from a bare perusal of clause reproduced above, the first Installment became payable on or before 1st July, 1992. The next installment became due on 1st January, 1993 and in this manner each subsequent Installment was payable after the expiry of every six months. Since the first Installment became payable w.e.f. 1st July, 1992 and was not paid by that date, therefore cause of action for the recovery of that Installment accrued to the appellant when that Installment became due. In this manner the cause of action for the subsequent Installments arose only when those particular Installments became due. Thus, we feel that the learned Trial Judge was wrong in saying that the cause of action accrued for the entire amount of Installments from the date of execution of the agreement. To make things clear, we feel that cause of action accrued separately with regard to each and every Installment only when that particular Installment became due and the period of limitation for that particular Installment will be three years commencing from the date that particular Installment became payable. This is how the period of limitation



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is to be computed and, if it is so computed, the cheques in question and so also the letter written by the respondent may turn out to be relevant requiring reconsideration. Of course, we are not returning any finding that the cheques and the letter in question would extend the period of limitation. We are leaving to the learned Trial Judge to consider this aspect."

(II) 1999 (I) CTC 238 (Shriram Chits and Investments (P) Ltd., T.Nagar vs. M.Krishnan and others, wherein the Division Bench of this Court has held that each case has to be decided on its factual aspects.

(III) 2012 - (2) LW 256 (K.Krishnamoorthy vs. Investment Trust of India Limited, No.1, Krishnama Road, Nungambakam, Chennai-34 and others), wherein the Division Bench of this Court has held that as per Article 55 of the Limitation Act, 1963, if there is any breach of contract, continuing cause of action would arise.

16. From a conjoined reading of the decisions referred to supra, the Court can easily discern that period of limitation would commence only from the date of cause of action arises and further if there is any breach of contract, cause of action is continuing.

17. In order to repel the contentions put forth on the side of the appellant/first respondent, the learned counsel appearing for the respondents 1 and 2/petitioners has also made an inert exercise by way of citing the following decisions:

(I) AIR 1999 SC 3275 (Steel Authority of India Ltd., v. J.C.Budharaja, Government and Mining Contractor), wherein the Hon'ble Supreme Court has held that the arbitration proceedings would commence from the date of giving of notice under Article 137 of the Limitation Act, 1963.

(II) 1992 (3) SCC 608 (S.Rajan vs. State of Kerala and another), wherein the Hon'ble Supreme Court has held that if there is any difference between the parties, cause of action would accrue from the date of difference as per Article 137 of the Limitation Act, 1963.

(III) 1993 (4) SCC 338 (Panchu Gopal Bose vs. Board of Trustees for Port of Calcutta), wherein the Hon'ble Apex court has held that period of limitation would arise from the date when cause of action arises.



18. As adverted to earlier, as per Clause 22 of the Deed of Assignment, the parties are entitled to invoke arbitration proceedings and Clause 22 has already been vivisected into two parts. The first part is that if any dispute or difference or difficulty arises betwixt the parties, the parties can invoke arbitration proceedings. The second part is that if there is failure of payment of two consecutive installments at any point of time, arbitration proceedings can be invoked. Further simply because the second part is available under Clause 22, the Court cannot come to a conclusion that period of limitation would commence only from default of two consecutive installments by invoking Article 137 of the Limitation Act.

19. It is an admitted fact that an agreement has come into existence betwixt the parties. The main contention put forth on the side of the appellant/first respondent is that as per Clause 55 of the Limitation Act, 1963, if contract is broken, the period of limitation would run. It is an admitted fact that as per materials found in the Deed of Assignment, the last Installment falls due only from the month of June, 2003. After June 2003, cause of action would arise for invoking arbitration proceedings and admittedly arbitration proceedings have been initiated by the appellant on 16.6.2003. Therefore, it is quite clear that Article 55 of the Limitation Act, 1963 squarely applies to the facts and circumstances of the present case and the arbitration proceedings have been initiated well within the period of limitation. Further, the Court would exemplify the issue that arises between the parties by way of making a reliance upon Article 52 of the Limitation Act, 1963. It is an admitted fact that Article 52 of the said Act deals with period of limitation with regard to arrears of rent.

20. It is an avowed principle of law that the starting point of limitation for recovery of arrears of rent by the landlord is the date when the rents become due. To put it in a nutshell, for each and every month rent, a separate cause of action would arise from the date when it falls due.

21. In the instant case, as mentioned in many places, the last installment falls due only in the month of June, 2003 and arbitration proceedings have been initiated on 16.6.2003. Therefore, it is quite clear that as per Article 55 of the Limitation Act, 1963, cause of action would continue till breach of contract in respect of last payment.

22. The arbitrator, after considering the vital difference, between Article 55 as well as Article 137 of the Limitation Act, 1963, has clearly come to a conclusion to the effect that a



part of claim of the appellant/first respondent is barred by limitation and passed an award only in respect of remaining part (within the period of limitation). Therefore, viewing from any angle, the Court cannot come to a conclusion that the award passed by the arbitrator is barred by limitation.

23. The learned Single Judge, without considering the entire conditions mentioned in Clause 22 of the Deed of Assignment, has erroneously taken a view that limitation would start mainly on default of two consecutive installments as per Article 137 of the Limitation Act, 1963. In view of the discussions made earlier, this Court is of the view that the contentions put forth on the side of the appellant/first respondent are really having subsistence force, whereas the contentions put forth on the side of the respondents 1 and 2/petitioners are of no use and therefore, the present Original Side Appeal is liable to be allowed.

In fine, this Original Side Appeal is allowed with cost. The order passed in Original Petition No.625 of 2006 is set aside and Original Petition No.625 of 2006 is dismissed with cost. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr

To

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

2.The Record Keeper,
Original Side,
High Court, Madras.

+1cc to M/s.Anand, Abdul & Vinodh Associates, Advocate,
S.R.No.36756

+2cc's to Mr.T.S.Baskaran, Advocate, S.R.No.36935

O.S.A.No.9 of 2009

KJI (CO)
CA(21/07/2016)