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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

O.S.A. No. 84 of 2012
and M.P. No. 1 of 2012

S. Malliga ... Appellant

vs.

1. The Chief Regional Manager
Chennai LPG Regional Office
Hindustan Petroleum Corporation Ltd.,
J-12, Phase II, Sipcot Industrial Area
Gummidipoondi
Thiruvallur District.

2. Shri M.A. Tankiwala
The Sole Arbitrator
Director Refineries
Hindustan Petroleum Corporation Ltd.,
Petroleum House, 6th Floor
No.17, Jamshedji, Tata Road
Churchgate
Mumbai - 400 020.

... Respondents

Appeal filed under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the Fair and decreetal order dated 20.11.2009 in O.P. No. 298/2011 presented under 34 of the Arbitration and conciliation Act 1996 to set aside the award dated 10/01/2009 passed by the 2nd respondent in so far as issued decided against the petitioner is Concerned.



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For Appellant

.. Mr. V. Ayyadurai
for Mr. D. Rajagopal

For Respondents

.. Mr. M. Vijayan
for M/s. King & Patridge
for 1st respondent

J U D G M E N T
(Delivered by R.SUDHAKAR, J.)

This Appeal is filed against the order of the learned Single Judge refusing to set aside the arbitral award passed by the second respondent/Arbitrator against the present appellant.

2. A Dealership Agreement was entered into between the appellant and the first respondent on 10.07.2000, whereby dealership of H.P. Gas was awarded to the appellant herein. Due to violation of the terms of the said dealership agreement, the dealership was terminated on 16.06.2008. The claim of the appellant before the Arbitrator was for restoration of the dealership, since the termination was illegal. A counter claim was filed by the first respondent seeking payment of Rs.10,80,028/- with interest. The Arbitrator, by award dated 10.1.2009, upheld the order of termination of dealership and allowed the counter claim amount of Rs.10,80,028/- along with interest of Rs.11,02,046.32 calculated up to 30.6.2008 @ 13% per annum.

3. Calling into question the said award, the appellant preferred an Original Petition. The learned Single Judge, in the order dated 20.11.2009, after considering the letter of the appellant dated 20.5.2002 addressed to the Regional Manager of the first respondent/company, admitting her liability to the extent of Rs.9,86,000/-, which she offered to repay at the rate of Rs.30,000/- per month from July, 2002, held that the Arbitrator was right in rejecting the claim of the appellant and allowing the counter claim of the first respondent. It was further held that there was nothing perverse in the finding of the Arbitrator and that the Award is passed based on the evidence on records, that is to say after considering



the statement of accounts and other documents relied upon by both sides. The learned Single Judge also held that the finding of the Arbitrator is not assailed in terms of Section 34 of the Arbitration and Conciliation Act. That apart, it was held by the learned Single Judge that the interest awarded by the Arbitrator at the rate of 13% per annum as against the claim of the first respondent at 18% per annum is reasonable.

4. Assailing the said order, the unsuccessful petitioner in the original petition has filed the present appeal.

5. Before advertng to the merits of the case, let us analyse the scope of interference by the Court in the matter of arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, which reads as under:

"Section 34. Application for setting aside arbitral award.

1. Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

2. An arbitral award may be set aside by the Court only if-

a. the party making the application furnishes proof that-

i. a party was under some incapacity, or

ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

iii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters



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beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

b. the Court finds that-

i. the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

ii. the arbitral award is in conflict with the public policy of India. Explanation.-Without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

3. An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further



Union of India & Anr., (2008) 14 SCC 785.)"
(emphasis supplied)

7. In Swan Gold Mining Limited v. Hindustan Copper Limited, (2015) 5 SCC 739, the Supreme Court held that arbitrator's decision is generally considered binding between the parties and, therefore, the power of the court to set aside the award would be exercised only in cases where the court finds that the arbitral award is on facts erroneous or patently illegal or in contravention of the provisions of the Act. It was further held that the arbitrator appointed by the parties is the final judge of the facts. The findings of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him. It is apposite to refer to the said portion of the orders hereunder:

"11. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal.

12. It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of



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facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.”

(emphasis supplied)

8. In the case on hand, except raising certain issues on facts, there is no pleading to the effect that the arbitral award is liable to be set aside on the grounds specified in Sections 34(2) and 34(3) of the Act. We, therefore, find no ground to interfere with the order passed by the learned Single Judge confirming the arbitral award.

9. Even though during the course of the argument, the learned counsel for the appellant raised a plea on the interpretation of the terms of the contract, we find that such plea was not raised by the appellant before the learned Single Judge. As observed earlier, the scope of Section 34 is very limited one and whatever has been pleaded before the learned Arbitrator can only be raised and pleaded before the Court. If such new plea is allowed to be raised, it amounts to enlarging the scope of restricted provision, similar to an appeal proceeding and we are alive to the fact that we cannot sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence.

For the foregoing reasons, we find no justification to interfere with the order of the learned Single Judge and hence this Appeal is dismissed. No costs. Consequently, the connected M.P is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

avr/sasi



To

The Sub Assistant Registrar
Original Side High Court Madras

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+1 cc to M/s.King & Partridge Advocate sr.20596

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