

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2016

Coram:

The Hon'ble Mr.Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.160 of 2010
and

M.P.No.1 of 2010

M/s.Jonas Woodhead & Sons (I) Ltd.,
No.12, 2nd floor
Khader Nawaz Khan Road
Chennai 600 006 .. Appellant

vs.

1. Consolidated Civil Construction (I) Ltd.,
No.2G, Lakshmi Bhavan
No.609, Anna Salai
Chennai 600 006
2. Prof.Dr.R.Radhakrishnan
3. Dr.H.B.N.Shetty
4. Mr.P.S.Subramaniam .. Respondents

This Appeal is preferred under Section 37 of the Arbitration and Conciliation Act, 1996 read with Clause 15 of the Letters Patent Act and Order XXXVI Rule 1 of O.S.Rules against the order of this Court dated 13.3.2009 in O.P.No.646 of 2004.

O.P.No.646 of 2004: Petition filed under section 34 of the Arbitration and conciliation Act 1996 to set aside the Award dated 05.05.2004 passed by the Second and Fourth Respondents.

For Appellant : Mr.Santhanaraman
For Respondents : Mr.Ajoykumar Gnanam for R1
R2 to R4 - arbitrators.

JUDGMENT

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

This Original Side Appeal has been directed against the order dated 13.03.2009 passed in O.P.No.646 of 2004 by the learned Single Judge of this Court.

2. It is averred in the petition filed in O.P.No.646 of

2004 that an agreement has come into existence between the petitioner and first respondent on 10.2.1997 with regard to construction of a commercial building and the same has been terminated on 16.7.2001 at the instance of the first respondent and subsequently the disputes between the parties have been referred to the arbitrators, who have been arrayed as respondents 2 to 4. The arbitrators have passed an award to the tune of Rs.11,77,017/- on 5.5.2004. Further it is averred in the petition that one of the arbitrators by name P.S.Subramaniam, who has been arrayed as fourth respondent herein, has written a letter to the petitioner before passing the award in question. Under such circumstances, on the ground of misconduct of an arbitrator, the present petition has been filed for getting the relief sought therein.

3. The learned Single Judge, after considering the contentions put forth on either side, has dismissed the Original Petition No.646 of 2004 by way of passing the impugned order and the same has been challenged in the present Original Side Appeal.

4. The learned counsel appearing for the appellant/petitioner has sparingly contended that the award has been passed on 5.5.2004 and prior to passing of the award on 11.4.2004, the fourth respondent/one of the arbitrators has written a letter by way of saying that he sent a draft award. Under such circumstances, he committed misconduct and the same has been brought to the knowledge of the learned Single Judge, but the learned Single Judge has not at all considered the same and therefore, the order passed by the learned Single Judge is liable to be set aside and the award in question is liable to be set aside.

5. Per contra, the learned counsel appearing for the first respondent has contended that the fourth respondent has been appointed as an arbitrator only by the appellant/petitioner and if really the fourth respondent has written a letter dated 11.4.2004 and thereby created misconduct, the appellant/petitioner can very well invoke Section 13(2) of the Arbitration and Conciliation Act, 1996. Since the appellant/petitioner has not availed of the said provision, he is precluded from raising the said aspect for setting aside the award and the learned Single Judge, after considering the lapses on the part of the petitioner, has rightly dismissed the Original Petition No.646 of 2004 and therefore, the order passed by the learned Single Judge does not call for any interference.

6. It is an admitted fact that an agreement has come into existence between the appellant/petitioner and first respondent on 10.2.1997 with regard to construction of a commercial

building. It is also equally an admitted fact that the same has been terminated on 16.7.2001 and subsequently, as per arbitral clause, three arbitrators have been appointed and they passed an award dated 5.5.2004 and the same has been challenged in O.P.No.646 of 2004 under section 34 of the Arbitration and Conciliation Act, 1996.

7. The only ground mentioned on the side of the petitioner in O.P.No.646 of 2004 is that prior to passing of the award, on 11.4.2004, the fourth respondent/one of the arbitrators has written a letter to the petitioner with a copy of draft award.

8. The learned counsel appearing for the petitioner has advanced his entire argument only on the basis of the letter alleged to have been written by one of the arbitrators on 11.4.2004.

9. At this juncture, the Court has to look into the provision of Section 13(2) of the Arbitration and Conciliation Act, 1996 and the same reads as follows:

"(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitration shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement or the reasons for the challenge to the arbitral tribunal."

10. From a mere perusal of the said provision, it is made clear that a party to arbitration proceeding can invoke the said section, if he intends to challenge an arbitrator. In the instant case, as rightly pointed out on the side of the first respondent, no attempt has been made on the side of the appellant/petitioner after receipt of the alleged letter dated 11.4.2004.

11. Even assuming without conceding that the said letter has been written by one of the arbitrators/fourth respondent herein, since a legal provision is available so as to redress the alleged grievance of the appellant/petitioner as per section 13(2) of the said Act and since the appellant/petitioner has not availed the same, it is needless to say that the appellant/petitioner is totally precluded from raising that aspect, by way of filing Original Petition No.646 of 2004.

12. The learned Single Judge, after considering the provision of Section 13(2) of the said Act and also after

considering the fact that the petitioner has not evinced any interest so as to invoke the said provision of law, has rightly dismissed the Original Petition No.646 of 2004.

13. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/petitioner and altogether, the present Original Side Appeal deserves to be dismissed.

In fine, this Original Side Appeal is dismissed without cost. The order dated 13.3.2009 passed by the learned Single Judge in Original Petition No.646 of 2004 is confirmed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ajr

To

The Sub Assistant Registrar
Original Side, High Court,
Madras 104.

1 cc to Mr.Ajaykumar Gnanam, Advocate, sr.40513
1 cc to Mr.M.Santhanaraman, Advocate, sr.40982

nm co
kra 17.08.2016

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