

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L)NO. 108 OF 2017

Radheya Machining Limited ..Appellant
Vs.
Kennametal India Limited ..Respondent

WITH

NOTICE OF MOTION(L)NO.707 OF 2017

Radheya Machining Limited ..Applicant
IN THE MATTER BETWEEN
Radheya Machining Limited ..Appellant
Vs.
Kennametal India Limited ..Respondent

Mr. Abhijeet A. Joshi, for the Appellant/Applicant.

Mr. Hemant Sethi i/b M/s Hemant Sethi and Co,for the
Respondents.

**CORAM :- S.C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**
DATE :- MARCH 24, 2017.

P. C.:

The learned Single Judge has dismissed a Petition
under Section 34 of the Arbitration and Conciliation Act,

1996 being Arbitration Petition No.1 of 2017.

2 The aggrieved Petitioner therein is before us.

3 On 30th January, 2017, while passing the
impugned order, the learned Judge had before him two
contentions. Firstly, that the Petitioner/Appellant before us
cannot be held to be liable to pay any sums under the Award.
The Award is patently erroneous and illegal. Secondly, the
Award is also illegal for it ignores a counter claim of the
Petitioner/Appellant before us.

4 The argument on the second issue was that there
could be a situation where certain goods are supplied during
the course of business by the Respondent to the Appellant.
The Appellant received these goods. However, when the
Appellant deals with these goods further, the parties with
whom he had dealt with report that the goods are defective,
thereupon, the Appellant takes up the matter with the
Respondent. The goods are then inspected and some agreed

proposals are exchanged. Therefore, once the goods were defective and there is admission on the part of the Respondent to that effect, then, non-consideration of the counter claim or omission to take up the same altogether vitiates the Award.

5 These very contentions are reiterated before us. In that regard, we would rely upon the pleadings in the statement of claim before the Arbitral Tribunal.

6 The Respondent/Claimant specifically asserted that it is entitled to receive a sum of Rs.28,97,868.90 with interest. That sum is due and payable under invoices drawn on the Petitioner/Appellant with effect from 22nd March, 2012. The goods were supplied, the receipt of the same is admitted, equally the price, quantity and the correctness of the other particulars in the invoice. Yet, the amount was not paid. A plea was raised that the goods were defective but that was also not substantiated and proved. Be that as it may, with all this the Balance sheet for the year ending 31st

March, 2012 of the Petitioner/Appellant before us shows in the liability column that a sum of Rs. 25,33,892.94 is due and payable to the Respondent before us. It is claiming that sum that initially a Petition for winding up was filed but pursuant to the order thereon, the proceedings in arbitration were initiated and completed.

7 Apart from this admission of the liability in the balance sheet, the pleadings in the winding up Petition were also relied upon.

8 True it is that there could be a counter claim on the ground that certain goods were supplied belatedly and certain goods supplied were defective, however, when the claim was restricted to the sum admitted and interest thereon, then, so long as the Appellant before us is unable to substantiate and prove that even this sum stated to be admitted is not due and payable, there is no question of counter claim being allowed. The basis of the claim is the supply of goods, the receipt, their acceptance and the

correctness of the particulars in the invoices. Once based on that a sum is due and payable and as admitted in the books of account of the Appellant/Petitioner, then, it is non receipt of that sum which is the foundation of the Award. Once that is the foundation, then, we do not see how the learned Judge or the Arbitrator can be faulted for rejecting the counter claim. That is rejected by assigning cogent and satisfactory reasons that the foundation for the counter claim is the same as that of the main claim. Once in the main claim the defence of the Appellant cannot succeed, then, they would not be able to obtain any relief in terms of their counter claim. There is, therefore, no perversity nor there is any error of law apparent on the face of the record, either in the Award or in its confirmation by the learned Single Judge.

9 Besides this, the Arbitrator in the Award has clearly held that the rejection of the goods based on which the counter claim was raised, cannot be the only or the sole basis to award the counter claim. There is an admission in the deposition of the Appellant's witness that the value of the

rejected goods was Rs.1.49 lakhs only. It is in such circumstances, that the Arbitrator observes that at best of this sum could have been withheld. All the more, therefore, we are disinclined to interfere with the order of the learned Single Judge. The Appeal has no merit and it is dismissed. No costs.

10 The above Notice of Motion does not survive, once we have dismissed the Appeal.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)