

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

CMA.No.1575 of 2017
and
CMP.Nos.8287 & 10156 of 2017

1. A.Jayakanthan
2. J.Jayanth

...Appellants

vs.

1.M/s.J.R.S.Crusher
Represented by its Partner Mr.Ramesh,
S.F.No.351/1, Hosapuram Village,
Denkanikottai Taluk,
Krishnagiri District.

2.M.Sathyamurthy
3.M.Santhamurthy
4.N.Ramesh
5.L.YousufAli,
District Judge (Retd.)
Sole Arbitrator,
No.63, Kandigai Road,
Kottur North, Chennai - 600 076.

... Respondents

Civil Miscellaneous Appeal is filed under section 37(2)(b) of the Arbitration and Conciliation Act, 1996 to set aside the Order dated 24.04.2017 made in I.A.No.3 of 2016 in O.P.No.347 of 2016, on the file of Mr.L.Yousuf Ali, Judicial Officer (Retd.), Sole Arbitrator, Chennai.

For Appellants : Mr.V.Srikanth

For Respondents : Mr.T.V.Ramanujam, Senior Counsel
for Ms.Kanimozhi Mathi.

J U D G M E N T

This appeal is directed against the interim order passed by the learned sole Arbitrator u/s.17 of the Arbitration and Conciliation Act 1996.

2. The brief facts, which are relevant to the dispute, are as follows:

The Appellants and the respondents 2 to 4 had entered into a partnership agreement on 27.07.2013 for carrying on business of crushing blue metal. The first appellant had also executed a lease deed, leasing out his land measuring about 3 acres 84 cents for the purpose of establishing the stone crusher by the partnership firm. The lease deed was also executed on 27.07.2013.

3. The partnership deed would show that the first appellant is 5% share holder and second appellant is 15% share holder. Both the appellants put together have 20% share, whereas the respondents 1 to 4 hold the remaining 80% share. The business ran into rough weather and there were complaints and counter complaints amongst the partners.

4. It is also claimed that the cousin brother of the first appellant one Anandan had entered into an agreement for supply of Boulders for the purpose of crushing. According to the respondents at the instance of the appellants, the said Anandan stopped supplying boulders, and the activity of the firm came to stand still in March 2015. Though this would be vehemently opposed by the appellant, he would contend that the boulders supply was stopped by the said Anandan because of non-payment of the agreed amount to him.

5. A legal notice was issued by the respondents 1 to 4 claiming that the appellant is not co-operating with the business and calling upon him to co-operate for continuation of the business. It appears that a complaint was given by the Manager of the firm against the 1st appellant and his son claiming that they had attempted to transport crushed blue metal during mid night. This resulted in arrest of the appellant and he came out on bail after being jailed for a day.

6. Since the partnership agreement had an Arbitration clause and the appellants did not co-operate for nomination of Arbitrator, an application was taken out by the respondents for appointment of Arbitrator in

OP.No.347 of 2016, before the Hon'ble Chief Justice. By an order dated 15.07.2016 the fifth respondent herein was appointed as the sole Arbitrator by the Hon'ble Chief Justice.

7. Upon entering arbitration, the parties had filed their claims and objections. Pending the arbitration, the respondents 1 to 4 had filed an application in I.A.No.81 of 2016 before the Principal District Judge, Krishnagiri under Section 9 of the Arbitration and Conciliation Act. While that was pending, the respondent 1 to 4 filed the present application before the Arbitrator seeking the following reliefs:

“ a) Direct the Respondents not to interfere with the possession and peaceful enjoyment of the Claimants in Survey No.354/1 in Hosanapuram Village.

b) Direct the Respondents to abide by the terms and conditions of the partnership Agreement and undertake all activities including obtaining license, raw materials, and all running licenses to ensure the operation of the crushing plant which is the sole purpose of the Partnership Agreement and thus render justice. “

I.A.No.81 of 2016 was dismissed as withdrawn.

8. In support of the above prayers, it was contended by the respondents 1 to 4 that since the land in which the crusher unit has been established belongs to the first appellant he has to apply for the necessary license as well as for the consent of Tamil Nadu Pollution Control Board. Unless the license is obtained, the business cannot be carried on. Therefore, they have sought for the above directions.

9. The appellants 1 and 2 filed counter to the main Arbitration which was also in fact a counter to the application filed by the respondents 1 to 4 seeking interim reliefs as stated supra. In the counter it was contended that the respondents 1 to 4 who were the claimants before the Arbitrator had not paid the lease amount as agreed by them for the land. They had not produced accounts for the period after 01.01.2015. It is also contended that the first appellant is entitled to certain sum as his remuneration as per clause 5 of the Partnership deed and the same has not been paid. It is the further contention of the appellant that the respondents have removed the accounts and other records relating to the business of the firm without the knowledge of the appellants and therefore, in the absence of accounts, and payment of his share as a managerial remuneration, as working partner of the firm he cannot be directed to comply with the statutory requirements.

10. The learned Arbitrator, after considering rival claims, had concluded that the reason for the disputes between the partners will have to be decided only after evidence having been let in. The learned Arbitrator had concluded that the respondents 1 to 4, being 80% partners and the business having been started with financial assistance from Banks to the tune of Rs.4,00,00,000/-, if allowed to be dormant, would result in substantial loss to the respondents 2 to 4. On the said ground, the learned Arbitrator found that there was a prima facie case as well as balance of convenience on the side of the respondents 1 to 4. The learned Arbitrator took note of the fact that the appellant, who had made counter claim for certain financial dues, had withdrawn the same for the present subsequently. As such, the dispute before the Arbitrator was restricted only to the claim of the respondents 1 to 4 and the claim of the appellants for arrears of remuneration.

11. In an application under section 17 of the Arbitration and Conciliation Act which is similar to Order 39 Rule 1 and 2 of CPC, the principles governing the grant of order of injunction under Order 39 Rule 1 and 2 of CPC are applicable. The Arbitrator has to see prima facie case, balance of convenience and irreparable loss. The facts that are not in dispute, clearly show that the respondents 2 to 4 are majority share holders

with 80% share, whereas the appellants 1 and 2 put together have only 20% share. Merely because the land in which the machinery has been erected belongs to the first appellant he is in a position to dictate terms by abstaining from obtaining statutory permissions. This is detrimental to him and respondents 2 to 4. Such an action on the part of the appellants will cause more harm to the respondents than detriment caused to the appellants themselves.

12. The reasons that are assigned by the appellants for not co-operating in trying to revive the business are that police complaints have been given, accounts have not been submitted and the respondents 2 to 4 have siphoned off nearly a sum of Rs.4,00,00,000/- during the period in which the firm was being run.

13. Admittedly, the operation commenced on 01.07.2014 and the firm was running only till March 2015. The accounts for the period from 01.07.2014 to 31.12.2014 have been furnished to the appellants in February 2015. If at all it is only the accounts for the period from 01.01.2015 to first week of March 2015 have not been furnished. Even according to the appellant the crusher unit, if it had been run properly would have earned a profit of Rs.1,00,00,000/- per month. It is due to the recalcitrant attitude of the first appellant the business has come to a halt.

14. It is not in dispute that the machinery worth Rs.3,00,00,000/- has been purchased by availing financial assistance from Banks and the interest payable has to be serviced, otherwise, the accounts will be classified as non-performing assets and the entire business would be permanently closed. On the above conclusions the learned Arbitrator had granted the interim orders as prayed for.

15. Aggrieved by the said order, the respondents 1 and 2 before the Arbitrator have come forward with this appeal.

16. Mr.V.Srikanth, learned counsel appearing for the appellants would contend that while deciding on the grant of interim orders as prayed for, the Arbitrator has gone into the merits of the rival claims of the parties, which would jeo paradise their case in main proceedings. He would further contend that the second relief that is sought for cannot be granted in view of section 14 of the Specific Relief Act.

17. According to the learned counsel, the second relief namely the order directing the appellants to abide by the terms and conditions of the partnership agreement dated 27.07.2013 and undertake all activities

including obtaining license, raw materials and all running licenses to ensure the operation of the crushing plant, which is the sole purpose of the partnership agreement cannot be granted in view of section 14 of Specific Relief Act, which provides that the contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms cannot be specifically enforced.

18. According to Mr.V.Srikanth, the obtaining of permission and other licenses is within the violation of first appellant and there cannot be a decree or interim order directing him to perform such contract. He would also rely upon the judgment of Hon'ble Supreme Court reported in **2010 4 CTC 546**. The learned counsel would also rely upon the judgment of Hon'ble Supreme Court in *Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim and Others* reported in **MANU/SC/0066/2013**, wherein the Hon'ble Supreme Court had pointed out that the appellate Court could not have interfered with the exercise of discretion by the trial Court in case of grant of interim orders like injunction.

19. The learned counsel would point out that in case of interim mandatory injunction, which, in fact if granted would amount to granting the main relief itself and as such, interim mandatory injunction cannot be granted under Order 39 Rule 1 and 2.

20. Per contra, Sri.T.V.Ramanujam, learned Senior Counsel appearing for the respondents would contend that the respondents who are 80% share holders are forced to be at the mercy of the appellants who are 20% share holders. The learned Senior Counsel would contend that the contractor, who had agreed to supply boulders to the Partnership Firm, is also the cousin brother of the first appellant. It is a case, where the first appellant using his position as land owner and his relationship with Anandan who had agreed to supply Boulders is attempting to extract more money from the respondents who are 80% share holders. It is also his contention that if the status quo is allowed to continue the firm will incur huge loss and will become defunct.

21. Sri.T.V.Ramanujam, learned Senior counsel would point out the learned Arbitrator had analyzed the facts and considered relevant requirements while granting injunction and has concluded that the respondents had made out a prima facie case and the balance of convenience is also in their favour. Beyond all that, the respondents, who

were 80% share holders, will be facing a near total loss if the business is not run.

22. I have considered the rival submissions. No doubt, the Hon'ble Supreme Court in ***Vinod Seth Vs. Devinder Bajaj & Another*** reported in **2010 (4) CTC 546** had said that if the obligations, are dependent upon personal qualification and violation of the supplier party cannot be specifically enforced. In the instant case, I find that the first appellant had consciously entered into lease deed offering his land on lease to the firm for a fixed lease amount. Therefore, as a owner of the land, if he consents for establishing a firm by executing partnership agreement, he is bound to by the terms therein and cannot wriggle out therefrom citing Section 14 of the Specific Relief Act.

23. The next contention of the learned counsel is that the contract cannot be specifically enforced if the appellant has substantial interest and the interest is of such a nature that compensation in money for non performance of the contract is an adequate relief. What exactly would be monetary compensation is the question to be considered. Even according to the appellants the monthly profit would be somewhere around 50% of the turnover and they had claimed a profit of nearly Rs.1,50,00,000/- during the

period of 5 months from 01.07.2013 to 31.12.2014 as per records.

24. Therefore, the profit per month is about Rs.30,00,000/- and the appellants, being 20% partners would be entitled to about Rs.6,00,000/-, the remaining Rs.24,00,000/- is loss to the respondents. I do not think the appellant would claim that he would be in a position to compensate for the said loss of profit is Rs.30,00,000/- per month. The business has been closed due to non co-operation of appellants for nearly 27 months. Therefore, the loss of profit till date is about Rs.8,10,00,000/-. The appellants who claim that they do not have money even to pay the Arbitrator, cannot be expected to compensate the respondents for the loss of such a magnitude. Apart from the above, all the machinery has been admittedly purchased by availing financial assistance from Banks. Therefore, monthly installments will have to be paid.

25. Sri.T.V.Ramanujam, learned Senior Counsel appearing for the respondents would contend that the respondents are paying a sum of Rs.14,00,000/- towards the monthly EMI for the loans borrowed for purchase of machinery. Therefore, I do not think that the argument of monetary compensation being an effective substitute can be accepted in view of facts of the case on hand.

26. Clause 6 of Partnership Deed very clearly says that the parties will have to co-operate, and be true and faithful to each other and shall not do or cause to be done anything which may be detrimental to the interest of the firm. Both the parties are bound by this agreement. Therefore, the Arbitrator has concluded that the respondents being major share holders and being persons, who would be affected from by the non running of the business, are entitled to the interim orders as prayed for.

27. I do not find any illegality or irregularity in the order passed by the Arbitrator. It is the trite position of law that the appellate Court would not interfere with the discretion exercised by the trial Court while passing order under Order 39 Rule 1 and 2. The same law would be applicable to the proceedings before Arbitrator under section 17 also.

28. The above proposition is reiterated by the Hon'ble Supreme Court in the case of ***Wander Ltd. Vs. Antox India (P) Ltd.*** reported in **1990 (Supp) SCC 727**, wherein the Hon'ble Supreme Court had categorically held that the trial Court should be slow to interfere with the discretion exercised by the Court of first instance, while granting interim orders of injunction. The same view has been held even in the cases relied upon by the learned

R.SUBRAMANIAN, J.

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counsel for the appellant in ***Mohd. Mehtab Khan and others Vs. Khushnuma Ibrahim and Other.*** Therefore, I do not see any ground to interfere with the order of the learned Arbitrator.

29. Thus the Civil Miscellaneous Appeal fails and the same is dismissed with cost of Rs.10,000/- payable by the appellants to the respondents. Consequently, connected Miscellaneous Petitions are closed.

04.08.2017

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To

1. Mr.L.YousufAli,
District Judge (Retd.)
Sole Arbitrator,
No.63, Kandigai Road,
Kottur North, Chennai - 600 076.

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