

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2017

Pronounced on : 16.11.2017

CORAM

THE HON'BLE DR. JUSTICE ANITA SUMANTH

O.P.No.137 of 2015

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1. Sri Lakshmi Hotel (P) Ltd.
Trichy.
2. Mr.V.S.Palanivel,
Managing Director,
Sri Lakshmi Hotels (P) Ltd.
Trichy - 620 001. ... Petitioner
- VS
1. M/s.Shriram City Union Finance Ltd.
rep. by its Senior Manager,
Mr.G.Rani
2. Mr.K.Balasubramanian, B.A.B.L.
District Judge, Registrar General (Retd)
Madras High Court, Chennai,
No.18/1069, Jeevan Bhima Nagar,
Anna Nagar West Extn.
Chennai - 600 101. .. Responents.
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Prayer: Petition filed under section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 27.12.2014

For Petitioner : Mr.G.T.Subramanian
For Respondents : Mr. Satish Parasaran, S.C.
for Mr.R.Parthasarathy - R1

ORDER

This petition is filed in terms of Section 34 of the Arbitration and Conciliation Act (in short 'Act') challenging an award passed by the Arbitrator dated 27.12.2014. The petitioners in this Original Petition (in short 'borrowers') were the respondents in the proceedings for arbitration and the 1st respondent (in short 'company'), the claimant.

2. The borrowers availed of a loan from the company in the year 2006 to the tune of Rs.1,57,25,000/- under two agreements dated 3.4.2006 and 3.7.2006 and three separate disbursements. Admittedly, the petitioners discontinued the payment of instalments due, as a result of which, the agreements stood cancelled by the company. The Agreements contained a clause for resolution of disputes by arbitration. A claim was filed by the company before the sole Arbitrator and in addition to various claims, interest at the rate of 24% per annum was sought on the unpaid dues.

3. After hearing the parties in detail, an award was passed by the sole arbitrator dated 27.12.2014. The defence of the borrowers before the Arbitrator is interesting. While the outstanding principal is not disputed, the borrowers would dispute the rate of interest arguing that only simple interest at the rate of 12 % per annum was payable and not 24% per annum as claimed by the company in arbitration. The Arbitrator considers the defence of the borrowers, noting as a finding of fact at internal page 9 of the award the following:

'The only solace, however, for the claimant is that respondents have not denied the fact of borrowing from the claimant and also the total loan amount of Rs.1,57,25,000/-. A letter from the second respondent under Ex.R2 itself confirms this loan transaction between the claimant and the respondents.'

4. Thus while on the one hand, the petitioners did not dispute the factum of borrowing, on the other hand, the genuineness and bonafides of the loan agreements was assailed. According to the borrowers, their signatures had been obtained in blank formats and incomplete documents, blank cheques and demand promissory notes all of which were subsequently filled in by the company as per its whims. In fact, an interlocutory application was filed in I.A.No.1 of

2012 seeking a direction from the Arbitrator for expert verification of the handwriting and signatures on the loan documents to establish the lack of veracity thereof. The interim application was dismissed by the Tribunal on 11.08.2012 and the order of dismissal has become final, in so far as no appeal under section 37 of the Act has been filed challenging the same.

5. A final award came to be passed on 27.12.2014 wherein the Arbitrator finds the borrowers liable to pay a sum of Rs.2,21,08,244/- with interest at 24% from the date of claim petition till its realisation in full.

6. The correspondences exchanged between the parties reveal that the factum of loan is not disputed and the borrowers have, infact, undertaken to settle the same in full citing immediate financial stringency. Communication dated 06.09.2007 contains a specific commitment by the borrowers to the effect that efforts were on going '*on war-footing*', to close the outstandings. Since there were no payments forthcoming thereafter, the company issued a legal notice dated 17.12.2007 calling upon the borrowers to repay the outstandings of an amount of Rs.2,24,97,595/- as on 21.11.2008 along with interest at 24% and delayed payment charges. A

reminder was issued by the company on 21.1.2008. It was for the first time in reply to the legal notice issued that the counsel for the borrowers questioned on 25.1.2008 the demand for interest at the rate of 24% on the ground that it was usurious and unconscionable.

7. Mr.G.T.Subramanian, learned counsel appearing for the borrowers would argue that taking into consideration the high value of the security offered, simple interest at 12% would be fair. He would also offer on behalf of the borrowers that they were prepared to pay the amount outstanding as a one time settlement upon condition that the interest levied was 12% and no more.

8. Mr. Satish Parasaran, learned Senior Counsel appearing for Mr.R.Parthasarathy, learned counsel for the company would draw attention to earlier proceedings of this Court in Application No.272 of 2009 wherein the company had sought the appointment of a receiver to collect the receipts from the Hotel run by the borrowers, pending arbitration. The learned Single Judge noted that the area of dispute concerned solely the rate of levy of interest being 24% as against 12% admitted by the borrowers. Vide order dated 29.04.2009, the undertaking of the borrowers to pay interest at 12% within a period of two weeks was recorded and liberty granted

to commence proceedings for arbitration. The borrowers preferred an O.S.A. challenging the aforesaid order and a Division Bench of this Court on 19.04.2010, directed the respondent to pay a sum of Rs.1,03,33,750/- within a period of eight weeks from the date of receipt of the order observing that the dispute as regards the rate of interest would be decided in arbitration. The aforesaid direction for remittance has not been complied with by the borrower till date.

9. Mr.Parasaran relies on the judgment of the Supreme Court in the case of *Swan Gold Mining Ltd. V. Hindustan Copper Ltd.*, dated 22.9.2014, a copy of which has been circulated.

10. Heard learned counsel. The impugned award records the position that the agreed and contracted rate of interest is 24% as set out in the loan agreements dated 03.04.2006 and 03.07.2006.

11. The question before me is whether the agreed rate of interest being 24% is liable to be substituted with the rate of interest at 12%, which, according to the borrowers, is more acceptable. The petitioner would allege that the loan documents have been executed fraudulently, are inchoate and consequently

legally unenforceable. In fact this question has been raised before the Arbitrator as well. A petition was filed in 2012 seeking reference of the documents to a hand writing expert for analysis. The Arbitrator rejects the prayer on the basis that the request was made only in 2012 and was belated seeing as the proceedings commenced in 2009 itself. The borrowers have chosen to accept this order. Before me, learned counsel would argue that the rejection of the interim application as belated was clearly erroneous as objections had been raised even in the defence to the claim statement. Further, there were several discrepancies and blanks in the columns in the loan agreements as well as in the dates of execution of the loan agreements and the mortgage deed that would establish the fraud on the part of the company.

12. A perusal of the award reveals that all factual aspects of the matter as raised by the parties have been adverted to and adjudicated upon by the Arbitrator prior to arriving at the conclusion that the borrowers are liable to pay the outstanding dues to the company along with the contracted rate of interest at 24% from the date of claim till the date of realization. The sole dispute raised by the borrowers and canvassed before me is with regard to the rate of interest, being usurious. The allegations of fraud on the part of the

company have been noted and adjudicated upon by the Arbitrator and I do not propose to re-visit the same. The thrust of the appeal is solely on the rate of interest that has been found by the Arbitrator to be the agreed contracted rate warranting no interference at this juncture. The view taken is based on an appreciation of the relevant facts and the terms of the agreements between the parties and, in my view is liable to be confirmed as regards the levy of interest for the period from date of claim till date of award, being 27.12.2014. The grounds of challenge under Section 34(2) are narrow in scope and do not permit a re-appreciation of evidence. The proper course of action for the petitioner, if it was really aggrieved by the order of the tribunal rejecting the interim application, was to have challenged the same. This was however not done and the facts have thus attained finality.

13. The Supreme Court in *Swan Gold Mining* (supra) holds as follows:

'12. 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.

13. *It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.'*

14. In the facts and circumstances as noticed above, and in the light of the aforesaid judgment of the Supreme Court, the award is confirmed.

15. The Original Petition stands dismissed. No costs.

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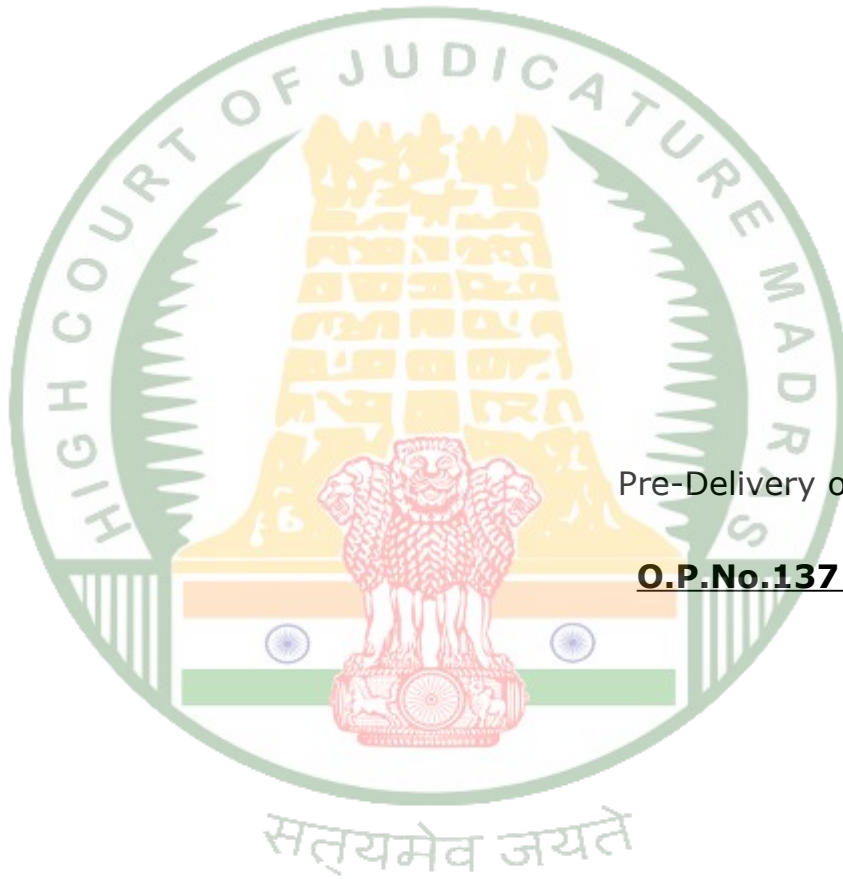
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Index: Yes/No

Speaking order/non-speaking order

Dr.ANITA SUMANTH,J.

SI/msr



Pre-Delivery order in

O.P.No.137 of 2015

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