

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr. JUSTICE M.SUNDAR

O.S.A.No.195 of 2012

Mohamad S.Pathan,
South Maharashtra Tempo Service,
Near Aradhana Hotel,
Opposite to Dhirjipura,
Baroda District,
Gujarat Pin: 390 001. Appellant

vs

1.Indusind Bank Ltd.,
rep. by its Authorised representative
Corporate Office at Sudarshan Building,
No.86, Chamiers Road,
Chennai - 600 018.

2.Dhirajlal K.Vakaria,
South Maharashtra Tempo Service,
Bajrang Bhuran,
Baailalbhai House,
Chhani, Baroda,
Gujarat Pin: 391 740.

3.K.S.Gowthaman,
Advocate/Arbitrator,
New No.49, New NO.224 B,
IV Cross street,
Natesa Nagar, Virugambakkam,
Chennai - 600 092.

.. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 23.2.2010 in O.P.No.710 of 2007 on the file of this Court.

For Appellant .. No Appearance
For Respondents .. Mr.K.Moorthy for R1

JUDGMENT
(Delivered by M.SUNDAR, J.)

This Intra Court appeal arises under Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A & C Act" for brevity)

2. To be precise, this Intra Court appeal has been filed under Section 37 of A & C Act.

3. Appeal is directed against an order dated 23.2.2010 made by a learned Single Judge of this Court in O.P.No.710 of 2007, wherein and whereby, the learned Single Judge dismissed a challenge to an Arbitral Award dated 16.02.2007 made by a Sole Arbitrator.

4. Subject matter of arbitration is vehicle finance.

5. When the matter was listed yesterday (26.10.2017), there was no representation for the appellant, though the learned counsel for the first respondent/Bank was duly present.

6. To be noted, respondent No.2 is the co-borrower/guarantor. Respondent No.3 is the Sole Arbitrator, who passed the Award, which is the subject matter of the proceedings before us.

7. With an intention to give one more opportunity to the learned counsel for the appellant, we posted the matter today under the caption "for dismissal".

8. Today also when the matter is called, there is no representation for the appellant.

9. We are of the view that it may not serve any useful purpose in dismissing such matters for default, as on a perusal of the records, we find that the entire matter turns on a very narrow compass. Further more, dismissal of such matters for default only leads to further rounds of litigation which clog the list and cause avoidable delay in disposal of other matters. Also to be noted, arbitral Award, which is subject matter of this appeal was made more than a decade ago on 16.01.2007 and this appeal itself has been pending for more than half a decade.

10. We find from the Memorandum of Grounds of appeal that the Award dated 16.02.2007 made by the Sole Arbitrator has been assailed on three grounds. The three points are as follows:

- (a) No notice to the appellant.
- (b) Award was passed three years after the Arbitral Tribunal concluded the submissions and orders were reserved.
- (c) Arbitral proceedings were initiated more than two years after the sale of the vehicle.

11. We find that the learned Single Judge has examined ground (a) supra and returned a finding that the same is untenable/incorrect as notice sent to appellant was returned

with the postal endorsement 'returned'.

12. Other ground raised before learned Single Judge is regarding consent qua appointment of Arbitrator which has been elaborately dealt with and negatived. We have perused the judgment and find no reason to interfere. Thereafter, learned Single Judge has clearly recorded that no other ground was urged. This has not been disputed in the memorandum of grounds of appeal. To be noted, on a demeanor even if disputed, it is a ground of review and not a ground of appeal. Raising grounds that were not raised before the learned Single Judge in an appeal under Section 37 of A & C Act can be only in exceptional cases as the scope is extremely narrow. There is no such plea that this is such an exceptional case. We are of the view that (b) and (c) do not deserve any consideration at this distant point of law considering the trajectory of the matter.

13. We find no infirmity in the order of the learned Single Judge and we also find from the memorandum of grounds that no other tenable grounds have been raised to interfere with the order of the learned Single Judge. More so, in the light of the fact that this is an Intra Court appeal under Section 37 of A & C Act.

14. The appeal is dismissed as bereft of merits. Considering the nature of the matter and the trajectory of the proceedings, there will be no order regarding costs.

Sd/-
Assistant Registrar

//True copy//

सत्यमेव जयते Sub Assistant Registrar

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To

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

+lcc to Mr.K.Moorthy, Advocate SR.No.76548

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No.195 of 2012

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