

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.DURAI SWAMY

C.M.A.Nos.3523 & 3524 of 2017 &
C.M.P. Nos. 22586 & 22587 of 2017

M/s.Sri Ambal Mills Limited
Rep. by its Managing Director Mr.C.D.Menon
Regd. Office at Kamanaickenpalayam
Somanur - 641 668 and
Administrative Office at
No.20, Bharathi Park Road
No.1, Coimbatore - 641 001

2.Mr.C.D.Menon

C.R.Menon (Since dead)

3.Jaya R.Menon

4.R.Pujitha

5.R.Krithika

... Appellant in both C.M.As/Petitioners

v.

1.M/s.Shiva Texyarn Limited

Having its Regd. Office at No.252

Mettupalayam Road

Coimbatore - 641 043

Represented by its Director

2.Mr.S.Shanmugam

District and Sessions Judge (Retd.,)

Sole Arbitrator, No 44/3, 4th Cross Street

Thirumangalam Nagar, Vadavali,

Coimbatore 641 041.

... Respondents in both C.M.As/Respondents

Civil Miscellaneous Appeal No.3523 of 2017 is filed under section 37 of Arbitration and Conciliation Act, 1996, against the judgment and decree dated 10.04.2017 passed in I.A.No.163 of 2016 in A.O.P.No.303 of 2011 on the file of Principal District Judge, Coimbatore.

Civil Miscellaneous Appeal No.3524 of 2017 is filed under section 37 of Arbitration and Conciliation Act, 1996, against the judgment and decree dated 10.04.2017 passed in I.A.No.164

of 2016 in A.O.P.No.302 of 2011 on the file of Principal District Judge, Coimbatore.

For Appellants : Mr.S.Udayakumar
(in both Appeals)

For Respondents : Mr.N.Manoharan - for R1
(in both Appeals)

COMMON JUDGMENT

Challenging the fair and final orders passed in I.A.Nos.163 and 164 of 2016 in A.O.P.Nos.302 and 303 of 2011 on the file of Principal District Court, Coimbatore, the petitioners in AOPs have filed the above Civil Miscellaneous Appeals.

2. Challenging the award passed in Award Nos. 3 and 4 of 2004 passed by the Arbitrator, the appellants have filed A.O.P.Nos.302 and 303 of 2011. On 19.01.2016, since the appellants failed to appear before the District Court, the District Court dismissed the petitions in A.O.P.Nos.302 and 303 of 2011 for default. On 08.02.2016, the appellants have filed the applications in I.A.Nos. 163 and 164 of 2016 to restore the petitions in A.O.P.Nos.302 and 303 of 2011, which was dismissed for default on 19.01.2016. In the affidavit filed in support of the petitions, the 2nd appellant has stated that he was laid up with viral fever, therefore, he could not meet their counsel and give instructions for arguing the matter before the District Court.

3.The respondents filed their counter and disputed the averments stated in the affidavit filed in support of the petitions.

4. The Court below, taking into consideration the case of both the parties, dismissed the applications finding that the appellants have filed the applications only to drag on the proceedings and that the appellants have not given sufficient reasons for restoring the AOPs. While dismissing the applications, the court below also taken into consideration the dismissal of the AOPs for default in the year 2013 and 2015. On the earlier occasions, the applications were restored to file at the instance of the appellants and this is the 3rd occasion the AOPs were dismissed for default.

5. Mr.S.Udayakumar, learned counsel appearing for the appellants submitted that final opportunity may be given to the appellants to make their submissions before the District Court and a date may also be fixed for making submissions before the Court below.

6. Mr.N.Manoharan, learned counsel appearing for the 1st respondent submitted that cause of action arose as early as in the year 1997 and the arbitral proceedings were initiated in the year 2004 and even after a lapse of several years, the appellants have not paid a single pie to the 1st respondent-claimant. Further, the learned counsel submitted that the averments stated in the affidavit filed in support of the applications were rightly rejected by the court below for the reason that the appellants have not given sufficient reason for restoring the applications.

7. Having regard to the submissions made by the learned counsel on either side, though this is the 3rd occasion, in which the appellants have filed applications for restoring the petitions, which were dismissed for default, since the appellants have stated that the 2nd appellant was laid up with viral fever on 19.01.2016 and that they have filed the applications on 08.02.2016 itself, in the interest of justice, the appellants can be given a final opportunity to make their submissions before the District Court, Coimbatore.

8. Since the AOPs were pending from the year 2011, I am of the view that the AOPs can be restored to file on imposing the following terms:-

(i) The order passed in I.A.Nos. 163 and 164 of 2016 are set aside on condition that the appellants pay a sum of Rs.25,000/- (Rupees twenty five thousand only) in each of the AOP to the 1st respondent-claimant within one week from the date of receipt of a copy of this judgment;

(ii) The appellants are directed to pay the cost amount awarded by the Arbitrator to the 1st respondent-claimant, within one week from the date of receipt of a copy of this judgment;

On compliance, the orders passed in I.A.Nos. 163 and 164 of 2016 shall be set aside and consequently, the applications in I.A.Nos. 163 and 164 of 2016 shall stand allowed.

9. The appellants are directed to make their submissions before the District Court, Coimbatore, after complying the conditions as stated above. The appellants are directed to make their submissions in A.O.P.Nos. 302 and 303 of 2011 on 23.01.2018 without seeking for any adjournment. The respondents are at liberty to make their submissions in the AOPs before the District Court, Coimbatore after the completion of the submissions by the appellants. The Principal District Judge, Coimbatore is directed to dispose of the petitions in

A.O.P.Nos. 302 and 303 of 2011, within a period of four weeks, from the date of completion of the submissions by the learned counsel on either side.

With these observations, the Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

Rj

1.The Principal District Judge,
Coimbatore.

2.Mr.S.Shanmugam
District and Sessions Judge(Retd.,)
Sole Arbitrator, No 44/3, 4th Cross Street
Thirumangalam Nagar, Vadavali,
Coimbatore 641 041.

+2 Ccs to Mr. S. Udayakumar, advocate sr 2195, 2194.

+2 Ccs to Mr.N. Manokaran, advocate sr 2555,2556.

C.M.A.Nos.3523 & 3524 of 2017 &
C.M.P. Nos. 22586 & 22587 of 2017

GMR(CO)
SP(12/01/2018)

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