

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

O.S.A. Nos.335 and 336 of 2017

Defodill Mobiles Marketing Private
Limited, Through its Authorised
Director, Mr.Puneet Bansal. ... Appellant in both OSAs.
1st Respondent

-vs-

- 1.Redington (India) limited,
SPL Guindy House,
95, Mount Road, Guindy,
Chennai-600 032.
- 2.Apple India (P) Ltd.,
19th Floor, Concorde Tower C,
UB City, No.24, Vittal Mallaya Road,
Bengaluru - 560 001.
- 3.Mr.Naresh Garg,
Sole Arbitrator, Chamber No.343,
2nd Floor, District Courts,
Bathinda-151 001, Punjab. ... Respondents in both OSAs.
Petitioner/ Respondent 2 & 3

Appeals filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent against the common fair and decretal order dated 17.08.2017 passed in O.P.No.581 of 2015 and A.No.3124 of 2017 on the file of original side of this Court.

O.P.581/15 : Original Petition filed under section 34 of the Arbitration Conciliation Act 1996 Praying from this Hon'ble Court to set aside the award dt 15/4/15 received by the petitioner on 25/4/15.

A.No.3124/17 : The Appellant is filed under order XIV Rule 8 of OS Rules read with section 34(3) of praying from this Hon'ble Court be please to condone the delay of 3 days in filing the present Original Petition by the Petitioner.

For Appellant : Mr.Aasim Shehzad
in both OSAs. for M/s.BFS Legal

For Respondents : Mr.S.S.Rajesh for R1
in both OSAs.

* * * * *

COMMON JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

These two appeals are against a common judgment and order dated 17.08.2017 passed by the learned Single Bench condoning the delay of 3 days in filing an application under Section 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as '1996 Act', being A.No.3124 of 2017 for setting aside the award dated 15.04.2015 passed by the Arbitral Tribunal in relation to disputes that had arisen between the parties hereto.

2.Learned counsel appearing on behalf of the appellant submits that the application under Section 34 of the 1996 Act had been filed by making a misleading statement that the award had been received by the respondent/applicant on 25.04.2015 when, in fact, the award had been received on 20.04.2015. It is, however, not in dispute that the application under Section 34 was filed within the extended period of limitation of further 30 days.

3.In this context, it would be pertinent to refer to Section 34 (3) of the 1996 Act, which is set out hereinbelow for convenience.

34.Application for setting aside arbitral award. -

(1)

(2)

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

4.On a perusal of Section 34 (3), it is patently clear that an application for setting aside may not be made after three

months have elapsed from the date on which the party making that application has received the arbitral award or, if a request had been made under section 33 from the date on which that request had been disposed of by the arbitral tribunal. The proviso, however, empowers the Court to entertain an application within a further period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application within the period of three months prescribed, but not thereafter.

5. It is now well settled by a catena of decisions of the Supreme Court that an application for setting aside of an award may not be entertained after three months and thirty days have elapsed, whatever be the cause. Reference may be made to the judgment of the Hon'ble Supreme Court in *Union of India v. Popular Construction Company*, reported in (2001) 8 SCC 470.

6. However, when an application is filed after three months, but within the extended period of thirty days, the Court may entertain the same, subject to satisfaction that there had been sufficient cause.

7. As a general principle, the Courts do not entertain an appeal from an order allowing an application for condonation of delay in entertaining an application or an appeal. However, an order rejecting an application for condonation of delay, which has the effect of putting an end to the lis, is appealable.

8. Learned counsel appearing on behalf of the appellant strenuously urged that the application for condonation of delay had been filed almost two years (601 days) after the application under Section 34 of the 1996 Act had been filed. Limitation, however, starts running from the date on which the application under Section 34 is filed. The date of filing of an application for condonation of delay is not relevant. If the application under Section 34 is still pending when the application for condonation of delay is filed, the Court might condone the delay subject to its satisfaction of the existence of sufficient cause of the delay in filing the application under Section 34.

9. In our considered view, although Section 5 of the Limitation Act, 1963 does not apply to an application under Section 34 of the 1996 Act, in view of the specific language of the proviso to sub-section (3) of Section 34 and in particular, the use of the words "but not thereafter", and an application under Section 34 filed beyond three months and thirty days from the date of receipt of the impugned award can never be entertained, the principles for condonation of delay enshrined in Section 5 of the Limitation Act would apply to an application made within the extended period of thirty days.

10.It appears that it was contended before the learned Single Bench, that the award had been received by the then authorised signatory and whole-time Director, Mr.M.Ragunathan, on 25.04.2015. It was argued that since he was the person responsible for dealing with the award, the date for limitation had to be reckoned from the date when the award reached his hands.

11.The date of limitation would have to be reckoned from the time when the award reached the respondent. However, the fact that the award reached the hands of the authorised signatory at a later date might, in our considered view, be sufficient ground for condonation of delay in filing an application for setting aside of an award under Section 34, provided the application was filed within the extended period of thirty days, as in this case.

12.In our considered view, condonation of delay, when the bar of the proviso to section 34 (3) is not attracted, is not appealable. However, an application entertained beyond the period of three months and 30 days would be appealable, as the Court would lack jurisdiction to condone the delay beyond three months and thirty days.

13.Article 25 of the Agreement dated 02.07.2014 executed by and between the parties, inter alia, provided as hereinbelow:

"Any and all disputes, controversies or differences arising from or in relation to or in connection with this Agreement shall be conducted in English and settled by mutual consultation between the parties hereto in good faith as promptly as possible, but failing an amicable settlement within thirty (3) days, shall be settled by arbitration in English before a panel of three arbitrators (unless a single arbitrator can be agreed upon by the parties) at Chennai, Tamilnadu, in accordance with the Arbitration and Conciliation Act, 1956 of India. The arbitrator (s) shall render a final opinion and award in writing stating the reasons therefor and the award shall be final and binding upon the parties hereto. The costs of arbitration shall be borne equally by the Parties, except that each Party shall bear its own attorney, witness and preparation costs."

14.In this case, the arbitrator posted the matter for hearing at Bhatinda in the State of Punjab. The respondent in these appeals sought termination of the arbitral proceedings at Bhatinda on the ground that the parties had agreed to arbitration at Chennai in Tamil Nadu before a panel of arbitrators and not at Bhatinda in the State of Punjab.

15.The learned arbitrator, however, rejected the prayer of the respondent and proceeded to make an exparte award in favour of the appellant. The learned Single Bench rightly set aside the award on the ground that the parties had, with the eyes open, agreed to the arbitration being held at Chennai in Tamil Nadu. As held by the learned Single Bench, Section 20 of the 1996 Act clearly provides that the parties are free to agree to the place of arbitration.

16.The finding of the learned arbitrator that the parties could not have agreed to arbitration at Chennai as no part of cause of action arose at Chennai is patently misconceived. It is well settled that the parties cannot by agreement confer jurisdiction on a Court which lacks jurisdiction, since Courts are created by a statute. The parties can agree to the jurisdiction of one Court to the exclusion of others when two or more Courts have jurisdiction to entertain a lis. On the other hand, an arbitral tribunal is a creature of agreement. There is no bar in law to the parties agreeing to arbitration at a place where no part of cause of action has arisen. On the other hand, it is often the practice to have arbitration proceedings before a neutral arbitral tribunal in a place to which neither parties belong, and where no business is carried out.

17.In our view, the learned Single Bench very rightly set aside the award, as the same was patently contrary to Section 20 of the 1996 Act read with Article 25 of the Agreement. Interference of this Court is, thus, not warranted.

18.The Appeals are, accordingly, dismissed. No costs.

Sd/-

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Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sra

To

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

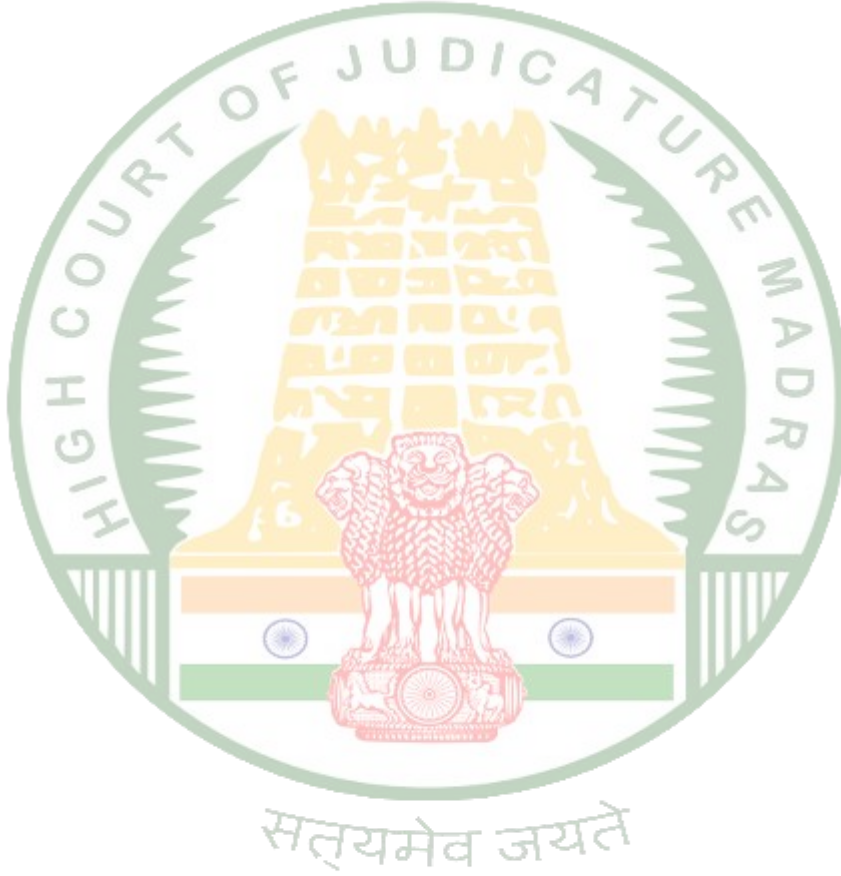
+2cc to Mr.S.S.Rajesh, Advocate, S.R.No.986

+2cc to Mr.Sanjay Pinto, Advocate, S.R.No.864

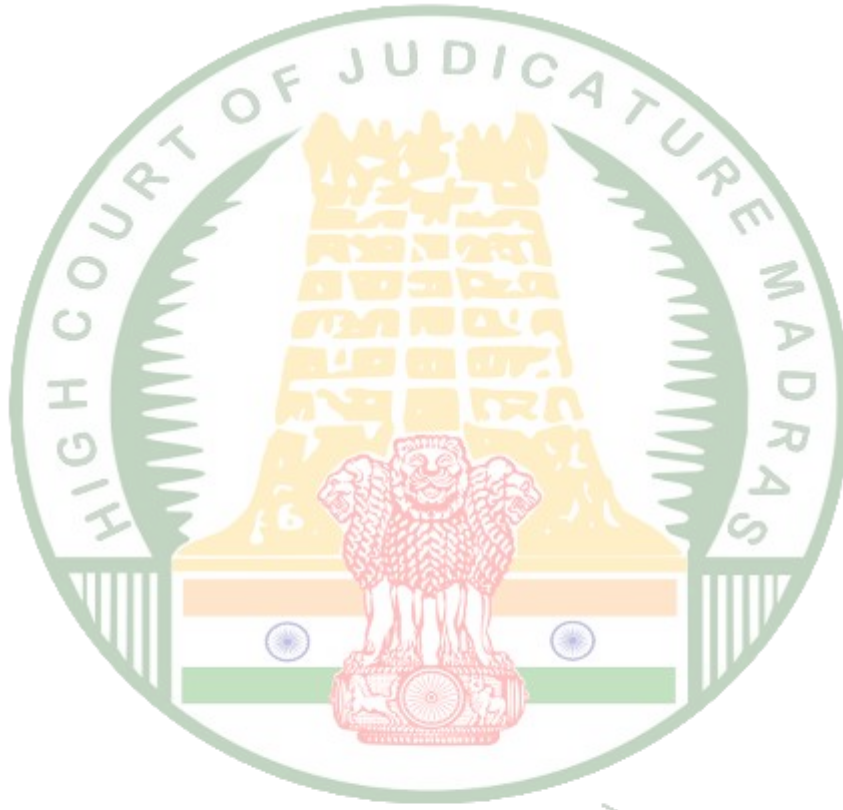
O.S.A.Nos.335 and 336 of 2017

RJ(CO)

RRK(19/02/2018)



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