

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.1740 to 1743 of 2018
and
CMP.Nos.13443 to 13446 of 2018

M/s.Thirumala Milk Products (P) Ltd.,
Represented by its General Manager,
Thiru Easwarababu Kolli,
Corporate Office Old No:1418/2A1, 2B1,
New No: 75/8, 200 Feet Road,
Thirumalai Nagar Extension,
Pooniamman Medu, Retteri,
Chennai - 600 110. ... Appellant in all the CMAs

Vs

Ch.Kishore ... Respondent in CMA.No.1740/2018
B.Ramesh ... Respondent in CMA.No.1741/2018
P.Boobalan ... Respondent in CMA.No.1742/2018
A.Devakar Selwyn ... Respondent in CMA.No.1743/2018

Common Prayer: Civil Miscellaneous Appeals filed under Section 37 of Arbitration and Conciliation Act, 2015, to set aside the impugned order dated 10.07.2018 in I.A.Nos.1 to 4 of 2018 in Arbitration Case Nos.1 to 4 of 2018, passed by the Sole Arbitrator and allow this Appeal.

(In all the CMAs)

For Appellant : Mr.P.V.Balasubramaniam

For Respondents : Mr.R.Arumugam

COMMON JUDGMENT

These appeals are filed under Section 37 of the Arbitration and Conciliation Act challenging the common order dated 10.7.2018 passed in I.A.Nos.1 to 4 of 2018 in Arbitration Case Numbers 1 to 4 of 2018 respectively.

2. The appellant is the respondent in the claim petitions, whereas the respondents in these appeals are the claimants in the claim petitions before the learned Arbitral Tribunal.

3. The appellant is a company registered under the provisions of the Companies Act, 1956 and is engaged in marketing milk and milk products under the name and style of "Tirumala Milk". As the appellant was unable to manage their own trucks, they wanted to sell their trucks and engage others to transport their milk and milk products in their vehicles. The respondents herein wanted to purchase the old trucks of the appellant and during negotiations, the respondents offered to purchase the vehicles and requested the appellant to engage them as transporters to transport milk and milk products of the appellant. The parties after thorough deliberations entered into separate agreements dated 21.7.2016. One of the conditions contained in the agreements reads thus:

"Though the Company in principle agreed to engage all the vehicles for transportation of its products for a minimum period of three years, the Company deserves every right to dismiss one or all the vehicles without citing any reason."

4. When things stood thus, it is stated that the appellant wanted to engage bigger refrigerated trucks to transport their milk and milk products and conveyed the same to the respondents. The respondents only requested the appellant to engage their trucks until the bigger trucks are engaged by the appellant. The said request was heeded to and after engaging bigger trucks, the appellant conveyed the same to the respondents.

5. The respondents herein filed O.A.Nos.290 to 297 of 2018 before this Court seeking interim injunction not to disengage their trucks until the period of three years gets over as per the agreement dated 21.7.2016. This Court, by order dated 20.4.2018, appointed Mr.K.Jayaraman, District Judge (Retd.) as Arbitrator to enter upon the reference and directed the parties to maintain status quo for a period of two weeks therefrom.

6. It is stated that on 21.4.2018 the respondents and 50 other persons entered the appellant's premises and abused the employees and threatened them of dire consequences if the appellant engages other trucks than that of the respondents. It is stated that on 22.4.2018 the respondents issued contempt notice to the appellant. It is the specific case of the appellant that there was no breach of the order dated 20.4.2018 passed by this Court.

7. In the court of the first hearing before the learned Arbitrator, on 4.5.2018, the order of status quo was extended. On 29.5.2018, in the course of the second hearing, the respondents have filed memo claiming that the interim order of status quo has been flouted by the appellant and seeking the learned Arbitrator to refer the matter to the High Court to proceed by way of contempt. The appellant was directed to file a counter affidavit to the said interim petition filed by the respondents under Section 27(5) of the Arbitration and Conciliation Act read with Order 39 Rule 2A and Section 151 of the Civil Procedure Code seeking to strike off the reply statement of the appellant for their wilful, deliberate and intentional act of disobedience of the interim order passed by the Tribunal on 4.5.2018.

8. It is stated that on 9.6.2018, the appellant filed counter affidavit denying all the allegations, more particularly refuting the claim of the respondents qua violation of the order of status quo. It is the specific case of the appellant that there was no order inhibiting the appellant was engaging bigger trucks or other vehicles than that of the respondents. The appellant also took a stand in the counter affidavit that the learned Arbitrator is not empowered to strike off the reply statement and, therefore, the prayer made in the interim application by the respondents is not maintainable. Thereafter, the respondents sent another memo vide email on 6.7.2018 seeking the learned Arbitrator to refer the matter to the High Court to punish the appellant for alleged contempt.

9. The learned Arbitrator, by the common order dated 10.7.2018, which is impugned in these appeals, ruled in favour of the respondents and the reply statements filed by the appellant were struck off.

10. Assailing the said order dated 10.7.2018 passed by the learned Arbitrator, the present appeals are filed.

11. The learned counsel appearing for the appellant contended that the learned Arbitrator has to determine the rights of the parties based on the agreement entered into between the parties and in the case on hand, the learned Arbitrator had ordered striking off of the reply statements, when the learned Arbitrator has no power to punish the appellant for contempt or to strike off the reply statement in toto.

12. The learned counsel for the appellant further contended that the order passed by the learned Tribunal while striking off the reply statements filed by the appellant is bereft of reasons. He added that learned Arbitrator had not considered the violation of the order of status quo as alleged by the

respondents, more so when the appellant had not been enjoined from engaging other vehicles and when the agreement does not have any "exclusivity" clause in favour of the respondents.

13. On the contrary, the learned counsel appearing on behalf of the respondents reiterated the reasons that weighed with the learned Arbitrator in striking off the reply statement filed by the appellant and prayed for dismissal of these appeals.

14. I heard Mr.P.V.Balasubramaniam, learned counsel for the appellant and Mr.R.Arumugam, learned counsel for the respondents in all the appeals and perused the documents available on record.

15. The facts are not much in dispute and, therefore, this Court does not propose to once again traverse in the factual aspects of the case.

16. In the order dated 20.4.2018 passed in O.A.Nos.290 to 297 of 2018, this Court held as under:

"3. That the interim order granted in pursuance of the order dated 28.3.2018 made in O.A.Nos.290 to 297 of 2018 directing the both parties hereto, to maintain status quo be and are hereby extended for a period of two weeks from the date of receipt of a copy of this order.

4. That is is open to the applicants to move for the relief under Section 17 of the Act before the Arbitral Tribunal, which shall be considered by the Arbitral Tribunal in accordance with law."

17. In the first sitting of arbitration proceedings on 4.5.2018, the learned Arbitrator held as under:

".... that till the respondent going to file objections and also counter statement there will not any harm to the respondent by extending the status quo and therefore directed that the status-quo to be continued till the disposal of the application for extension of interim order. For filing counter statement and also objection to the petition the hearing is posted on 15.5.2018..."

18. It is seen from the records that the respondent was never enjoined from engaging other vehicles. The fact that the vehicles of one of the respondents is still running for the appellant is not disputed by the respondents and there is no discussion whatsoever in the common order passed by the learned Arbitrator in this regard. The fact that the vehicles of the respondents have not yet been disengaged by the appellant and in

respect of two of the respondents, viz., Bhoopalan and Ramesh, the vehicles are put to continuous use. The said factual assertion of the appellant was also not considered by the learned Arbitrator. Merely because other vehicles have been used for transporting milk, in my considered opinion, a presumption cannot be drawn that the vehicles of the respondents are not used.

19. That apart, as per Clause 6 of the agreements entered into between the parties, which is reproduced infra for the sake of clarity and convenience:

"Though the Company in principle agreed to engage all the vehicles for transportation of its products for a minimum period of three years, the Company deserves every right to dismiss one or all the vehicles without citing any reason."

the appellant reserves the right to dismiss one or all the vehicles without assigning any reason. With regard to the power of the appellant to dismiss one or all the vehicles without citing any reason, the learned Arbitrator has not assigned any reason.

20. The learned Arbitrator by merely rely on Exs.C1 to C4 held that the vehicles of the respondents did not ply for 9000 km and this only goes to show that the vehicles of the respondents were not engaged by the appellant. While arriving at such finding, the learned Arbitrator ought to have discussed about the power of the appellant under the agreement, more particularly, the clause referred supra. Moreover, the appellant was nowhere inhibited from engaging bigger trucks. The order of status quo does not give a party a better right than what they possessed on the date of the order. The learned Arbitrator ought to have analysed the issues and determined the status-quo on the date of order, with reference to the contractual provisions determining the relationship between the parties.

21. The decisions relied on by the learned Arbitrator are distinguishable on facts. Unlike in the case law relied on by the learned Arbitrator, no conditional order subsists in the case on hand. The gross violation of the order of status quo, which is pleaded, needs to be established on facts and the learned Arbitrator ought to have considered the issue after threadbare analysis of the facts and circumstances of the case, the terms of the agreement, more particularly, Clause (6), which empowers the appellant to disengage one or more vehicles without assigning any reason. On this score alone, this Court is unable to subscribe to the view taken by the learned Arbitrator and the other issues raised pale into insignificance.

For the foregoing reasons, these appeals are allowed and the common order dated 10.07.2018 passed in I.A.Nos.1 to 4 of 2018 in Arbitration Case Nos.1 to 4 of 2018 respectively is set aside. The learned Arbitrator is directed to take up Arbitration Case Nos.1 to 4 of 2018 and dispose of the same on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

The Section Officer,
V.R.Section,
High Court, Madras.

+2 ccs to M/s.BFS Legal, Advocate, S.R.No.83928

C.M.A.Nos.1740 to 1743 of 2018
and
CMP.Nos.13443 to 13446 of 2018

CNR(CO)
SSM(08/03/2019).



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