

In the High Court of Judicature at Madras

Dated : 05.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SESHASAYEE

Original Side Appeal No.93 of 2018 & CMP.No.5911 of 2018

M/s.Madras Fertilizers Ltd., rep.
by its Deputy General Manager
(P&A), Post Bag No.2, Chennai-68.Appellant

Vs

1.M/s.Bavani Security & Night Patrol,
rep.by Proprietor S.V.Sethuraj,
No.53/103, II Street, Parameswari
Nagar, Adyar, Chennai-20.

2.Hon'ble Justice K.Venkatraman
(Retd.), Judge, Sole Arbitrator,
L-125, 17th Street, Anna Nagar
East, Chennai-102.Respondents

APPEAL under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent to set aside the fair and decretal order dated 03.8.2017 made in O.P.No.288 of 2016. filed under Section 34 of the Arbitration and conciliation Act 1996 to set aside the Award dated 14.09.2015 praying to set aside the Award dated 14.09.2015 by the 2nd Respondent herein.

For Appellant : Mr.Jeremiah for
Mr.P.Chandrasekar
For Respondent-1 : Mr.R.Murali

JUDGMENT WAS DELIVERED BY T.S.SIVAGNANAM, J

Heard the learned counsel for the appellant and the learned counsel for the first respondent/claimant.

2. This appeal is directed against the order passed by the learned Single Judge in O.P.No.288 of 2016 filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act for brevity) to set aside the order passed by the Hon'ble Arbitrator dated 14.9.2015.

3. The first respondent herein filed the claim petition before the Arbitral Tribunal praying for an award to be passed

(i) by directing the appellant herein to pay a sum of Rs.42,05,671/- to the first respondent/claimant being the balance non payment of the bill amount and to pay a sum of Rs.73,248/- to the first respondent/claimant towards interest at the rate of 18% per annum for the delayed payment of the bill amount raised by the first respondent/claimant and to pay a sum of Rs.13,42,824/- to the first respondent/claimant towards interest at the rate of 18% per annum for the balance non payment of the bill amount raised by the first respondent/claimant;

(ii) to direct the appellant to pay interest at the rate of 18% per annum for the amount to be awarded by the Arbitral Tribunal for the aforesaid claim till the date, on which, the award is made;

(iii) to direct the appellant to pay interest at the rate of 18% per annum for the entire award amount from the date of award till payment; and (iv) for award of costs of the entire proceedings.

4. The appellant herein resisted the claim petition by filing a counter, to which, a reply affidavit was filed by the first respondent/claimant and a rejoinder was filed by the appellant.

5. The Hon'ble Arbitrator framed seven issues for consideration, which are as follows :

"(1) Whether there was any shortage of man power on the side of the claimant as pleaded by the respondent ?

(2) Whether the shortage of man power, if any, will attract clause 11 of the agreement dated 03.1.2012 ?

(3) Whether Mr.R.Kumar can represent respondent company solely on the basis of the authorization letter given to him dated 12.9.2014?

(4) Whether the claimant is entitled to the amounts claimed in the claim statement?

(5) Whether the claimant is entitled to any interest and if so, the rate of interest?

(6) Whether the claimant is entitled to any cost? and

(7) To what relief the claimant is entitled to?"

6. Among the seven issues, the Hon'ble Tribunal took up Issue No.3 for consideration at the first instance, which pertains to the question as to whether Mr.R.Kumar can represent the appellant company and file counter statement and rejoinder. This issue was decided in favour of the first

respondent/claimant and against the appellant herein.

7. So far as Issue No.1 is concerned, the same was decided against the first respondent/claimant and in favour of the appellant. The remaining issues were decided in favour of the first respondent/claimant except the rate of interest, which was fixed at 9% for both pre-award and post-award periods.

8. The appellant challenged the correctness of the award by filing a petition under Section 34 of the said Act. Before the learned Single Judge, two contentions were raised,

(i) firstly as to whether the conclusion of the Hon'ble Arbitrator to the effect that person representing the appellant before the Hon'ble Arbitrator was not duly authorized to do so, was correct and

(ii) secondly whether there is any security lapse in terms of Clause 11 of the agreement between the parties so as to levy penalty in terms of the aforesaid Clause.

9. The learned Single Judge considered the factual matrix and took note of the Articles of Association of the appellant company and in particular Articles 106 and 108, which deal with power of the Managing Director. As per Article 106 of the Articles of Association of the appellant company, the power to institute, conduct, defend, compound and refer any differences to arbitration and to observe and perform awards made thereunder was specifically conferred on the Board of the appellant and not on the Managing Director. In other words, this power was specifically excluded from the purview of the Managing Director. The learned Single Judge considered the reasons assigned by the Hon'ble Arbitrator and held that there is no infirmity in the conclusion of the Hon'ble Arbitrator and confirmed the said finding.

10. The second contention, which was raised by the appellant before the learned Single Judge, was that the Articles of Association were not marked as documents in the arbitral proceedings.

11. The learned Single Judge took into consideration the fact that the Hon'ble Tribunal had extensively referred and quoted the Articles of Association and found that the document has not only been produced in the course of arbitration, but was also taken into detailed consideration and that there is no variation between the clauses extracted in the award and the clauses of the Articles of Association circulated before the learned Single Judge.

12. The next aspect, which was argued, was as to whether the non provision of sufficient security personnel itself is a security lapse attracting penalty.

13. The learned Single Judge interpreted Clause 11 of the agreement, which states that the contractor shall be wholly responsible for security lapses of his personnel while on duty and the appellant shall pay a penalty of Rs.5,000/- per incidence for any security lapses noticed or reported such as

theft, permitting unauthorized persons, etc., during the period of the contract.

14. The learned Single Judge has rightly found that there is no evidence before the Arbitral Tribunal to show that there was any specific incidence where there were security lapses resulting in theft or permitting unauthorized persons during the period of contract.

15. Thus, a security lapse cannot be merely because of non deployment of required number of security personnel and Clause 11 specifically refers to incidence of security lapse and for each such incidence, the appellant was entitled to deduct Rs.5,000/-. However, in the absence of any evidence before the Arbitral Tribunal, the learned Single Judge was fully justified in holding that Clause 11 of the agreement cannot be invoked.

16. Thus, we find that the reasons assigned by the learned Single Judge while rejecting the challenge to the award is perfectly legal and valid and that the same does not call for any interference.

17. The learned counsel for the appellant has contended that the award of interest at 9% is excessive.

18. However, there is no contention advanced by the appellant as to how the interest at 9% is excessive and even in the memorandum of grounds of appeal before this Court, a vague averment has been stated that the rate of interest is excessive. In the absence of any particular challenge to the award of interest at 9% as against the claim made by the first respondent/ claimant towards interest at 18%, we find that there is no error in the award passed by the Arbitral Tribunal awarding interest at 9%.

19. For the foregoing reasons, we find that the appellant has not made out any case for interference.

20. Accordingly, the above original side appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

TO
THE SUB ASST. REGISTRAR,
ORIGINAL SIDE, HIGH COURT, MADRAS.

+1cc to Mr.R.KURALI, Advocate, S.R.No.25497

+2cc to Mr.P.CHANDRASEKAR, Advocate, S.R.No. 25466

OSA.No.93 of 2018 & CMP.No.5911 of 2018

RSY (CO)
TR(19/04/2018)