

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2018

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The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice KRISHNAN RAMASAMY

Original Side Appeal No.157 of 2018
& C.M.P.No.8723 of 2018

P.Ponram,
Managing Partner,
M/s Unicon Engineers,
513A/6, Bharathi Road,
Coimbatore-641 049.

... Appellant

Vs.

The Manager Materials,
M/s Tamil Nadu Cements Corporation Ltd.,
L.L.A. Building II Floor,
735, Anna Salai, Chennai-641 002.

... Respondent

Original Side Appeal is filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order and decretal order dated 22.01.2018 made in Application No.7278 of 2017 against Application No.4846 of 2017 in E.P.No.7 of 2017 in Arbitral Award Case No.M&SEFC/CAER/11 of 2016.

For Appellant : Mr.R.Kannan
For Respondent : Mr.A.Sivaji

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH,J.)

After contest, an award was passed on 04.06.2016 on a reference made under the provisions of Micro, Small and Medium Enterprises Development Act, 2006 (Central Act 27 of 2006). Seeking to execute the award, the appellant has filed execution petition E.P.No.7 of 2017. An application was filed in Application No.4846 of 2017 by the respondent under Section 47 of the Civil Procedure Code, which was accordingly rejected by the Execution Court as not maintainable.

2. Challenging the aforesaid order, an application in A.No.7278 of 2017 was filed before the learned single Judge. The learned single Judge, having found that the order passed by the learned Master was not a speaking one, remitted it for fresh consideration. Aggrieved over the same, the present Original Side Appeal has been filed.

3. The learned counsel appearing for the appellant would contend that the very application seeking to invoke Section 47 of the Civil Procedure Code is not maintainable. The respondent, challenged the award by filing original petition without complying the mandate of pre-deposit. Under those circumstances, the learned single Judge ought to have remitted the matter instead of dismissing the application as not maintainable.

4. The learned Additional Advocate General appearing for the respondent would submit that the award has been passed without complying with the directions issued by this Court in M/s Eden Exports Company Vs. Union of India and others (2013 Writ Law Reporter 1). As per the said decision, the Arbitrators must be legally meant with legal background. The Execution Court has got power under Section 47 of the Civil Procedure Code to decide all questions. Therefore, what has been done by the learned single Judge is only an order of remittal. Hence, no interference is required.

5. In M/s Eden Exports Company Vs. Union of India and others (2013 Writ Law Reporter 1), challenge was made to various provisions of the Micro, Small and Medium Enterprises Development Act, 2006. While upholding the aforesaid enactment, the following observation was made.

"23. Coming to the question of formation of Facilitation Council, we are in full agreement with the conclusion arrived at by the learned single Judge. The contention of the learned counsel for the appellants / petitioners that the members preside over the Facilitation Council should have legal background and a Judicial Member has to preside over the Facilitation Council cannot be accepted. When the Facilitation Council is not a Tribunal constituted in exercise of power granted under Articles 323-A and 323-B of the Constitution, the appellants cannot be heard to contend that a Judicial Member has to preside over the Council or the members should have legal background. However, we cannot fully brush aside the aforesaid contention of the learned

counsel for the appellant. Considering the issues involved in all these matters, in order to avoid the Companies /Corporation in approaching the Court in large numbers, in future, we observe that while appointing the Members for the Council, the Government may bear in mind this aspect and appoint the Members having judicial background."

6. The aforesaid observation cannot be construed as a positive direction. In fact, the Division bench was pleased to hold that it cannot be contended that the Judicial member has to preside over the Council though we do not find anything wrong with the observation made, which in tune with the basic structure enshrined with the constitution. The constitution of the Tribunal cannot be questioned at this point of time. Perhaps the respondent could have raised the very contention at the relevant point of time as it touches upon the very vires of the enactment.

7. We are at the stage of implementation of the Award. The respondent has also filed the original petition challenging the Award. However, there was no compliance of mandatory pre-deposit. Perhaps, that is the reason why, the application was not numbered enabling the respondent in getting appropriate interim orders. However, we are not concerned with the said issue in this proceedings.

8. The Award passed by the Tribunal cannot be equated with a decree in a suit. However, the execution can be laid to give effect to the award. Section 47 of the Civil Procedure Code deals with consideration of all questions arising between the parties to the suit in which, a decree was passed. Therefore, the aforesaid provision cannot be extended to the arbitration Tribunal. After all, the object of the Arbitration and Conciliation Act, 1996, is that any Award passed must be subjected very little external interference except to the extent permissible, which is inclusive of Civil Court.

9. In the case on hand, the respondent has also filed the original petition challenging the Award. Therefore, having undertaken the aforesaid exercise raising the very same grounds, it is not open to it to file an application invoking the provision under Section 47 of the Civil Procedure Code, even assuming the same is maintainable in law.

10. Thus, looking from any perspective, we are of the considered view that the order of the learned single Judge cannot be sustained in the eye of law. There is no need for remand when the application itself is not maintainable. In such

view of the matter, we are inclined to allow this Original Side Appeal. Accordingly, the order passed by the learned single Judge is set aside and original side appeal stands allowed. However, we make it clear that we have not expressed anything on the maintainability of the original petition filed nor on the issues raised therein. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Assistant Registrar,
Original side High Court, Madras-104.

Copy to
The S.A.R Judicial Section,
High Court, Madras-104.

+1cc to Mr.A.Sivaji, Advocate, S.R.No.83834

+1cc to Mr.R.Kannan, Advocate, S.R.No.83814

O.S.A.No.157 of 2018

RJ (CO)
GSP(18/12/2018)

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