

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1975 of 2006

Hindustan Lever Ltd.,
101, Santhome High Road,
Chennai - 600 028.

... Appellant

vs

M/s.Saraswathi Agencies,
Prop.Ms.Sarasamma,
21/2, College Road, K.P.Mohalla,
Mysore

... Respondent

Prayer: Civil Miscellaneous Appeals filed under Section 37 of Arbitration & Conciliation Act, 1996, to set aside the order dated 08.02.2006 made in Arbitration Case No.1454 of 2005 on the file of Sri George Cheriyan, Sole Arbitrator.

For Appellant : Mrs.Radhika Krishnan for
M/s.Sarvabhauman Associates

For Respondent : Not ready in notice

J U D G M E N T

The appellant has filed this Civil Miscellaneous Appeal against the award dated 08.02.2006 passed by the learned Arbitrator in Arbitration Case No.1454 of 2005.

2.By the impugned award, the learned Arbitrator has dismissed the Arbitration Case on the ground that the Redistribution Stockist Agreement dated 10.09.1998 containing the Arbitration Clause was not signed by the appellant and was merely signed by the respondent. The operative portion of the order passed by the learned Arbitrator is reproduced below:-

Looking to the aforesaid meanings I am unable to agree with the submission by the learned counsel

for HLL that what is absent in the Redistribution Stockist Agreement is only a "counter signature" on behalf of HLL. HLL is one of the principal contracting parties and therefore had to be a signatory to the contract and not a "counter signatory" as a "counter signatory" only authenticates a signature already affixed by a person required to sign on a document. I therefore hold in the present case the Redistribution Stockist Agreement was signed only by the respondent i.e one of the parties to the agreement and was not signed by or on behalf of the other party i.e., the Claimant, HLL.

3. In the said proceedings also the respondent had remained unserved. The learned Arbitrator has dismissed the application on the ground that there was no arbitration agreement between appellant and the respondent.

4. Aggrieved by the same, the appellant has filed the present Civil Miscellaneous Appeal. In this appeal, the notice has not been served on the respondent till the date. I do not wish to keep this issue pending.

5. I have perused the award passed by the learned Arbitrator dismissing the application holding that no arbitration in absence of the signature of the appellant in the agreement, even though, the printed agreement, in which the respondent had agreed to bind herself with terms and conditions of Redistribution Stockist Agreement between them. Therefore, it would be incorrect to conclude that there was no arbitration clause for resolving disputes between the appellant and the respondent.

6. The learned counsel for the appellant relied on the decision of the Hon'ble Supreme Court in Govind Rubber Limited vs Louis Dreyfus Commodities Asia Private Limited, (2015) 13 SCC 477, wherein it was held as follows:-

13. It is equally well settled that while construing an arbitration agreement or arbitration clause, the courts have to adopt a pragmatic and not a technical approach. In Rukmanibai Gupta v. Collector [(1980) 4 SCC 556] , this Court held that: (SCC p. 560, para 6)

"6. Arbitration agreement is not required to be in any particular form. What is required to be ascertained is whether the parties have agreed that if disputes arise between them in respect of the subject-matter of contract such dispute shall be referred to arbitration, then such an arrangement would spell out an arbitration agreement."

15. A perusal of the aforesaid provisions would show that in order to constitute an arbitration agreement, it need not be signed by all the parties. Section 7(3) of the Act provides that the arbitration agreement shall be in writing, which is a mandatory requirement. Section 7(4) states that the arbitration agreement shall be in writing, if it is a document signed by all the parties. But a perusal of clauses (b) and (c) of Section 7(4) would show that a written document which may not be signed by the parties even then it can be arbitration agreement. Section 7(4)(b) provides that an arbitration agreement can be culled out from an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.

7. In view of the above decision cited by the learned counsel for the appellant and the observations, I am of the view, the award passed by the learned Arbitrator is liable to be set aside.

8. Accordingly, liberty is given to the appellant to issue fresh notice to the respondent at the correct address before venturing out to invoke the jurisdiction of this Court under Section 11 (6) of the Arbitration Act for appointment of an Arbitrator. Needless to state, such exercise has to be in accordance with law.

9. The Civil Miscellaneous Appeal stands disposed of. No cost.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Indian Council of Arbitration,
Chennai.

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

+1cc to M/s.Sarvabhauman Associates, Advocate sr.93117

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