

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**O.P.Nos.357 and 358 of 2010**

P.Daisy Rani

...Petitioner in O.P.No.357 of 2010

P.Sivaraj

...Petitioner in O.P.No.358 of 2010

Vs

1. M/s.Coimbatore Capital Ltd
Stock Exchange Buildings
No.686, Trichy Road,
Coimbatore – 641 005

2. Mr.S.Subramanian
Arbitrator
National Stock Exchange of India Ltd,
2nd Floor, Ispahani Centre,
Door No.123-124,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034

... Respondents in O.P.Nos.357
and 358 of 2010

Prayer in O.P.No.357 of 2010:- Original petition has been filed under Section 34(1) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 16.07.2009 and subsequent order under section 33 dated 23.09.2009 passed in Arbitration Case No.A.M.:CM/C-0127/2008 and allow the counter claim made by the petitioner in Arbitration Case No.A.M.:CM/C-0127/2008.

Prayer in O.P.No.358 of 2010:- Original petition has been filed under Section 34(1) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 16.07.2009 and subsequent order under section 33

dated 23.09.2009 passed in Arbitration Case No.A.M.:CM/C-0128/2008 and allow the counter claim made by the petitioner in Arbitration Case No.A.M.:CM/C-0128/2008.

For Petitioner in both O.Ps : Mr.Silambannan
Senior Counsel for
M/s.Kavya
Silambannan Associates

For Respondents in both O.Ps : Mr.H.Karthik Seshadri
for M/s.Iyer & Thomas

ORDER

The above two original petitions have been filed to set aside the award dated 16.07.2009 and subsequent order under Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'Act') dated 23.09.2009 passed in Arbitration Case Nos.A.M.:CM/C-0127/2008 and A.M.:CM/C-0128/2008 and allow the counter claim made by the petitioner in Arbitration Case Nos.A.M.:CM/C-0127/2008 and A.M.:CM/C-0128/2008.

2. The brief facts leading to file the above petitions are as follows:

The petitioners were trading in cash segment from the year 2003. As on 24.07.2008, their accounts showed a debit balance of Rs.1,76,760.67 and Rs.2,75,834.62. In spite of demand by the 1st respondent, the petitioner did not make payment to clear the debit balance. Hence, the claim made by the 1st respondent.

3. It is the main contention of the petitioner that they stopped trading from the year January, 2008 and the contract notes have not been signed by them for the rest of the claims. The learned Arbitrator considered the facts on record and passed an award directing the petitioners to pay a sum of Rs.1,76,760.67 and Rs.2,75,834.62 respectively with 12% interest from the date of application viz., from 17.09.2008 till the date of payment. Challenging the same, the original petitions are filed.

4. The main contention of the learned Senior Counsel appearing for the petitioners is that the Clause 2.12 of the agreement clearly stipulates that all the transactions and contract notes to be signed by the petitioners. Such being the position, without producing any contract notes with alleged transactions, the claim is not maintainable. The learned Arbitrator has not considered these facts and the burden of proof has not been shifted by the petitioner without any reason. It is his further contention that the question of making any demand as held by the Arbitrator did not arise at all, since the petitioner did not continue his trading from January, 2008. Therefore, the question of demanding the contract note did not arise at all. All these facts were not taken note by the learned Arbitrator. Hence, he prays to set aside the award passed by the learned Arbitrator.

5. The learned counsel for the 1st respondent submitted that the learned Arbitrator has considered the facts and factually found, in fact, the sufficient reasons have been given by the learned Arbitrator to disbelieve the contention of the 1st respondent. Therefore, such finding cannot be set aside under Section 34 of the Act by re-appreciating the entire evidence. It is well settled that the scope of interference under Section 34 of the Act is very limited except the award is illegal or contrary to law. Admittedly, under Section 34 of the Act, only when the award is beyond the scope of the contract, the award can be interfered normally. Similarly, this Court cannot re-appreciate the evidence as an Appellate Court to take a contrary view.

6. On perusal of the entire award, the learned Arbitrator taking note of the evidence adduced by both parties has, in fact, given four reasons to disbelieve the petitioners case. The learned Arbitrator in his finding has categorically held that the petitioners having traded between January 2008 to March 2008, must expected to know that during that period what are the 'buy' or 'sale' orders given by them, on what date and its quantity etc. It has also assessed the conduct of the parties and held that if the contract notes not signed and received by the petitioners, the natural conduct of the persons will be to demand the contract notes.

7. The learned Arbitrator therefore, assessed the conduct and also the trading practice has given reasons and took a view. Further

Arbitrator taking note of the trade practice and arrived at a finding, particularly, assessing the conduct of the parties, therefore, this Court cannot re-appreciate the entire evidence.

8. Accordingly, the view of the learned Arbitrator is justified. Hence, I do not find any other material to interfere with the award passed by the learned Arbitrator. None of the grounds set out under Section 34 of the Act has been made out to interfere the award.

9. Accordingly, the above original petitions are dismissed. No costs.

msv

23.07.2019

सत्यमेव जयते
WEB COPY

N.SATHISH KUMAR,J.

msv



O.P.Nos.357 and 358 of 2010

WEB COPY

23.07.2019