

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN
O.S.A.No.44 of 2018 and C.M.P.No.2581 of 2018

ABS Marine Services Private Limited
No.15, Valliammal Road, 1st Floor
Vepery, Chennai 600 007.

... Appellant/Respondent

-Vs-

National Institute of Ocean Technology
Velachery - Tambaram Road
Pallikkarana, Chennai 600 100

... Respondent/Petitioner

Prayer:-

Original Side Appeal under Clause 15 of the Letters Patent and Order XXXV Rule 1 of the Original Side Rules of the High Court of Madras, 1956 read with Section 37 of the Arbitration and Conciliation Act, 1996, against the order and decreetal order dated 22.12.2017 passed in O.P.No.511 of 2016, and consequently confirm the award dated 01.04.2016 passed by the learned Arbitrator.

O.P.No.511 of 2016:-

Original Petition praying that this Hon'ble Court may be pleased to (a) set aside the Award dated 01.04.2016 passed by the learned Arbitrator namely, the findings of the learned Arbitrator pertaining to issue nos.3 (partly), 4, 5, 6, 7, 14 and 15 contain therein (b) to order costs to the petitioner.

For Appellant : Mr.Manoj Menon for M/s.Menon,
Karthik & Mukundan

For Respondents : Mr.M.G.Pranavacharan for
M/s.Kochhar & Co

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 against the order of the learned Single Judge passed under Section 34 of the said Act on 22.12.2017 in O.P.No.511 of 2016. The learned Single Judge, set aside the arbitral award dated 01.04.2016, upon the claim petition filed by the respondent M/s.National Institute of Ocean Technology, wherein counter claim was filed by the contractor M/s.ABS Marine Services Private Limited. The contract between the parties was about the maintenance of the ships in question and the dispute arose in the context of the contractor M/s.ABS Marine Services Private Limited required to return the vessel of the respondent company M/s.National Institute of Ocean Technology on or before 15.12.2013, whereas in fact it was returned by them only on 30.01.2014, and so, for the interim period of 1½ months, when M/s.ABS Marine Services Private Limited claimed its maintenance charges, the claimant M/s.National Institute of Ocean Technology claimed damages for alleged illegal detention of the vessel by the contractor. The learned arbitrator passed the award, rejecting the claim as well as the counter claim of both the parties and the claimant M/s.National Institute of Ocean Technology was directed to return the bank guarantee of the contractor M/s.ABS Marine Services Private Limited.

2. The respondent M/s.National Institute of Ocean Technology, Chennai, filed an application under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as "The Act"), before the learned Single Judge of this Court, who, by the order impugned before us, set aside the arbitral award and further went ahead to allow the claim petition filed by M/s.National Institute of Ocean Technology with interest at the rate of 12% per annum. The operative portion of the said order in paragraph 18 is quoted below for ready reference.

"18. The decisions relied upon by the learned counsel for the respondent do not have any application to the case on hand. This case involved a total wrong application of law by the Tribunal. There is no appreciation of fact involved. The reasoning on the face of it is perverse. Accordingly, the award passed by the tribunal dated 01.04.2016 is set aside and the claim petition stands allowed as prayed for with interest at 12% per annum. No costs."

3. Aggrieved by the same, the contractor M/s.ABS Marine Services Private Limited is in appeal before us under Section 37 of the Act. While the learned counsel for the appellant Mr.Manoj Menon urged before us that the learned Single Judge could not have modified the arbitral award dated 01.04.2016, as Section 34 of the Act does not permit that, the learned counsel for the respondent Mr.Pranava Charan, relying upon certain judgments cited by him, urged that the findings in favour of the respondent given by the learned Single Judge deserve to be upheld and maintained. He also sought to urge that the learned Single Judge, in exercise of Section 34 of the Act, had power to modify the arbitral award also. He submitted that even the Honourable Supreme Court, in large number of cases, has done that viz., to modify the arbitral award or reduction of interest rate etc.,

4. In our considered opinion, the scope of Section 34 is very narrow and limited and the said provision cannot be construed as regular appeal power of the Court sitting in appeal over the arbitral award. The limited scope envisaged of interference by the Court is limited to set aside the award only, if the party making such application furnishes proof of the five contingencies enumerated in Section 34(2) of the Act. The said provision is quoted below for ready reference.

"34. Application for setting aside arbitral award -

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, if the decisions on the matters submitted to arbitration can be separated from those

enot so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal, or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or failing such agreement, was not in accordance with this Part;"

5. We are satisfied that, in the present case, the learned Single Judge has exceeded the scope of Section 34 application filed before him and while setting aside the arbitral award dated 01.04.2016, has erred, with great respects, in allowing the claim petition filed by the claimant / respondent company M/s.National Institute of Ocean Technology with interest at the rate of 12% per annum.

6. Therefore, we are inclined to allow the present appeal filed by the appellant M/s.ABS Marine Services Private Limited and set aside the entire order passed by the learned Single Judge to avoid any possibility of confusion in the mind of the learned Arbitral Tribunal by any observation or finding of the learned Single Judge. We therefore, set aside the order of the learned Single Judge dated 22.12.2017 and restore the matter back to the Arbitral Tribunal at the stage, where the evidence of both the parties was completed. Learned Arbitral Tribunal shall hear the arguments of both the parties again and pass a fresh arbitral award within a period of three months from today. For the aforesaid period of three months, the status quo shall be maintained by both the parties with respect to the encashment of bank guarantee, already made.

7. With these observations, the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kst

To

1. The Sub Assistant Registrar,
High Court, Madras-104.
2. The Posting Circle,
Original Side(OP),
High Court, Madras-104.

+lcc to M/s.Menon, Advocate, S.R.No.53296

+lcc to M/s.Kochhar & Co, Advocate, S.R.No.53297

O.S.A.No.44 of 2018

RSK(CO)
CS/29/07/2019



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