

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.6.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No.130 of 2019
and
C.M.P.No.11408 of 2019

M/s.Macro Marvel Projects Ltd.
rep. by its Director Mr.M.Ravikumar
GC, Gleneden Place,
No.813, Poonamallee High Road,
Kilpauk, Chennai 600 010.

Appellant

Versus

1. M.Arumugam
2. AR.Kumar
3. T.Amutha
4. T.Lavanya (Minor)
5. T.Hariprasath (Minor)
(RR4 and 5 Minors rep. by
Mother and Guardian, R3)
6. AR.Gomathi

Respondents

Prayer: Original Side Appeal filed under Section 37 of the Arbitration & Conciliation Act, 1996 read with Order XXXVI Rule 9 of O.S. Rules against the order of this court dated 6.3.2019 in O.P.No.697 of 2008.

For appellant : Mr.M.Rajaraman

For Respondents : Mr.PL.Narayanan

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Claimant/Appellant M/s.Macro Marvel Projects Limited has filed the present Appeal under Section 37 of the Arbitration & Conciliation Act, 1996, aggrieved by the order passed by the learned Single Judge dated 6.3.2019 in O.P.No.697 of 2008 under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the Arbitration Award dated 22.7.2008 passed by a

Hon'ble Judge/Arbitrator Mr.Justice R.Balasubramaniam.

2. The learned Single Judge upheld the Arbitral Award wherein the learned Arbitrator had rejected the claim of the Appellant-M/s.Macro Marvel Projects Limited on the ground that the Agreement under which the Respondents have agreed to sell the land to the Appellant-Company could not be performed by the vendors-Respondents on account of the fact that the lands in question were acquired by the State Government and therefore, the performance of the contract in question became impossible. About the refund of the advance amount, the learned Arbitrator held that since no prayer for refund was made by the claimant/Appellant, no such relief could be granted in terms of Section 22 (2) of the Specific Relief Act.

3. The learned Single Judge dismissed the Original Petition under Section 34 of the Act by the impugned order and upheld the decision of the learned Arbitrator that in view of the Agreement in question having been frustrated or rendered impossible of being performed, the learned Arbitrator was justified in denying the relief to the claimant.

4. The learned counsel Mr.M.Rajaraman, appearing for the Claimant/Appellant before us also urged that the learned Arbitrator exceeded the terms of reference and therefore, the Arbitral Award deserves to be set aside within the meaning of Section 34(2)(a)(iv) of the Arbitration and Conciliation Act 1996 which stipulates that Arbitral Award can be set aside by the court only if the party making the application furnishes proof that 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.

5. The learned counsel for the Appellant/Claimant also submitted that later on, the said land acquisition proceedings were dropped by the State, however, such fact has not been placed on record either before the learned Arbitrator or before the learned Single Judge. He further submitted that though the Notification to that effect was issued on 13.2.2014, the order passed by the learned Single Judge is dated 6.3.2019 but, the Award is dated 22.7.2008.

6. On the other hand, the learned counsel for the Respondent supported the judgment of the learned Single Judge.

7. Having considered the rival submissions made at the Board, we are of the clear opinion that there is no merit in the present Appeal filed by the Appellant/Claimant. The Arbitration Agreement entered between the parties clearly stipulates that any dispute arising out of the agreement between the parties can be referred to Arbitrator under the said Agreement. The parameters of dispute, upon being referred to

Arbitrator, cannot be narrowed down by contending that the issue relating to the refund ought to have been considered and some relief ought to have been granted to the Claimant/Appellant by the learned Arbitrator even if he came to the conclusion that the performance of the contract by the Vendor became impossible on the ground that the acquisition proceedings were initiated by the State Government at that point of time which were dropped subsequently. We are not impressed with the said submissions of the learned counsel for the Appellant.

8. The dispute arising out of the Agreement in its entirety was referred and was determined and adjudicated by the learned Arbitrator. In the absence of any prayer made by the claimant, even in alternative, for refund of any advance amount paid to the Vendor, the learned Arbitrator was justified in refusing the said alternative claim to the claimant. In any case, refusal of such relief to the claimant does not render such Arbitral Award open to be assailed within the meaning of Section 34(2) of the Act. The parameters laid down under Section 34 for setting aside the Arbitral Award are very narrow and have to be strictly construed to avoid tinkering or interference with the Arbitral Award by the courts of law in Section 34 of the Act. The entire purpose of providing such narrow scope for interference by the courts is to restrict such interference by the courts under Section 34 of the Act.

9. We do not find any such infirmity in the Arbitral Award in question much less in view of the cogent reasons given by the learned Single Judge while dismissing the petition under Section 34 of the Act. As far as the issue of dropping of the land acquisition proceedings at the subsequent stage after the Arbitral Award was passed is concerned, we cannot appreciate the same at this stage as the said fact is in no way on record before us. Therefore, we leave it open to the Appellant to seek his remedy in accordance with law.

With this observation, the Appeal is dismissed. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

ssk

To

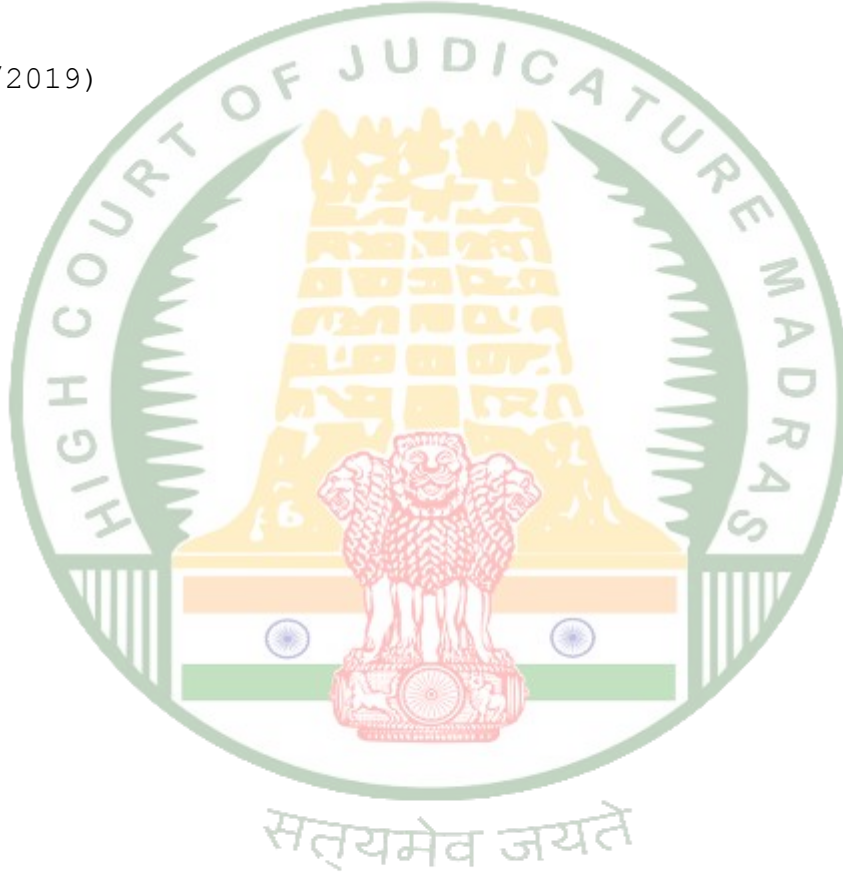
The Sub Assistant Registrar,
Original Side,
High Court, Madras

+1cc to Mr.M.Rajaraman, Advocate SR.No.47298

+1cc to Mr.PL.Narayanan, Advocate SR.No.47800

O.S.A.No.130 of 2019

MR(CO)
GMY(17/07/2019)



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