

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No. 182 of 2019
and
C.M.P.No. 16985 of 2019

Mr.Vinod Bhatla
No.132, St. Mary's Road
Alwarpet,
Chennai - 600 018. Appellant

Vs.

1. M/s. Matrimmony.com
(Previously known as Consim Info Private Ltd.,)
10th Floor, 2nd Tower, TVH Belicia Towers
MRC Nagar,
Chennai - 600 028.
2. Mr.Justice K.Chandru
"Sakthi Illam"
First Floor, Lalitha Mahal
New No.3, Justice Sundaram Road
Mylapore, Chennai - 600 004. ... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of
O.S.Rules read with Clause 15 of Letters Patent against the
Order dated 07.06.2019 passed by the learned Single Judge of
this Court made in O.P.No. 531 of 2015.

For Appellant : M/s. Zaffarullah Khan
for M/s.Velumani.T

For Respondents : M/s. John Zacharial
for Fox Mandal & Associates

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J)

The Original Side Appeal had been filed under Section 37 of the Arbitration and Conciliation Act 1996 by the petitioner in O.P.No. 531 of 2015 aggrieved by the Order of the learned Single Judge dated 07.06.2019 dismissing the said Original Petition.

2. The appellant Vinod Bhatla and the first respondent M/s. Matrimony.com had entered into a Leave and License Agreement on 17.03.2008 for a period of 11 months commencing from 20th March 2008 till 19th February 2009 with respect to the premises at Door No. DE-O, Ground Floor, Whispering Heights, No.132, St. Mary's Road, Alwarpet, Chennai - 600 018. The monthly License fee agreed was Rs.1,40,640/- subject to deduction of tax at source. Maintenance charge of Rs.1,000/- was also agreed to be paid to the Association of Residents. An amount of Rs.14,06,400/- was also paid as security deposit. It had been further agreed between the parties that the agreement can be terminated by giving notice of not less than 60 days in writing to the other party, and when Matrimony.com vacates the premises, the appellant Vinod Bhatla should return the security deposit. On failure, the same shall carry 18% interest per annum. There was also a clause in the Leave and License Agreement for dispute resolution by reference to Arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996.

3. The first respondent Matrimony.com claimed that they had vacated the premises on 31.10.2008 and had handed over vacant possession along with keys to the appellant/Vinod Bhatla. They further claimed that they had issued a notice on 05.09.2008 prior to vacating the premises, in which they had stated that they would vacate the premises by 31.10.2008. They further claimed that the appellant did not return the security deposit. There were exchanges of letters/notices between the parties. The appellant, Vinod Bhatla however stated that the first respondent had continued to be in occupation till 31.05.2009 and that therefore the License fee from November 2008 to May 2009 should be adjusted from the security deposit. The appellant thus claimed that a sum of Rs.1,74,216/- alone was payable to the first respondent.

4. The first respondent invoked the Arbitration clause and Mr. Justice K.Chandru, former Judge of this Court was appointed as the Arbitral Tribunal.

5. Both parties appeared before the Arbitral Tribunal and adduced evidence. Finally an award was passed on 22.06.2015 whereby the learned Arbitrator held that there was no legal infirmity in the issuance of notice prior to vacating the property and also held, as a fact, that the first respondent had vacated the premises and had handed over vacant possession along with fixtures on 31.10.2008. The Arbitrator finally held that the appellant, Vinod Bhatla had to pay a sum of Rs.26,84,680/- together with interest at the rate of 18% p.a., to the first respondent, Matrimony.com. A counter claim preferred by the appellant for compensation for usage of the furnitures and fixtures was dismissed.

6. Questioning that award, the appellant filed O.P.No. 531 of 2015 under Section 34 of the Arbitration and Conciliation Act 1996. By Order dated 07.06.2019, the learned Single Judge dismissed the said Original Petition. The reasoning of the learned Single Judge is extracted for better appreciation:-

"22. The words "public policy" or "opposed to public policy", find reference in Section 23 of the Contract Act and also Section 34 (2)(b)(ii) of the Arbitration and Conciliation Act, 1996. As stated above, the interpretation of the contract is matter of the Arbitrator, who is a Judge, chosen by the parties to determine and decide the dispute. The Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy."

17. Having regard to the above judgments on a perusal of the entire Award, though notice is required in writing has not been established. The fact remains that the Arbitrator has considered the entire evidence and analysed the facts, come to the conclusion that the petitioner is also residing in the same address. Taking note of the conduct of the Petitioner, held that even assuming that there is 5 days short in the notice has passed award after analysing factual aspects. When the Arbitrator has considered the entire facts and arrived a conclusion,

merely because such conclusion capable of some other interpretation that cannot be construed as violation of public policy. It is the contention of the learned counsel that as long as the reciprocal promise has not been performed by one of the contract party other need not to perform his obligation cannot be countenanced for the simple reason that the learned Arbitrator has factually found that all his contention is not correct. Hence, Section 50, 51 and 52 of the Contract Act, cannot be pressed into service for non-suit well versed Award on factual aspects. Hence, I am of the view that the finding of the Arbitrator cannot be interfered.

18. However, taking note of the fact that it is only a Lease and License Agreement invoking 18% of the contractual interest, in my view, though the parties are agreed such contractual agreement, thereby in order to give a quietus to the parties, the interest has to be on a reasonable basis and should not be exorbitant. Therefore, this Court is inclined to restrict the interest at the rate of 7.5% p.a. from 18% from the date of Award. Future interest at the rate of 7.5% is awarded.

19. As far as the counter claim is concerned, the Learned Arbitrator has factually found that though the amenities were provided, there is no agreement to compensate the alleged loss. Further it is not the case of the petitioner that the furniture were damaged and the damages were also not proved. Further it is also held that as the claimant already vacated the premises subsequent electricity dues after the period cannot be ordered to be paid by the claimant and the same is dismissed.

20. In the result the Award is modified on the above terms. Accordingly O.P. is partly allowed. Connected Application is closed. No costs."

7. Heard arguments advanced by Mr.Zaffarullah Khan, learned counsel for the appellant and Mr.John Zacharia learned counsel for the first respondent.

8. Mr.Zaffarullah Khan, learned counsel for the appellant stated that the Arbitral Tribunal had found that it had not been established that prior notice expressing intention to vacate the premises had actually been issued by the first respondent. The learned counsel stated that though copy of the notice dated 05.09.2008 had been produced, there was no proof that it had actually been sent and received by the appellant. The learned counsel assailed the reasoning of the Arbitrator that a presumption could be drawn of constructive notice of intention to vacate since the parties were residing/carrying on business in the same premises. He also stated that the first respondent did not vacate the premises on 31.10.2008 as alleged but had retained possession till May 2009 and stated that the evidence on these aspects were wrongly appreciated by the Arbitrator and consequently urged that the award should be interfered with since it was patently illegal and was in violation of public policy. The learned counsel strongly urged that the award and the order of the learned Single Judge upholding the award should both be set aside.

9. On the other hand, Mr.John Zacharia, learned counsel for the first respondent supported the order of the learned Single Judge and was insistent that it did not require any interference.

10. We have carefully considered the arguments advanced.

11. Section 34 of the Arbitration and Conciliation Act is as follows:-

"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 an 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 matters submitted to arbitration can be separated from those not 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; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force,

or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. -Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

12. A plain reading of the provision shows that the grounds for Court interference with an award are very limited and narrow and must be confined with the scope of the Section. No Court can go beyond the provision of law stipulated under Section 34 of the Arbitration and Conciliation Act 1996. A petition under Section 34 of the Act is not an appeal against the award of the Arbitrator. The learned Single Judge, who hears the petition under Section 34 of the Act is also not discharging the function of an Appellate Authority. The

grounds as stated in the provision are denial of opportunity or whether there is a fundamental breach of Indian law or that the award is contrary to fundamental policy of Indian Law or to Interest of India or contrary to justice or morality or if it is patently illegal. Moreover public policy violation should be so unfair and unreasonable as to shock the conscience of the Court.

13. In fact this Bench had an opportunity to examine the scope of Section 34 and Section 37 of the Arbitration Act in O.S.A.No.151 of 2019, order dated 08.07.2019 [M/S.Fomra Housing And Ors. vs M/S.Raagul Foundations Pvt. Limited] and had held as follows:-

"10. Having heard the learned counsel for the parties, and on considering the above averments and arguments of the learned counsel for the parties, we are satisfied that no case for interference was made out before the learned Single Judge under Section 34 of the Act. We are of the considered opinion that the manner of appreciation of the evidence of the learned Arbitral Tribunal cannot be a ground to set aside the Arbitral Award. It is simply outside the parameters of Section 34 of the Act and it is not a regular Appeal provided against the Arbitral Award. It would be contrary to the letter and spirit of Section 34 of the Act itself if such petitions were to be treated as regular Appeal against the Arbitral Awards. The narrow parameters provided in Section 34 of the Act which require to be established with averments and cogent evidence. None of them is found in the present case except the reiteration of the provisions of Sections 34 of the Act. The very emphasis placed by the learned counsel for the appellant before us on the manner in which the learned Arbitrator considered the documents leads us to believe that there is nothing beyond this in the case under Section 34 of the Act, which in our opinion could not satisfy the parameters of Section 34 of the Act. It is neither against morality nor justice much less against the public policy.

11. We are rather baffled with the

manner in which Petitions under Section 34 of the Act are so casually filed by invoking the court process against the very spirit to get expeditious justice through the Alternative Dispute Mechanism provided in the Act and the purpose is defeated. Mere filing of the Petition under Section 34 of the Act and pendency thereof will become an excuse for the parties not to permit the execution of the Arbitral Awards in such cases, even though there is no stay granted by High Court and that is precisely what defeats the purpose of the Act itself. Section 37 of the Act is a further remedy still on a narrower compass. The said provision is also quoted below for ready reference:-

"37. Appealable orders. -(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely: -

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a court from an order of the arbitral tribunal--

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

12. The scope of Appeal under

Section 37 of the Act is only to the extent of clause (a) refusing to refer the parties to arbitration under Section 8; (b) granting or refusing to grant any measure under Section 9 and (c) setting aside or refusing to set aside an Arbitral Award under Section 34. A mere refusal of the learned Single of this Court with cogent reasons for confirming the Arbitral Award is not a ground to entertain an Appeal under Section 37 of the Act. That only further delays and defeats the very purpose for which a remedy of this nature is provided for very exceptional circumstances in the Act.

13. We are completely satisfied that these parameters are not even touched, nor established with with proper averments and evidence in the present case. Therefore, the learned Single Judge, in our opinion, was perfectly justified in rejecting the Original Petition filed under Section 34 of the Act.

13. We do not find any merit in the present Appeal and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. The connected miscellaneous petition is also dismissed."

14. The contention of the learned counsel for the appellant revolve around re-appreciation of evidence. This is not permissible. The award cannot also be interfered with on the ground that the terms of the agreement were incorrectly interpreted by the Arbitrator. The repeated contentions of the learned counsel regarding the notice and the fact of vacating the premises are issues over which the Arbitral Tribunal had given a definite finding based on the pleadings and evidence before it. Those findings can never be stated to be in conflict with public policy of India or that they shock the conscience of this Court. There is also no patent illegality in such findings. The learned Arbitrator had considered the entire evidence and had also taken note of the fact that the appellant was residing in the very same

premises. The learned Arbitrator had also found that the appellant himself had referred to the notice dated 05.09.2008. The learned Single Judge had also examined all these facts and had modified the award only to the extent of reducing the rate of interest for 18% p.a., to 7.5/- p.a. Having given our anxious thought to the issues raised before us, we are convinced that the Appeal has no merits and deserves to be dismissed.

15. Accordingly, the Original Side Appeal is dismissed, however without any orders regarding costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vsg

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

+1cc to M/s.Fox Mandal & Associates, Advocate SR.No.67809
O.S.A.No. 182 of 2019
and
C.M.P.No. 16985 of 2019

SSV(CO)
GMY(24/01/2020)

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