

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.63 of 2014

Sree Kumar Textiles (P) Ltd.
rep. by its Managing Director Mr.V.Sathappan,
G-1, Industrial Estate,
Madurai – 625 007.

... Petitioner

Vs

1.M/s.Kaveri Hitech Spares,
rep. by its Proprietor K.Anand Subbiah,
7/240, West Street, Sivandhipuram,
Ambasamudram Taluk, Tirunelveli District,
rep. by its Power Agent R.Sathyanarayanan

2.Thiru. V. Sethu Solayar

... Respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitration award dated 23.06.2008.

For Petitioner : Mr.Baskar

For Respondents : No Appearance

ORDER

The respondent before the arbitral tribunal is the petitioner before this Court invoking the provisions of Section 34 of the Arbitration and Conciliation Act, 1996. The respondent herein had filed a claim petition before the sole arbitrator for recovery of a sum as detailed below:

i	Returnable advance	Rs.08,10,000.00
ii	Conversion Charges paid in excess	Rs.21,57,224.00
iii	Difference in the value of bailed goods and the returnable goods	Rs.11,00,000.00
Total		Rs.40,67,224.00
Add		
iv	Interest @ 18% p.a. For the above said amount from 25.09.2003 to the date of petition i.e., 25.08.2006 (for a period of 35 months)	Rs.21,35,292.60
Total		Rs.62,02,516.60/-

2. The respondent / claimant would submit that they had entered into Cotton Yarn Conversion Work Agreement with the petitioner herein. As per the terms of the agreement dated 10.11.2002 the petitioner herein would supply staple cotton to the respondent herein who would convert the same in to yarn.

3. The respondent / claimant had agreed to pay conversion charges and an advance of Rs.8,10,000/- was also paid which was required to be adjusted after two months in ten monthly equal installments or in the termination of the agreement. The agreement envisage the continuous supply of cotton without any stoppage and in the event of stoppage the respondent / claimant was required to be compensated. The respondent / claimant was also required to maintain 30% stock position as per the terms of the agreement. Excise duty was required to be paid by the petitioner herein. That apart a sum of Rs.35,000/- payable to the workers was also to be paid by the petitioner.

4. The respondent / claimant would submit that the petitioner had stopped despatching the yarn from 25.09.2003 on the ground that they required money over and above the conversion charges. A notice dated 30.09.2003, came to be issued by the respondent / claimant which were suitably replied to by the petitioner herein vide reply dated 06.10.2003. In the reply, the petitioner had contended that the respondent / claimant was not maintaining the cotton stock position for producing minimum of 2,000 Kg per day. By reason of the non-supply of adequate cotton, the machine had become idle and the petitioner had suffered a loss. Since, the petitioner was not coming forward to settle the dispute the respondent / claimant was constrained to invoke the Arbitration clause.

5. The petitioner herein on entering appearance had emphatically denied the allegations contained in the claim statement and further contended that there was no stoppage or non-supply by the petitioner herein. The petitioner denied the liability to pay the sum of Rs.35,000/- per week

towards wages of workmen. The petitioner would further contend that the sum of Rs.8,10,000/- which is paid as advance was an interest free advance for which the respondent / claimant cannot charge interest.

6. The learned arbitrator had ultimately passed the award for a sum of Rs.36,85,608/- together with interest at the rate of 12% per annum. This award is the subject matter of challenge before this Court.

7. During the arguments learned counsel appearing for the petitioner would contend that they are aggrieved only by interest being levied on the advance amount of Rs.8,10,000/-. This amount even according to clause 10 of the agreement dated 10.11.2002 was an interest free advance, that being the case the respondent / claimant is not entitled to claim interest.

8. Heard the learned counsel and perused the records.

9. Clause 10 of the agreement entered into between parties clearly indicate that the said advance is an interest free advance which is repayable either by adjusting the sum in ten equal monthly instalments after a period of two months from the date of agreement or at the termination of the agreement. In the instant case the amounts are sought to be recovered on the termination of the agreement. In view of the clause 10 of the agreement the learned arbitrator was wrong in imposing interest on this interest free advance amount. The arbitrator has clearly overlooked the terms of the agreement while passing the said award.

10. In the light of the above, the arbitral award dated 23.06.2008 is set aside with reference to the interest on the sum of Rs.8,10,000/-. In all other aspects the award is confirmed. The Original Petition is therefore partly allowed. No Costs.

20.02.2020

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Index : Yes/No
Speaking order/non-speaking order

P.T.ASHA, J.,

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