

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2021

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.61 of 2021

&

C.M.P.No.413 of 2021

Marg Limited,
Rep. by its Authorised Signatory,
No.4 / 318, Rajiv Gandhi Salai,
Kottivakkam, Chennai – 600 041 ... Petitioner

Vs.

1.McNally Bharat Engg. Co. Ltd.,
No.4, Mangoe Lane,
Kolkata – 700 001

2.Karaikal Port Pvt. Ltd.,
Keezhabanzore Village,
T.R.Pattinam,
Karaikal – 609 606

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India

to set aside / review the order passed under Section 16 (3) of the Arbitration and Conciliation Act, 1996 as amended dated 06.10.2020 in Arb. Case no.4 of 2019 on the file of the sole arbitrator Hon'ble Mr.Justice Ashok B.Hinchigeri (Retd) by allowing the Revision and thereby reject the second statement of claim dated 24.12.2019 filed by the claimant before the sole arbitrator.

For Petitioner : Mrs.Srividhya Aravindan
For Respondent 1 : Mr.Adityanarayan
For Respondent 2 : Mr.Vinod Kumar
M/s. J Sagar Associates

ORDER

The petitioner has invoked the Jurisdiction of this Court under Article 227 of the Constitution of India challenging the dismissal of their petition filed under Section 16 (3) of the Arbitration and Conciliation Act, 1996, herein after referred to the Act.

2. To appreciate the issue on hand, it is necessary to briefly allude to the facts that have culminated in the filing of the present revision. The petitioner and the 1st respondent had entered into contract dated 14.08.2010 and 01.03.2011 for the installation of stackers / reclaimers and conveyor systems which was to be installed by the 1st respondent. Disputes arose between the parties and thereafter a Tripartite Agreement dated 23.08.2012 and Supplementary Agreement dated 06.03.2013 came to be executed between the parties which included the 2nd respondent herein as well.

3. The arbitration proceedings was initiated by the 1st respondent by issuing notice dated 15.09.2017. The petitioner and the 1st respondent had appointed their respective arbitrators in A.P.No.1156 of 2017. Simultaneously, application under Section 9 of the Act was filed by the 2nd respondent before this Court. Initially, an interim order was granted. Thereafter, on entering appearance the

1st respondent had taken out an application to set aside the order on the ground that this Court lacked jurisdiction to entertain the petition. The learned Single Judge had originally allowed the application filed by the 1st respondent and had dismissed the Section 9 petition filed by the 2nd respondent. This order was taken on appeal in O.S.A.No.346 of 2017. By order dated 06.08.2018, the Division Bench of this Court, of which I am a party, had allowed the appeal holding that the venue and seat of arbitration was at Chennai and therefore it was the only the Courts at Chennai that had jurisdiction over the lis.

4. Meanwhile, the Calcutta High Court had appointed Hon'ble Mr.Justice Bhaskar Bhattacharyya (Retd.), Chief Justice of Gujarat High Court as the presiding arbitrator. On 06.08.2018 the statement of claim was filed by the 1st respondent. The order of the Calcutta High Court was taken up on challenge by the 2nd respondent before the Hon'ble Supreme Court and likewise the order in O.S.A.No.346

of 2017 was also challenged by the 1st respondent before the Hon'ble Supreme Court.

5. By order dated 08.03.2019, the Hon'ble Supreme Court was pleased to appoint Hon'ble Mr. Justice C.Nagappan (Retd.), Former Judge of the Hon'ble Supreme Court as the presiding arbitrator. Thereafter, by order dated 29.03.2019 the Hon'ble Supreme Court was pleased to substitute Hon'ble Mr.Justice Ashok B. Hinchigeri, Former Judge of the Karnataka High Court in place of the Hon'ble Mr.Justice C.Nagappan.

6. On 27.04.2019, the first sitting of the arbitral tribunal was held, in which all parties had appeared and the learned arbitrator had formulated the procedure for the arbitral proceedings. The statement of claim was directed to be filed within a period of four weeks. Meanwhile, there was an order of NCLT declaring a moratorium with regard to the petitioner company. Therefore, the proceedings

were kept on hold.

7. On 11.12.2019, after the order was lifted the learned arbitrator had a sitting which was attended by all parties and a revised time schedule was prescribed. Under this revised time schedule the statement of claim was to be filed by 24.12.2019 and four weeks thereafter the respondents in the arbitral proceedings, namely, the petitioner and the 2nd respondent were directed to file statement of defense and counter claim. The 2nd respondent on the very same day raised the issue of seat of arbitration since the Hon'ble Supreme Court had left this issue to the decision of the arbitrator.

8. By 27.01.2020, the learned arbitrator held Chennai to be the seat. The 1st respondent had also taken out an application under Section 17 of the Act before the learned arbitrator for a direction to the petitioner to furnish security. By order dated 17.03.2020, this application was ordered and the petitioner was directed to furnish the

security to the tune of Rs.66,42,00,000/-. It is submitted that the said payment has not been made to date.

9. The 2nd respondent had filed their statement of defense but however the petitioner had not filed their statement of defense as directed by the Court. Therefore, on 28.05.2020, issues were framed by the learned arbitrator and the matter was posted for evidence. At this juncture, on 31.08.2020, the petitioner has come forward with the petition which is now the subject matter of this revision.

10. In the application filed by the petitioner under Section 16 (3) the petitioner would submit that after the present arbitrator was appointed, the 1st respondent who had earlier filed a statement of claim on 06.08.2018 had filed a fresh statement of claim on 24.12.2019 raising new grounds which were inconsistent with the previous statement of claim and no leave had been obtained from the tribunal. The petitioner therefore contended that the learned

arbitrator ought not to have accepted the new statement of claim since proceedings before the present tribunal shall be deemed to be only a continuation of the previously appointed tribunal. The petitioner would also place reliance on the provisions of Order VI Rule 7 of the CPC to state that no new pleadings can be raised except by filing an amendment. Therefore, the petitioner has taken out this application for a direction that the arbitral tribunal shall not accept the statement of claim dated 24.12.2019 except by way of an amendment.

11. The respondents had vehemently opposed the said petition inter alia contending that the same was highly belated and that the petitioner having participated in the proceedings and accepting the schedule of procedure had not objected to the learned arbitrator directing the 1st respondent to file their statement of claim.

12. Ultimately, by order dated 06.10.2020, the learned

arbitrator had dismissed the said application. The learned arbitrator had held that the provisions of Section 16 (3) provides that any plea that the arbitral tribunal was exceeding the scope of its authority should be raised immediately. However, in the instant case the petitioner after participating in earlier proceedings has filed this petition only when the matter is listed for evidence. The learned arbitrator had also observed that the petitioner had not filed their statement of defense.

13. It is challenging this order that the present revision has been filed.

14. The grounds on which the said revision has been filed is that the arbitrator has not considered the fact that a new pleading is sought to be introduced in the 2nd claim statement without an amendment application being filed. The petitioner would further contend that the present application is nothing but a continuation of

the earlier proceedings.

15. The learned counsel appearing on behalf of the respondents would set out in detail the conduct of the petitioner in not questioning the procedure that had been framed by the arbitrator, not once but twice, wherein, the first date that was given was for the filing of the statement of claim. They would also highlight the fact that the petitioner herein has to date not filed his statement of defense and it can only be presumed that they have tacitly agreed to the claim put forward by the 1st respondent.

16. Mr.Vinod Kumar, learned counsel appearing on behalf of the 2nd respondent would submit that it is the 2nd respondent who has to be aggrieved by the new statement of claim since under the earlier claim statement the 1st respondent had only made a claim against the petitioner and not against the 2nd respondent, whereas, in the new statement of claim, the claim has been made against both the 2nd

respondent and the petitioner. The learned counsels in unison would submit that the only aim of the petitioner was to protract the proceedings and render the procedure of the arbitral proceedings otiose.

Discussion:

17. This revision is a sheer abuse of process of Court. A party who has participated in the proceedings relating to the drawing up of the schedule of arbitration from 27.04.2019 has not chosen to object to the filing of a fresh claim statement till August 2020 and without even filing a statement of defense has taken out the petition which is the subject matter of the present proceedings.

18. Further the application under Section 16 (3) is also not maintainable as the same is highly belated. The documents would reveal that on 27.04.2019, during the first hearing of the learned arbitrator the time schedule for the arbitral proceedings had been

arrived at. The petitioner herein was a party to the proceedings. No objection was raised when the arbitrator had directed the 1st respondent to file their statement of claim within a period of 4 weeks. Thereafter, on 11.12.2019, the second sitting of the learned arbitrator was held where the time schedule was revised. During this proceedings, the learned arbitrator had directed the claimants to file their statement of claim by 24.12.2019 and four weeks thereafter the petitioner and the 2nd respondent were directed to file their statement of defense / counter claim. The petitioner was a party to these proceedings and no objection was raised even then.

19. Thereafter, on 17.03.2020 orders were passed in the petition filed under Section 17 of the Act by the 1st respondent for a direction to the petitioner to furnish security. The learned arbitrator had directed the petitioner to furnish security to the tune of Rs.66,42,00,000/-. Even on that day there was no objection on the side of the petitioner.

20. Further, on 28.05.2020, the learned arbitrator had framed the issues and posted the matter for evidence. Even at this stage there was no objection on the part of the petitioner. It was only on 31.08.2020 that this petition has come to be filed.

21. The above sequence of evidence would clearly demonstrate how the attempt on the part of the petitioner is only to protract the proceedings. Further, as rightly pointed out by the learned counsel for the 2nd respondent, it is only the 2nd respondent who is truly aggrieved by a fresh statement of claim being filed since under the earlier statement of claim which was filed on 06.08.2018 there was no claim against the 2nd respondent and it is only in the statement of claim on 24.12.2019 that a claim has been made against the 2nd respondent as well.

22. That apart, the arbitral proceedings is now at the stage of

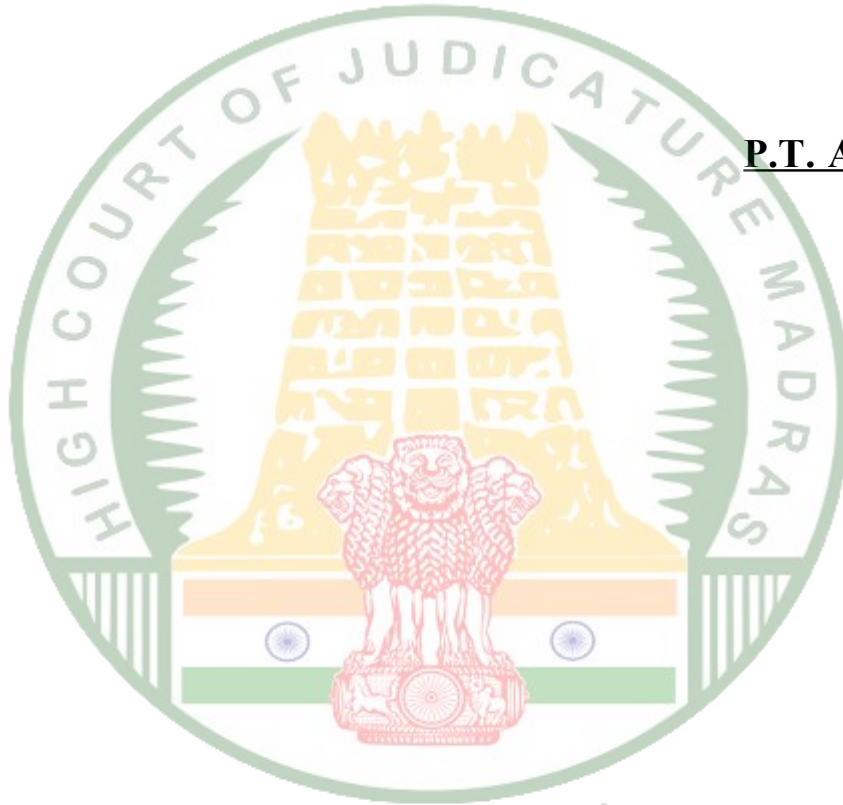
evidence. It is also to be borne in mind that there is a time schedule prescribed under the Act for completing an arbitral proceedings and parties cannot be allowed to take out frivolous application with the sole aim of protracting the proceedings.

23. I therefore do not find any reason for interfering with the well considered order of the sole arbitrator and consequently the Civil Revision Petition stand dismissed. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.

18.02.2021

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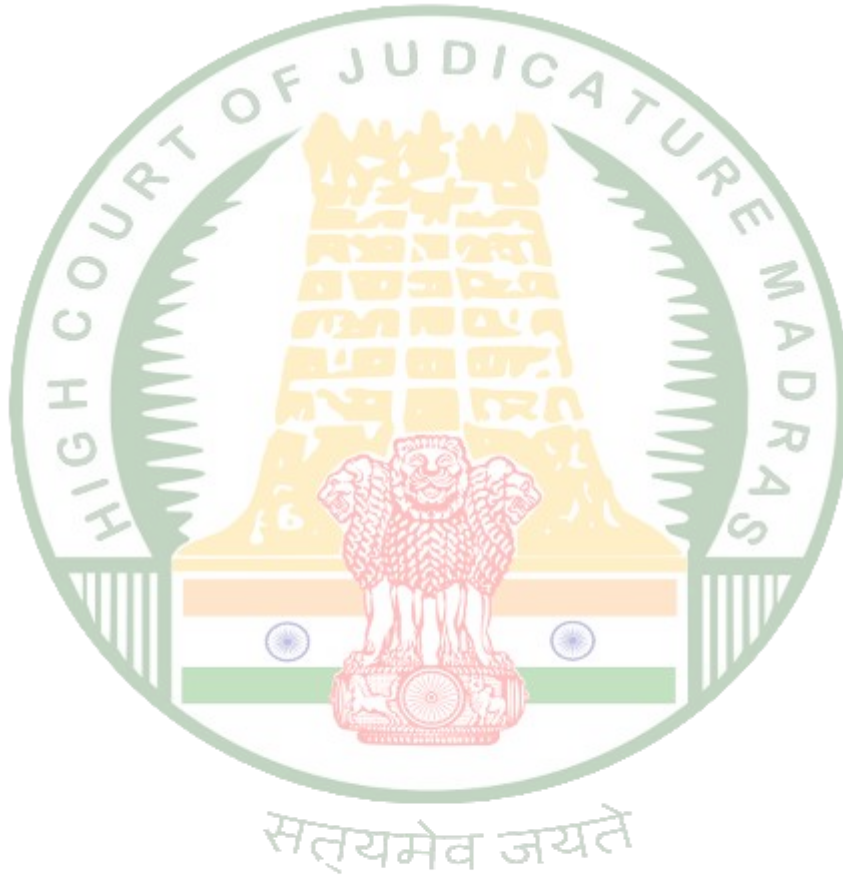
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