



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.334 of 2009

1. R.Nallathambi
2. K.Singaraj
3. K.Thangamuthu
4. K.Manickam
5. K.K.Kandasamy
6. A.K.Palanivel
7. P.Ponsingh

.. Appellants/Respondents 3 to 9

Vs.

1. S.P.S.Feeds by its
Proprietor S.Palani,
D.No.115-A, Paramathi Road,
S.P.Pudur, Namakkal. ..1st Respondent/Petitioner
2. Poorani Feeds (P) Ltd.,
by its Director Nirmala,
D.No.6/1189-A, Opp.Power Station,
Paramathi Road, Namakkal Town.
3. Nithiya .. Respondents 2 & 3/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to set aside the fair and decretal order dated 30.10.2008, passed in Arb.O.P.No.25 of 2006 on the file of the Principal District Judge, (Motor Vehicle Accident Claims Tribunal), Namakkal.

For Appellants : Ms.S.Aiyshwarya
for M/s.Sarvabhauman Associates

For Respondent 1 : Mr.R.Bharanidharan

J U D G M E N T

(The case has been heard through video conference)

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the order dated 30.10.2008, passed by the learned Principal District Judge, Namakkal in A.O.P.No.25 of 2006 under Section 34 of the Arbitration and Conciliation Act, under which, the learned Principal District Judge has set aside the arbitral award



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dated 18.03.2006, passed in favour of the appellants on the ground that there is no arbitration agreement between the parties to the dispute and no notice of arbitration was given to the respondents prior to the commencement of the arbitration.

2. This Court has perused the arbitral award dated 18.03.2006. As seen from the arbitral award, admittedly, no notice of arbitration was given to the respondents prior to the passing of the arbitral award, which was the subject matter of challenge in A.O.P.No.25 of 2006, filed by the first respondent under Section 34 of the Arbitration and Conciliation Act. Further, as seen from the arbitral award, there was no arbitration agreement in writing between the parties. Under Section 7 of the Arbitration and Conciliation Act, it is clear that any arbitration agreement must be in writing. Section 7 of the Act reads as follows:

"7. Arbitration agreement.— (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

3. The learned Principal District Judge has correctly considered the arbitral award and has correctly observed that there is no arbitration agreement between the parties and there is no notice of arbitration given to the respondents by the Arbitration Tribunal before the passing of the arbitral



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award in favour of the appellants. The relevant portion of the arbitral award reads as follows:

"ACCEPTANCE:

Both the parties had unconditionally accepted for Local Arbitration.

Both the parties had accepted the above named Arbitrators."

4. As seen from the arbitral award, there is no arbitral agreement in writing between the parties to the dispute. Even though the arbitral award states that the parties have unconditionally accepted the local arbitration, the arbitration agreement in writing is admittedly not there. When the respondents have categorically denied the existence of any arbitral agreement between the parties and they deny acquiescence to the jurisdiction of the Arbitration Tribunal, it is clear that there was no arbitration agreement in writing between the parties. Section 7 of the Arbitration and Conciliation Act has not been complied with and hence the learned Principal District Judge under the impugned order dated 30.10.2008, passed in A.O.P.No.25 of 2006 has rightly set aside the arbitral award dated 18.03.2006, passed against the first respondent.

5. During the course of his arguments, the learned counsel appearing for the first respondent would submit that subsequent to the passing of the impugned order, the first respondent company has also filed a suit for declaration against the appellants that no money is due and payable by them to the appellants. The said suit has also been decreed in their favour on 27.06.2011 in O.S.No.592 of 2006, on the file of the learned Principal District Munsif, Namakkal.

6. After taking into consideration the aforementioned factors, this Court does not find any merit in the appeal filed by the appellants under Section 37 of the Arbitration and Conciliation Act.

7. In the result, this appeal is dismissed and the impugned order passed by the learned Principal District Judge, Namakkal is confirmed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar



To

1. The Principal District Judge,
Namakkal

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.50068

C.M.A.No.334 of 2009

NRL (CO)
GMY (26/10/2021)