



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

WEB COPY

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No. 1751 of 2021

and

C.M.P. Nos. 9292, 9293 & 9295 of 2021

1. M. Gajendran
 2. M.G. Vasantha Kumar
- ... Appellants/Claimants

Vs.

1. M/s. Everest Blue Metals,
S.F. No.2523,
Veppilai Mettur (Vill),
V. Kongarapatti (Po),
Kadaiyampatti (TK),
Salem (dt) 636 351.
 2. R. Munirathinam
 3. M. Raja
- ...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 37 (2) (b) of the Arbitration and Conciliation Act, 1996 against the Order of the Learned Arbitrator in I.A. No.3 of 2020 in V.P. No.1 of 2020 in O.P. No.79 of 2020 dated 10.03.2021 in dismissing the interim application filed under Section 17 of the Arbitration and Conciliation Act, 1996.

For Appellants : Mr. G. Hari Hara Arun Somasankar

For Respondents : Mr. D. Shivakumaran

JUDGMENT

This Appeal has been filed under Section 37 of the Arbitration and Conciliation Act, challenging the order dated 10.03.2021 passed by the Arbitral Tribunal under Section 17 of the Arbitration and Conciliation Act rejecting the Appellants' application I.A. No.3 of 2020, wherein the Appellants have sought for direction to the respondents to deposit a sum of Rs.5,96,74,929/- along with interest at 18% per annum or to furnish security for the said sum failing which to order for the attachment of the properties in the schedule of the petition.



2. Heard the learned counsel on both sides.

3. It is the case of the Appellants who are the claimants in the Arbitration that the respondents have admitted their liability to the extent of the aforesaid amount and in such circumstances they have filed I.A.No.3 of 2020 before the Tribunal seeking for the aforementioned direction.

4. However, learned counsel for the respondents would submit that the respondents have never admitted their liability to the Appellants. Under the impugned order, the Arbitral Tribunal has given the following reasons for dismissing the application I.A. No.3 of 2020 filed by the Appellants under Section 17 of the Arbitration and Conciliation Act :

Moreover, the petitioners have not quantified the amount of claim from the respondents in the claim petition. On the other hand, the petitioners have prayed for a declaration that they are the major share holders of the first respondent firm and to direct the deposit of 60% of profit made by the first respondent firm and to appoint a receiver to ascertain the amount. Hence unless the petitioners have been declared as major share holders of the first respondent firm and the total amount of claim is ascertained, no order can be passed with regard to the direction to the respondents to deposit a sum of Rs.5,96,74,929/- or to furnish security for the said amount and failing which for the order of the attachment of the properties mentioned in the schedule of the petition. Moreover, any interim relief must be in conformity with the main prayer in the claim petition. Under these circumstances the present petition filed by the petitioners under Sec.17 of the Arbitration and Conciliation Act, 1996 for the relief as prayed therein cannot be accepted at this stage of the proceedings and it has to be rejected. Accordingly, I decided the Issue No.2 against the Petitioners. In view of the above findings, the Petition filed by the Petitioners under Section 17 of the Arbitration and Conciliation Act, 1996 to direct the Respondents to deposit a sum of Rs.5,96,74,929/- along with interest at 18% per annum or to furnish security for the said sum of Rs.5,96,74,929/- or failing which to order for the attachment of the properties mentioned in the schedule of the petition is hereby dismissed.



5. Any order passed under Section 17 of the Arbitration and Conciliation Act is a discretionary order. Only when the said discretion has not been exercised judiciously by not following sound legal principles, this Court is having the power to interfere under Section 37 of the Arbitration and Conciliation Act, 1996.

6. The reasons given by the Tribunal under the impugned order as stated supra cannot be considered to be injudicious. The learned Arbitrator has observed that the Appellant has not quantified the amount of claim from the respondents in the claim petition and only under those circumstances he has rejected the application I.A. No.3 of 2020. This Court does not find any infirmity in the impugned order.

7. The learned counsel for the Appellant would submit that the impugned order has been passed by the Arbitral Tribunal without deciding I.A. No. 2 of 2020 filed by the Appellant wherein the Appellant had sought an interim relief also under Section 17 of the Arbitration and Conciliation Act to appoint a receiver to ascertain the activities of the first respondent including the orders, machinery bought, client details and all other activities in relation to the first respondent. The learned counsel for the Appellant would submit that without deciding the aforementioned application, the learned Arbitrator has adjudicated and erroneously dismissed application I.A. No.3 of 2020. According to him, only after deciding I.A. No.2 of 2020, the Arbitrator ought to have decided I.A. No.3 of 2020. Admittedly, no order has been passed in I.A. No.2 of 2020 by the Arbitral Tribunal, till date.

8. The only matter under challenge before this Court is an order passed in I.A. No.3 of 2020. As observed earlier, as seen from the impugned order, there is no scope for interference as the Arbitrator has exercised his discretion judiciously while dismissing the application filed by the Appellant seeking for a direction to the respondents to deposit the alleged admitted amount. Since it is admitted by the learned Counsel appearing on both sides that I.A. No.2 of 2020 is still pending on the file of the Arbitral Tribunal, no prejudice would be caused to both the parties if a direction is issued to the Arbitral Tribunal to dispose of I.A. No.2 of 2020 on merits and in accordance with law before passing of any Arbitral Award.



9. In the result, this Civil Miscellaneous Appeal stands dismissed. However, a direction is issued to the Arbitral Tribunal to dispose of I.A. No.2 of 2020 filed by the Appellant seeking for appointment of receiver within a period of one month from the date of receipt of a copy of this Judgment before pronouncement of the final Arbitral Award in the main arbitration claim. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ab/vsi2

To

Mr.V.Paul Das B.A.B.L.,
Sub Judge (Retd)
Arbitrator,
NO.82/106, Perambur,
High Road Lane (South)
Jamalia, Chennai-600 012.

+1cc to Mr.G.Hari Hara Arun Somasankar, Advocate Sr.54409
+1cc to Mr.D.Shivakumaran, Advocate Sr.53831

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srg 16/11/2021