

Application No.2419 of 2021

in O.P.No.595 of 2019

N. SATHISH KUMAR, J.

This application has been filed to adjourn the proceedings in O.P.No.595 of 2019 so as to give the learned Arbitration Tribunal an opportunity to resume the arbitral proceedings or to take other action as in the opinion of the arbitral tribunal will eliminate the ground for setting aside the arbitral award.

2. Though several grounds have been set out in the affidavit in support of the above said relief, the sum and substance of the case of the application is that, the subject matter of the Memorandum of Understanding dated 08.05.2006 is related to the sale of procurement of land at Musivakkam Village, Kancheepuram District.

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3. It is the contention of the learned Senior Counsel appearing for the applicant that, in respect of the Memorandum of Understanding dated 18.06.2006, only a sum of Rs.1,83,00,000/- have been paid,

whereas, the claim has been made for a sum of Rs.5,33,76,000/- . Otherwise, his contention is that, the payments made by the wife of the respondent herein, in respect of other transactions, particularly, relating to the property situated at Ambatur, is also included in the claim petition. Therefore, his contention is that the Arbitrator has to resume the Arbitral Proceedings and clarify the reasons and also fill up the gap in the reasons, otherwise, the defects can be cured by the Arbitral Tribunal.

4. The learned Senior Counsel literally made his submission contending that, despite a stand taken by the applicant that the subject matter of the agreement dated 18.05.2006 covers only in respect of Rs.1,83,00,000/-, then the Arbitrator has included other claims, which has no way connected with the Memorandum of Understanding. Therefore, his submission is that the reasons given by the learned Arbitrator has to be clarified and the gap has to be filled by reasoning, by resuming the Arbitration proceedings. This is, in order to eliminate the ground for setting aside the award.

5. Reliance has also been placed before this court on the judgment passed by the Hon'ble Supreme Court ***in Dyna Tecchnologies Private Limited Vs. Crompton Greaves Limited reported in (2019)20 SCC 1***, wherein, at paragraph No.35, 36 and 37, it is held thus:

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with

inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

36. At this juncture, it must be noted that the legislative intention of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced."

6. A perusal of the above Judgement shows that, there is no

dispute with regard to the prepositions laid down by the Court. But here in this case, It is not the case that the arbitrator has not given any reasons or decisions is of bereft reasoning, or the Award contains some curable defects. The only contention of the applicant is that the amount paid by the wife of the respondent herein, in respect of some other transaction, has also been included in the claim application and therefore, there is a curable defects. Such contention, in my view, cannot be fall within the ambit of curable defect or to fill the gabs in the reasons. In fact, taking note of the various defence and claim statements, and also the pleadings in the claim petition as well as in the counter statement, the learned Arbitrator has framed necessary issues and considered all the relevant materials and passed detailed Order. Therefore, " Whether the amount included in the claim petition is beyond the terms of the contract or not?" is a matter of merit in the original petition, not in this application.

7. This court, therefore, unable to accept the contention of the

counsel for the applicant to direct the Arbitrator to resume the Arbitral proceedings and clarify the reasons. If such contention is accepted, it is nothing, but, directing the Arbitrator to review his own order. It is to be noted that, similar stand has also taken before the Arbitrator by the applicant herein that the payment made by his wife cannot be included in the transaction. The learned Arbitrator, considering the matter on merits, rejected the above said contentions. Therefore, at any such imagination, it cannot be said that, there is a curable defect or there is a lack of reasoning, warranting this court to direct the Arbitrator to resume the arbitral proceedings and to give further clarification. This court do not find any merits in this application.

8. Accordingly, this application is dismissed. No costs.

9. Post the main O.P.No.595 of 2019 on 09.11.2021 " for Arguments".

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