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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

OSA (CAD) NO.90 OF 2021

VS Ecommerce Ventures (P) Limited,
rep. by its Director V.S.Aathitiyan
No.40/8, Indira Gandhi Street,
Palayapallayam,
Erode - 638 011.

... Appellant/
Petitioner

.Vs.

Kavithalayaa Productions (P) Limited,
New No.9, Lambeth Avenue,
(Off. Bawa Street) Abhiramapuram,
Chennai - 600 018.

... Respondent/
Respondent

Prayer:

Appeal filed under Order XXXVI, Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent and Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 28.6.2021 made in O.P.No.932 of 2019 on the file of this Court.

Prayer in O.P.No.932/2019:

Petition filed under section 34 of the Arbitration and Conciliation Act, 1996 praying to a) set aside the impugned order dated 16.05.2019 passed by the Sole Arbitrator in the Arbitration proceedings, b) pass an order allowing the counter claim of Rs.3,40,000/-filed by the petitioner c) direct the respondent to pay the costs of this petition to the petitioner and d) pass such further or other orders given the fact and circumstances of the matter.



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For the Appellant

: Mr.S.S.Rajesh
for M/s.R and P Partners

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

There is no merit in this appeal since the only ground urged is a point of limitation.

2. The appellant questions the propriety of a judgment and order dated June 28, 2021 passed on a challenge to an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. The award dated May 16, 2019 held against the appellant herein on the ground of limitation.

3. According to the appellant, the arbitration court erred in reckoning the time spent by the parties in negotiation to be time which was liable to be excluded for the purpose of limitation in terms of a Supreme Court judgment reported at (2020) 14 SCC 643 (Geo Miller and Company Private Limited v. Chairman, Rajasthan Vidyut Utpadan Nigam Limited). The appellant asserts that the rule laid down by the Supreme court is that the period during which the parties were bonafide negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act. The appellant says that such proposition comes with the caveat that when limitation becomes an issue, the entire negotiation history between the parties must be specifically pleaded and placed on record for the court to draw a conclusion therefrom that the parties were bonafide negotiating towards an amicable settlement during such period.

4. The appellant claims that there was no such pleading in the statement of claim carried by the respondent to the arbitral reference nor were the papers pertaining thereto placed on record before the Arbitrator, for the Arbitrator to draw an inference therefrom that there was a bonafide attempt to negotiate towards an amicable settlement. Indeed, the appellant complains of the arbitration court finding out a new ground to deal with the objection of limitation that the appellant had raised before the arbitral tribunal, though the reason given in the award in such regard was quite distinct from the ground that weighed with the arbitration court.

5. It is necessary, in such context, to set out the relevant sentences from the arbitral award of May 16, 2019 as found in



paragraph 37 thereof:

"37. ... The Claimant in its email dated 13.09.2015 (Ex.C8) sought the transfer of Equity stake, to which the Respondent for the first time in its email dated 14.09.2015 (Ex.C9) pointing out several deficiency of the Claimant, expressed that it would be better to rescind the contract. So the limitation will start only from 14.09.2015 (Ex.C9). The Claimant issued Notice of Arbitration under Section 21 of the A & C Act on 09.12.2017 (Ex.C23). ..."

6. On the other hand, paragraph 8 of the impugned judgment records, inter alia, as follows on the question of limitation before proceeding to discuss the Supreme Court judgment referred to above in the following paragraph and holding that the period for negotiation would have to be excluded for the purpose of computing limitation:

"8. It is the contention of the learned counsel for the petitioner that as per Clause 6(c) of the Advisory Agreement, the Equity shares to be transferred within one month, therefore, the limitation starts from that period. Whereas claim has been filed in the year 2019, which is barred by limitation. Therefore, the above aspect is not considered by the learned Arbitrator. It is to be noted that the Advisory Agreement dated 07.08.2013 and the non-exclusive Revenue Sharing License Agreement dated 12.08.2013, the period of limitation expires only on 12.09.2016. In the meanwhile, notice of invocation of arbitration was also issued. The first mail sent by the petitioner is on 26.08.2016 and thereafter the petitioner sent settlement proposal. Immediately, the respondent sought for negotiation. Thereafter, notice of invocation has been sent. It is to be noted that one month time is stipulated in the agreement to pay the amount. The Arbitrator has considered the negotiations between the parties held that before expiry of three years period, the parties engaged in negotiations through various e-mails sent between them."

7. With respect, it was not necessary for the arbitration court to find a different reason for sustaining the award or rejecting the ground of limitation urged by the appellant herein. At paragraph 37 of the award, as quoted above, the Arbitrator had rendered a clear finding that the cause of action



arose for the respondent herein to lodge a claim on September 14, 2015 when the appellant herein purported to deny the equity shares that the respondent herein was entitled to in terms of the advisory agreement of August 7, 2013. It is evident that the Arbitrator reckoned that Article 113 of the Schedule to the Limitation Act, 1963 would be applicable since no specific Article prior thereto would cover the nature of the claim that was carried by the respondent herein to the arbitral reference. The Arbitrator noticed that the notice invoking arbitration was issued within a period of three years from the date when the cause of action accrued to the respondent herein. The Arbitrator referred to Section 21 of the 1996 Act and the significance of such provision in computing the period of limitation in an arbitral reference. There does not appear to be any infirmity in the reasons furnished in the award in such regard.

8. In such circumstances, the arbitration court should have confined itself to the reasons furnished by the Arbitrator without attempting to discover any further grounds to repel the objection as to the permissibility of the claim on the ground of limitation.

9. Since the only issue canvassed both before the arbitration court and in this appeal is the very right of the respondent herein to pursue the claim since, according to the appellant, it was barred by limitation and since the Arbitrator has adequately and appropriately dealt with the objection in the award dated May 16, 2019, the challenge to the arbitral award has been rightly rejected by the trial court, though the reasons in support thereof are those as indicated above and as found in the arbitral award itself.

10. OSA (CAD) No.90 of 2021 is dismissed. There will be no order as to costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

bbr

To:

- 1 The Sub Assistant Registrar,
Original Side,
High Court of Madras.



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The Arbitral Tribunal,
Hon'ble Justice K.Venkataraman,
Former Judge, Madras High Court, Madras.

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+1cc to Mr.R.P.Partners, Advocate, SR.NO.53767(10/02/2022)

OSA (CAD) No.90 of 2021

PPA (CO)
PM/25/11/2021