



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE S.KANNAMMAL

O.S.A.Nos.318 & 319 of 2019
and C.M.P.Nos.26018 & 26025 of 2019

O.S.A.No.318 of 2019
M/s.Goodwill Wealth Management Pvt Ltd.,
Previously M/s.Goodwill Comtrades Pvt Ltd.,
A Company incorporated under the
Companies Act,
No.9, 2nd Floor, Masha Allah Building,
Bheema Sena Garden Street, Mylapore,
Chennai - 600 004,
Rep. By its Head - Legal M.Shiek Sadique .. Appellant/Petitioner
(cause title accepted vide order dated 21.11.2019)

Vs

Hari Theertha .. Respondent/Respondent

O.S.A.No.319 of 2019

M/s.Goodwill Wealth Management Pvt Ltd.,
Previously M/s.Goodwill Comtrades Pvt Ltd.,
A Company incorporated under the
Companies Act,
No.9, 2nd Floor, Masha Allah Building,
Bheema Sena Garden Street, Mylapore,
Chennai - 600 004,
Rep. By its Head - Legal M.Shiek Sadique .. Appellant/Petitioner

Vs

Divya Theertha .. Respondent/Respondent

Prayer in O.S.A.No.318 of 2019: Appeal filed under Section 37 of the Arbitration and Conciliation Act to set aside the order dated 06.03.2019 made in O.P.No.312 of 2018 filed against the award dated 22.03.2018 made in MCX/ARB/4917A/17 on the file of Multi Commodity Exchange limited, Chennai.

Prayer in O.S.A.No.319 of 2019: Appeal filed under Rule 9 of O.S.Rules r/w Section 36 of the Arbitration and Conciliation Act to set aside the order dated 06.03.2019 made in O.P.No.313 of



2018 filed against the award dated 22.03.2018 made in MCX/ARB/4918A/17 on the file of Multi Commodity exchange limited, Chennai.

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For Appellant : Mr.G.Surya Narayanan
(in both cases)

For Respondent : No appearance
(in both cases)

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

These two appeals have been filed by the appellant seeking to invoke Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the award passed by the learned Arbitrator while dismissing the counter claim filed by the appellant and the dismissal of the applications filed invoking Section 34 of the Arbitration and Conciliation Act before the learned Single Judge.

2. The brief facts which are required for adjudication of these appeals are as follows:

2.1. The respondent in both the appeals being the husband and wife, having their respective accounts operated by them by logging in with the appellant, who is the broker trading in commodities. These accounts are being operated from time to time by the respondents. However, the Manger incharge by name Venugopal Reddy was also having private transaction with the respondents as could be seen from the documents filed by the appellant before the learned Arbitrator. This Venugopal Reddy appears to have committed fraud by defrauding many persons including the respondents. There were criminal proceedings initiated against him apart from the insolvency petition filed by him. In the insolvency petition filed, the respondents were shown as creditors.

2.2. The respondents filed claim petition inter alia contending that they have lost money as the said Venugopal Reddy was working as Manager of the appellant and, therefore, on the principle governing vicarious liability, the appellant is responsible. The money was collected by Venugopal Reddy on behalf of the appellant.

2.3. The appellant contended in the counter claim and by way of counter affidavit inter alia stating that the transaction between the respondents and Venugopal Reddy were distinct and different and in the accounts operated by the respondents, actually some amount is due to the appellant. The documents have been filed to show the accounts being operated by the



2.4. The learned Arbitrator though not granted the claim amount as sought for nonetheless passed an award against the appellant on the principle of vicarious liability as Venugopal Reddy received some amount from the respondents.

4. The learned Single Judge did not go into the said issue as it was felt that Section 34 of the Arbitration and Conciliation Act does not facilitate such an exercise. Accordingly, on the premise that the view of the arbitrator, as could be classified as either possibly or probably, there is no need to exercise the power under Section 34 of the Arbitration and Conciliation Act as the case on hand would not be amenable for such an exercise.

6 Learned counsel appearing for the appellant reiterated the aforesaid contentions made. In sum and substance, it is contended by him that the aforesaid two arguments raised in respect of documents have not been considered either by the Arbitrator or by the learned Single Judge. Therefore, the rigour of Section 34 of the Arbitration and Conciliation Act would apply and the materials having not been considered would be a



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ground to set aside the award. The learned counsel further submitted that the aforesaid materials are not even disputed by the respondents. Under those circumstances, there is no need to call for a finding as the accounts were operated by the respondents and the documents filed are the documents signed by them. In such view of the matter, the award requires to be interfered with as confirmed by the learned Single Judge. It is further submitted that the award can be interfered with when there is unintelligible reasoning. The learned Arbitrator while not considering the material has given his own reasoning on the basis of vicarious liability. In support of his contention, the learned counsel appearing for the appellant placed reliance on the judgment of Apex Court in Dyna Technologies Pvt Ltd., v. Crompton Greaves Ltd reported in MANU/SC/1765/2019 wherein it has been held as follows:-

"36. 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 reasoning 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



7. We find considerable force in the submission made by the learned counsel appearing for the appellant. When the matters are placed before the learned Arbitrator supported by adequate pleadings along with documents, a duty is imposed upon him to consider them. A finding given in ignorance of these materials would certainly be amenable for interference under Section 34 of the Arbitration and Conciliation Act. Therefore, it is not a possible or probable view especially when the documents marked by the appellant constitute the documents signed and sent by the respondents.

8. We are quite conscious of the law laid down by the Apex Court that there cannot be any modification or allowing of claim in exercise of power under Section 34 of the Act or Section 35 of the Act, as the case may be. However, when we are dealing with the case where the materials placed were not considered which constitute a communication sent by the respondents stating that their liability to the appellant can be adjusted, they obviously constitute primary materials to be considered before coming to a conclusion. Ignoring those materials without discussing them and coming to the conclusion on the question of probability cannot be sustained in the eye of law. There is obviously an element of applicability which is available to the arbitrator and that is the reason why the legislation has thought it fit to eschew the rigour of the Indian Evidence Act. However, the Arbitrator is expected to pass an award considering the relevant materials. Inasmuch as the Arbitrator has come to the conclusion, we have not hesitation in setting aside the award as confirmed by the learned Single Judge. We feel that it is the case which would come under the scope adumbrated under Section 34 of the Arbitration and Conciliation Act.

9. Accordingly, the award as confirmed by the learned single Judge stands set aside making it clear that setting aside of the award will not stand in the way of the respondents to workout their remedy afresh, if law so provides.

10. The original side appeals stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

mmi/ssm



To

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

2. Mr. V. Paul Das,
Sole Arbitrator,
Multi Commodity Exchange India Limited,
Chennai.

+2cc to Mr. G. Suryanarayanan, Advocate, S.R.No.41039, 41040

O.S.A.Nos.318 & 319 of 2019

RSI (CO)
GN(30/09/2021)