



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03RD DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P.No.963 of 2017

1. Mrs. VinnamalaPrasunna,
W/o. Late.V.V.Ramana Reddy,
M/s. PSVR Agencies,
Door No.401, P.R.Pradise Apartments,
Post Office Road, Balaji Nagar,
Nellore - 524 002. Andhra Pradesh.
2. Mrs. VinnamalaSudhir,
(Represented by POA Mrs.VinnamalaPrasunna)
S/o. Late.V.V.Ramana Reddy,
M/s.PSVR Agencies,
Door No.401, P.R.Pradise Apartments,
Post Office Road, Balaji Nagar,
Nellore – 524 002. Andhra Pradesh.
3. Mr. VinnamalaSai Srinivas,
S/o. Late.V.V.Ramana Reddy,
M/s. PSVR Agencies,
Door No.401, P.R.Pradise Apartments,
Post Office Road, Balaji Nagar,
Nellore – 524 002. Andhra Pradesh.

... Petitioners

Vs

1. The Waterbase Ltd,
Mr.ChandraMohan,
Office at Thappar House,
37, Monteith Road,
Egmore, Chennai – 8.



2. Mr.S.Giridhari,
Arbitrator,
New #35, Old #15,
Santhome High Road,
Mylapore, Chennai – 600 004.

... Respondents

Original Petition praying that this Hon'ble Court be pleased to set-aside the award passed by the 2nd Respondent dated 04/03/2017 for a sum Rs.64,76,533 (Rupees Sixty Four Lakhs Seventy Six Thousand and Five Hundred and Thirty Three only) payable to the 1st Respondent with applicable interest of 18% from 05/03/2017 till the date of full and final payment of realisation.

This Original Petition coming on this day before this court for hearing in the presence of Ms.G.Sridevi, advocate for the Petitioner herein and Mr.A.Rajan, advocate for the 1st Respondent herein and upon reading and for the Affidavit of Vinnamala Prasunna filed herein

it is ordered as follows:-

That Mr.R.Uma Shankar, Advocate, residing at Sri Lakshmi Rangan Nivas, New No.7, Kondi Chetty Street, Parrys, Chennai-1 (Mobile No.9444010639) be and is hereby appointed as a Sole Arbitrator to enter upon reference and adjudicate the matters.



3) That the learned Sole Arbitrator appointed herein shall be paid fees
ther incidental charges, fixed by him and the same shall be borne by
rties equally.

4) That both parties hereto shall bear their own costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
03RD DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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ED

24.09.2021

O.P.No.963 of 2017

ORDER

DATED: 03.09.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 27.09.2021

APPROVED ON : 27.09.2021

Copy to:

Mr.R.Uma Shankar, Advocate,
Arbitrator,
Sri Lakshmi Rangan Nivas,
New No.7, Kondi Chetty Street,
Parrys, Chennai – 1.
(Mobile No.9444010639)



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/9/2021

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Original Petition No.963 of 2017

1. Mrs.VinnamalaPrasunna

2. Mrs.VinnamalaSudhir
rep. by Power of Attorney
Mr.Vinnamala Prasunna

3. Mr.VinnamalaSai Srinivas

...

Petitioners

Vs

1. The Waterbase Ltd

2. Mr.S.Giridhari
Arbitrator

...

Respondents

PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, to set aside the award passed by the second respondent dated 4/3/2017 for a sum of Rs.64,76,533/- payable tot he first respondent with applicable interest of 18% from 5/3/2017 till the date of full and final payment of realisation.

For Petitioner

...

Ms.G. Sridevi

For respondents

...

Mr.A.Rajan
for R.1.

**ORDER**

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This Original Petition has been filed, to set aside the award passed by the second respondent, dated 4/3/2017, for a sum of Rs.64,76,533/-, payable to the first respondent with applicable interest of 18%, from 5/3/2017, till the date of full and final payment of realisation.

2. Brief facts which are necessary for the disposal of this Original Petition are as follows:-

The claimant is a public limited Company, incorporated under the Companies Act, 1956, an aquaculture unit engaging in Shrimp farming, processing of shrimp for export and manufacturing and selling International quality shrimp feeds under various brand names from the year 1990. The deceased V.V.Ramana Reddy approached the first respondent to appoint him as a dealer for Nellore area. The first respondent and deceased executed a Dealership Agreement, dated 15/6/2006 and further extended the Agreement by the letter of renewal, dated 17/6/2009 upto 16/6/2012. As per the agreement, the first respondent will extend the credit period to the deceased and in the event of overdue payment beyond the credit period, interest will be charged at the rate of 21% p.a., as mutually agreed. As the



3. The deceased issued twelve cheques to discharge part of the total admitted liability. Cheques were dishonoured. On 12/5/2010, the first respondent sent notice, but the same was returned by the Postal Department, on 15/5/2010, with remark on addressee “deceased.”. Thereafter, on 16/6/2010, first respondent had issued notice to all the legal heirs of the deceased and as per Clauses 9 and 10 of the agreement, the first respondent had called upon the petitioners to submit the dispute for arbitration, which was received by the first respondent, on 18/6/2010.

4. It is the contention of the learned counsel appearing for the first respondent before the arbitrator that the dealership agreement got lapsed on expiry of three years and as such, the arbitration claim based on the said agreement is not legal and valid.

5. The learned Arbitrator, taking note of the submission of both sides passed the following award:-

“The respondents are jointly and severally liable to pay Rs.64,76,533/- in favour of the claimant with applicable interest of 18% from 5/3/2017 till the date of full and final payment of realisation.”



6. Being aggrieved, the petitioners have come forward with the present Original Petition, praying for the relief as stated therein.

7. Heard Ms.G.Sridevi, learned counsel for the petitioners and Mr.S.A.Rajan, learned counsel for the first respondent.

8. The main contention of the learned counsel for the petitioners is that even though, the matter was heard, on 27/7/2013, award was passed on 4/3/2017, i.e., after three years. The award is liable to be set aside, since the very arbitrator is the financial controller of the first respondent. Hence prayed for dismissal.

9. The learned counsel appearing for the first respondent submitted that award has been passed after giving proper opportunities to the parties and after perusing all the materials produced before the Arbitrator. The very agreement itself provided for arbitration, in case of any dispute between the parties. Hence, the same cannot be found faulted in law.

10. Heard the arguments advanced on either side and perused the materials available on record.



11. Arbitrator is none other than the financial controller of the first respondent which fact has not been disputed. It is to be noted that the appointment of Arbitrator by the employer is not in accordance with law, as held in the judgment of the Hon'ble Supreme Court, in **PERKINS EASTMAN ARCHITECTS DPC & ANR Vs. HSCC (INDIA) LTD (2019 SCC ONLINE SC 1517)** and therefore, the very award cannot be sustained in the eye of law. That apart, it is relevant to be noted that award has been passed after a lapse of four years. There was no explanation whatsoever given by the arbitrator for an inordinate delay. This Court, in **K.DHANASEKAR VS. 1. THE UNION OF INDIA, REP. BY ITS GENERAL MANAGER, SOUTHERN RAILWAY, PARK TOWN, CHENNAI 600 003 AND 4 OTHERS (O.P.No.4 of 2015)** has held that in the absence of any explanation or reason for the delay in passing the award, such delay, in fact, certainly have an impact and violation of public Policy of India and set aside the award.

12. Yet another illegality apparent on the face of the award is that degree was passed against the legal heirs which is against the substantive provisions of C.P.C. If at all the degree has to be passed, it should be executed only as against the property of the deceased, whereas the learned Arbitrator has passed a personal degree. It is also cannot be sustained in the eye of law.



13. In view of the above, this Court is of the view that the award passed by the sole Arbitrator cannot be sustained in the eye of law and hence, the same is hereby set aside. It is open to the parties to go for fresh arbitration. At this stage, both sides submitted that there is no objection for appointment of any Advocate as an Arbitrator.

14. Accordingly, with the consent of both sides, Mr.Uma Shankar, learned Advocate is appointed as an Arbitrator, to enter upon reference and adjudicate the matters. Parties are at liberty to raise all the pleas legally.

15. This Original Petition is ordered as follows:

i. Mr.R.Uma Shankar, Advocate, Sri Lakshmi Rangan Nivas, New No.7, Kondi Chetty Street, Parrys, Chennai 1 (Mobile No.9444010639) is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matters.

ii. Learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date

of receipt of the Order.



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iii. The learned Sole Arbitrator appointed herein shall be paid fees and other incidental charges, fixed by him and the same shall be borne by the parties equally.

16. This Original Petition is ordered, accordingly, leaving the parties to bear their own costs.

Sd./-N.S.K.J.,
03.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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