



C.R.P.No.2996 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.2996 of 2022
and
C.M.P.Nos.16197 and 16200 of 2022

S.Madhan

... Petitioner

VS

1.A.Venkateshwaran

2.D.Subash

3.K.Prakash

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order made in I.A.No.3 of 2021 in Arbitration case between Dr.A.Venkateshwaran, Dr.K.Subash, Dr.K.Prakash and S.Madhan dated 21.07.2022 on the file of the Arbitral Tribunal comprising of Justice Mr.G.M. Akbar Ali (Retd.) Sole Arbitrator and order termination of the arbitration proceedings.

For Petitioner : Mr.Hari Radhakrishnan



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Arbitral Tribunal rejecting the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996.

2. The respondents herein initiated arbitration proceedings against the petitioner for recovery of Rs.9,34,26,256/- with interest from the petitioner herein and another. According to the respondents, the petitioner herein and another borrowed a sum of Rs.6,00,00,000/- from the respondents on 10.12.2015 agreeing to repay the same on or before 30.12.2016 together with interest at the rate of 9% per annum.

3. The petitioner herein who was arrayed as the 2nd respondent in the arbitration proceedings filed a petition under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the very maintainability of the claim petition before the arbitrator on the ground that there was no arbitration agreement between the petitioner and the respondents herein. The main contention of the petitioner herein is that the signature of the petitioner in the



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arbitration agreement was a forged one. It was the further contention of the petitioner that the memorandum of financial agreement which was basis for the initiation of the arbitration proceedings was examined by a Forensic Expert and compared with the admitted signatures of the petitioner in a Registered Sale Deed dated 07.02.2016, affidavit of the petitioner filed before the High Court dated 12.11.2018 in W.P.No.30085 of 2018 and letter of the petitioner dated 19.02.2016 addressed to the Deputy Director, Directorate General of Central Excise and Intelligence, Chennai. It was stated by the petitioner that the said expert by its report dated 10.03.2020 had opined that his signatures found in the Memorandum of Financial Agreement, should have been a forged one. Based on the said report, the petitioner had filed an application before the Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996 stating that there is no valid arbitration agreement and hence, the Arbitrator has no jurisdiction to enter arbitration.

4. The respondents herein filed a counter and resisted the same on the ground that based on the opinion given by a Private Expert, the petitioner cannot maintain the present application. Apart from that, the respondents also



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stated that in the present application, the petitioner only denied the genuineness of the Memorandum of Financial Agreement, but he had not denied the receipt of money, execution of cheques and contents of previous agreement dated 10.12.2015 which led to the financial agreement dated 28.03.2017 and consecutively, they prayed for dismissal of the application filed under Section 16 of the Arbitration and Conciliation Act, 1996.

5. During the course of the hearing of Section 16 application, the Arbitral Tribunal decided to obtain an independent expert opinion from the authorised Forensic Science Department and forwarded the document to one Dr.S.Raghuragavendra, Forensic Expert, Forensic and Biometric Investigation Service, Chennai. After receipt of opinion from the said expert, the Arbitrator concluded that as if the expert appointed by him rendered opinion that he was not a position to arrive at a definite conclusion based on the admitted and disputed signatures.

6. Ultimately, the Arbitral Tribunal concluded that the expert opinion is not conclusive and handwriting of a person can also be proved by other means.



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After observing so, the tribunal proceeded to hold that the plea of forgery concerning the Memorandum of Financial Agreement dated 28.03.2017 raised by the petitioner has to be decided based on the evidence to be adduced by both the parties and consequently, dismissed the Section 16 application. Aggrieved by the same, the petitioner is before this Court.

7. When the matter was posted for admission before going into the merits of the case, this Court entertain a doubt with regard to the maintainability of the revision.

8. Section 16 of the Arbitration and Conciliation Act, 1996 reads as follows:-

"16.Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and



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(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34."

9. The close scrutiny of the above Section would make it clear that an



objection to the jurisdiction of the Arbitral Tribunal shall be raised not later than to the submissions of the defence, subject to the exception under Sub-Section 4 of the Section 16. The Sub-Section 5 of Section 16 of the said Act, declares that if the Arbitral Tribunal takes a decision rejecting the plea, it shall continue with the arbitral proceedings and make an arbitral award. The next Sub-Section 6 of Section 16 of the said Act, talks about the remedy available to the aggrieved party against the decision of the Arbitral Tribunal rejecting his plea opposing jurisdiction.

10. The reading of Sub-Section 6 of Section 16 of the said Act, would make it clear that any party aggrieved by such an arbitral award, may make an application to set aside the same under Section 34. Therefore, it is clear that the Arbitral Tribunal after rejecting the plea opposing its jurisdiction shall continue with the arbitral proceedings and make an arbitral award. Any party aggrieved by such an award is entitled to question it only under Section 34 of the said Act. Therefore, the party aggrieved by an order rejecting his plea opposing the jurisdiction of arbitral tribunal can very well canvass the same while challenging the main award.



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11. The scope and ambit of the power of the High Court to interfere with the orders of the Arbitration Tribunal came up for consideration in ***Bhaven Construction vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd., (Civil Appeal No.14665 of 2015, dated 06.01.2021)*** reported in (2022) 1 SCC 75 the relevant observations of the Hon'ble Apex Court is as follows:-

"11. Having heard both the parties and perusing the material available on record, the question which needs to be answered is whether the arbitral process could be interfered under Article 226/227 of the Constitution, and under what circumstance?"

12. We need to note that the Arbitration Act is a code in itself. This phrase is not merely perfunctory, but has definite legal consequences. One such consequence is spelled out under Section 5 of the Arbitration Act, which reads as under

"5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

The non-obstante clause is provided to uphold the intention of the legislature as provided in the Preamble to adopt UNCITRAL



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Model Law and Rules, to reduce excessive judicial interference which is not contemplated under the Arbitration Act.

13. The Arbitration Act itself gives various procedures and forums to challenge the appointment of an arbitrator. The framework clearly portrays an intention to address most of the issues within the ambit of the Act itself, without there being scope for any extra statutory mechanism to provide just and fair solutions.

14. Any party can enter into an arbitration agreement for resolving any disputes capable of being arbitrable. Parties, while entering into such agreements, need to fulfill the basic ingredients provided under Section 7 of the Arbitration Act. Arbitration being a creature of contract, gives a flexible framework for the parties to agree for their own procedure with minimalistic stipulations under the Arbitration Act.

15. If parties fail to refer a matter to arbitration or to appoint an arbitrator in accordance with the procedure agreed by them, then a party can take recourse for court assistance under Section 8 or 11 of the Arbitration Act.

16. In this context, we may state that the appellant acted in accordance with the procedure laid down under the agreement to



unilaterally appoint a sole arbitrator, without Respondent 1 mounting a judicial challenge at that stage. Respondent 1 then appeared before the sole arbitrator and challenged the jurisdiction of the sole arbitrator, in terms of Section 16(2) of the Arbitration Act.

17. Thereafter, Respondent 1 chose to impugn the order passed by the arbitrator under Section 16(2) of the Arbitration Act through a petition under Article 226/227 of the Indian Constitution. In the usual course, the Arbitration Act provides for a mechanism of challenge under Section 34. The opening phrase of Section 34 reads as

"34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3)"

The use of term "only" as occurring under the provision serves two purposes of making the enactment a complete code and lay down the procedure.

18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In Nivedita Sharma v. COAI, this Court referred to several judgments and held: (SCC p.343, para 11)

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the



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High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation – L. Chandra Kumar v. Union of India. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. (emphasis supplied). This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

.....

26. It must be noted that Section 16 of the Arbitration Act, necessarily mandates that the issue of jurisdiction must be dealt.



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first by the tribunal, before the Court examines the same under Section 34. Respondent 1 is therefore not left remediless, and has statutorily been provided a chance of appeal. (emphasis supplied). ..."

12. The reading of above decision of the Hon'ble Apex Court would make it clear that the power under Article 227 of the Constitution of India can be exercised to interdict the arbitral process only in exceptional cases and rarest of rare cases. The interference is permissible only in cases where the order of the Arbitral Tribunal is so perverse and patently illegal and the illegality perpetuated by such order is incapable of being corrected at latter point of time. The object is to facilitate completion of arbitration proceedings at the earliest.

13. In the case on hand, the petitioner herein disputes his signature found in the arbitration agreement. The petitioner in support of his plea, produced the opinion given by a Private Expert. The Arbitral Tribunal on its part appointed an independent expert. He also has given an opinion. The learned Arbitrator after receipt of opinion from the expert appointed by him, concluded that the



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expert opinion is not final and binding, the plea of forgery raised by the petitioner has to be decided based on the evidence to be adduced by both the parties. I do not find any error in the reasoning given by the learned Arbitrator.

14. The learned counsel for the petitioner mainly contended that the opinion given by the expert appointed by the Arbitrator is also in his favour. Therefore, the arbitrator erred in saying that there are two contradictory reports. The perusal of the opinion given by the expert appointed by the arbitrator is based on the comparison of questioned signature with the admitted signature obtained from the petitioner on 17.04.2021, after initiation of arbitration proceedings. The questioned documents viz., Memorandum of Financing Agreement was dated 28.03.2017, the sample signatures S1 to S11 were obtained subsequent to the dispute. Another sample signature S12 was dated 10.12.2015.

15. Therefore, even the expert appointed by the Arbitrator did not use any contemporary signature for comparison. Therefore, it is not safe to decide the plea of forgery only based on the report of the experts. The opinion given



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by the experts shall be considered along with other evidences to be let in by the parties.

16. Such a conclusion reached by the arbitrator cannot be said to be so perverse entitling the petitioner to invoke supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The question of forgery raised by the revision petitioner is a disputed question of fact and the same has to be decided only based on the evidence. It is not safe to decide the question of forgery merely based on opinion given by the experts. The experts opinion has to be considered along with other evidence to be let in by the parties.

17. In the case on hand, the Arbitrator came to the conclusion that the plea of forgery raised by the petitioner has to be decided based on the evidence adduced by both the parties. The conclusion reached by the Arbitrator is not so perverse warrenting interference to this Court under Article 227 of the Constitution of India.

18. It has been held by the Hon'ble Apex Court in ***Deep Industries***



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Limited v. Oil and Natural Gas Corporation Limited reported in (2020) 15

WEB C **SCC** 706 where an application filed under Section 16 of the Act is dismissed, no appeal is provided to challenge said order of dismissal. The aggrieved party must await for the passing of a final award and while challenging award under Section 34, we can raise the question. The relevant observations of Apex Court is as follows:-

"22. One other feature of this case is of some importance. As stated hereinabove, on 09.05.2018, a Section 16 application had been dismissed by the learned Arbitrator in which substantially the same contention which found favour with the High Court was taken up. The drill of Section 16 of the Act is that where a Section 16 application is dismissed, no appeal is provided and the challenge to the Section 16 application being dismissed must await the passing of a final award at which stage it may be raised under Section 34. ..."

19. In view of the law laid by the Hon'ble Apex Court in **Bhaven Construction vs. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.,** and **Deep Industries Limited v. Oil and Natural Gas Corporation Limited** cases, I am not inclined to interfere with the order passed by the learned



Arbitrator.

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20. Accordingly, the Civil Revision Petition is dismissed. No costs.

Consequently, the connected civil miscellaneous petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

dm



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To

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Hon'ble Mr.Justice G.M.Akbar Ali (Retd.)
Sole Arbitrator,
Arbitral Tribunal,
No.108/64, 2nd Floor, Catholic Centre,
Armenian Street,
Parrys, Chennai – 600 001.



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S.SOUNTHAR, J.

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