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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 25TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No. 966 of 2017

In the matter of Arbitration and
Conciliation Act, 1996

And

In the matter of the Award passed on
28.08.2017 in Arbitration Dispute
Between M/s. SEARCH LIGHT
PRODUCTION and Mr.P.BALA
(arising out of O.P.No. 651 of 2011)

P. Bala,
No.126, Vivekananda Street,
Amman Apartments,
Chennai – 93.

.. Petitioner

-Vs-

1. Search Light Production,
By its Proprietor, Mr.Rajiv Babbar,
Flat No.1, Amar Nikethan J.B.Nagar,
Antheri East,
Mumbai – 400 059.

2. Mr. Justice K.B. Sivasubramaniam (Retd.,)
Sole Arbitrator,
No.47, Pulla Avenue,
Shenoy Nagar,
Chennai – 600 030.

... Respondents



Original Petition praying that this Hon'ble Court be pleased to (a) set aside the Award dated 28.08.2017 passed in favour of the 1st respondent ; (b) direct the 1st respondent to pay the petitioner a sum of Rs.3,31,30,000/- with interest at the rate of 18% per annum ; AND (c) direct the 1st respondent to pay the petitioner the costs of this petition.

This Original Petition coming on this day before this court for hearing in the presence of Mr.V.Ayyadurai, Senior counsel for Mr.N.Velmurugan, Advocates for the petitioner herein and Ms.Madhu Preetha Elango, for M/s.R.Parthasarathy, Advocate for the respondents herein, and upon reading the petition filed herein, and this Court having observed that the petitioner's role is only to direct the feature film for which he will be paid his remuneration and he is also entitled for profit sharing and as per contract dated 27.04.2009, the petitioner's financial commitment is zero and having found the contract unworkable due to the high financial budget, which was not expected, the first respondent (Producer) chose to withdraw from the contract and the withdrawal from the contract by the first respondent is not opposed to public policy as any prudent businessman will do the same in similar circumstances and the Arbitrator has rightly rejected the contention of the petitioner and there is no merit in this petition as there is no infirmity



WEB COPY That the Original Petition in O.P.No.966 of 2017 be and is hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 25TH DAY OF JANUARY 2022.

Sd/-

ASSISTANT REGISTRAR (O.S.-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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ED
11.02.2022

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O.P.No. 966 of 2017

ORDER

DATED: 25.01.2022

THE HON'BLE MR. JUSTICE
ABDUL QUDDHOSE

FOR APPROVAL : 11.02.2022

APPROVED ON : 14.02.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2022

Coram:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.P.No.966 of 2017

P.Bala

... Petitioner

vs.

1.Search Light Production

by its Propreitor Mr.Rajiv Babbar Flat No 1
Amar Nikethan J.B. Nagar Antheri East
Mumbai - 400059

2.Mr Justice K.B.SivaSubramanim

Retd. Sole Arbitrator No. 47 Pulla Avenue
Shenoy Nagar CH-30

... Respondents

Original Petition filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking a) to set aside the Award dated 28.08.2017 passed in favour of the 1st respondent; b) to direct the 1st respondent to pay the petitioner a sum of Rs. 3,31,30,000/- with interest at the rate of 18% per annum; and c) to direct the 1st respondent to pay the petitioner the costs of this petition.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel,
for Mr.N.Velmurugan

For Respondents : Ms.Madhu Preetha Elango,
for Mr.R.Parthasarathy

**ORDER**

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This petition has been filed under section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award dated 28.08.2017 passed by the Arbitral Tribunal against the petitioner calling upon the petitioner to pay the respondent a sum of Rs.1,12,77,772/- together with interest @ 18% per annum from 27.04.2009 till the date of Arbitral Award and interest at the same rate from the date of the Arbitral Award till the date of realisation.

2. The petitioner claims to be a reputed Film Director. The first respondent is a producer of Feature Films. Under an agreement dated 31.07.2008, the petitioner was appointed by the first respondent as a Director for the production of a Feature Film to be commenced in the first half of 2009. Under the terms and conditions of the agreement, the first respondent agreed to pay an advance of Rs.1,12,77,772/- to the petitioner. The details of the payments and other terms are reflected in the agreement signed between the parties. Since the first respondent withdrew from the contract by exercising its power under clause 10 of the agreement dated 31.07.2008, they sought for refund of a sum of Rs.1,12,77,772/- paid to the petitioner as according to the first respondent, even before the production of Feature Film could commence, the contract has been withdrawn by the first



respondent on the ground that the film project was not workable due to increase in the financial budget and other financial implications. Since the petitioner failed to refund the advance amount of Rs.1,12,77,772/-, the first respondent initiated arbitration in accordance with arbitration agreement and a sole Arbitrator was appointed by this Court on 11.09.2014 under section 11 of the Arbitration and Conciliation Act, 1996 in O.P.No.615 of 2011. The Sole Arbitrator appointed by this Court acted upon the arbitral reference and after hearing both the parties and based on the pleadings and evidence available on record, has passed the impugned arbitral award dated 28.08.2017 referred to supra. Aggrieved by the same, the petitioner has filed this petition under section 34 of the Arbitration and Conciliation Act.

3. Heard Mr.V.Ayyadurai, learned senior counsel representing Mr.N.Velmurugan, learned counsel for the petitioner and Ms.Madhu Preetha Elango, learned counsel representing Mr.R.Parthasarathy, learned counsel for the first respondent.

4. Admittedly, the petitioner has received a sum of Rs.1,12,77,772/- from the first respondent as per the agreement dated 31.07.2008 for directing the Feature Film to be produced by the first respondent. As per the agreement, the first respondent had agreed to utilise the petitioner's services



as a Director for the production of a Feature Film to be commenced in the first half of 2009. Under clause 10 of the agreement, the first respondent being a production company, if it does not intend to commence/continue the production of the Feature Film for whatsoever reason can seek for refund of advance amount from the petitioner and the petitioner on receipt of the letter of communication in writing from the first respondent shall refund within a period of two weeks from the date of letter of communication in writing from the first respondent. The receipt of a sum of Rs.1,12,77,772/- from the first respondent is acknowledged by the petitioner as seen from the documents filed along with the typed set of papers as well as from his statement of defence which was filed before the learned Arbitrator.

5. Mr.V.Ayyadurai, learned Senior Counsel for the petitioner drew the attention of this court to the agreement dated 31.07.2008 entered into between the petitioner and the first respondent and would submit that the Arbitral Tribunal under the impugned arbitral award has misapplied the terms and conditions of the agreement dated 31.07.2008. He would submit that the first respondent ought to have followed the procedure contemplated under clause 25 of the agreement dated 31.07.2008 which stipulates the issuance of 15 days notice by the first respondent to the petitioner before terminating the contract.



6. Mr.V.Ayyadurai, learned Senior Counsel also drew the attention of this court to the Arbitral Award dated 28.08.2017 and would submit that the Arbitral Tribunal has erroneously applied clause 10 of the agreement which enables the first respondent to withdraw from the contract and according to him, apart from the said clause, being opposed to public policy, the said clause will also not apply in view of the fact that the production of the Feature Film has already commenced and Artists for the film were also engaged by the petitioner.

7. Mr.V.Ayyadurai, learned Senior Counsel also drew the attention of this Court to the statement of claim dated 20.11.2014 filed before the Arbitral Tribunal by the first respondent as well as to the counter claim dated 11.12.2014 made by the petitioner before the Arbitral Tribunal for the losses suffered by the petitioner due to the alleged breach of contract committed by the first respondent by terminating the contract arbitrarily. He would also submit that the Arbitral Tribunal has erroneously rejected the counter claim filed by the petitioner for a sum of Rs.3,31,30,000/- along with 18% interest per annum on the ground of limitation. According to him, as seen from the defence statement of the petitioner filed before the learned Arbitrator, the petitioner has totally spent Rs.1,40,67,733/- towards pre-production expenses for producing Feature Film. According to him,



limitation period starts only after filing of the claim statement by the respondent before the Arbitral Tribunal, but according to him, the Arbitral Tribunal has rejected the counter claim erroneously on the ground of limitation. According to him, the statement of claim was made by the respondent before the Arbitral Tribunal on 20.11.2014 and the counter claim was made by the petitioner on 11.12.2014 and therefore, the counter claim is within the period of limitation. However according to him, arbitrarily and not in accordance with law, the Arbitral Tribunal has rejected the counter claim filed by the petitioner and has erroneously allowed the claim filed by the first respondent.

8. Mr.V.Ayyadurai, learned Senior Counsel for the petitioner also drew the attention of this Court to the judgement of the Hon'ble Supreme Court in the case of *Voltas Limited vs. Rolta India Limited* reported in **(2014) 4 SCC 516** in support of his submission that the period of limitation for a counter claim commences only from the date of institution of the arbitral proceedings by the first respondent and hence, he would submit that since the arbitration as seen from the statement of claim made by the respondent before the Arbitral Tribunal was made only on 20.11.2014, the counter claim made by the petitioner against the respondent as seen from the counter claim dated 11.12.2014 is well within the period of limitation.



9. Per contra Ms.Madhu Preetha Elango, learned counsel for the first respondent would submit that the first respondent has rightly exercised the power under clause 10 of the agreement dated 31.07.2008 and has withdrawn from the project after having paid an advance of Rs.1,12,77,772/- to the petitioner, only after coming to know that the Film Project is not financially workable as the budget cost is very high. She would submit that clause 10 of the contract dated 31.07.2008 enables the first respondent to withdraw from the contract without giving any reason, at any stage of production of the Feature Film or even before commencement of the Feature Film. She would submit that clause 25 of the contract is not attracted for the case on hand as only under clause 10, the first respondent withdrew from the contract and there was no termination of the contract by the first respondent under clause 25 of the agreement which is applicable only when there is a breach of contract committed by the petitioner.

10. Learned counsel for the first respondent also drew the attention of this Court to the defence statement of the petitioner dated 31.01.2015 filed before the Arbitral Tribunal and would submit that the grounds raised in this petition were never raised by the petitioner in his defence statement filed before the Arbitral Tribunal. According to her, being an investor, the

first respondent has invested huge amount of money and having come to



know that the Feature Film project is not financially viable, they have withdrawn the contract exercising the rights under clause 10 of the agreement and has sought for refund of the advance amount paid to the petitioner. According to her, the Arbitral Tribunal has rightly appreciated the terms and conditions of the agreement dated 31.07.2008 and the evidence available on record and only thereafter has come to the right conclusion that the petitioner is liable to refund the advance amount paid by the first respondent as no expenditure was incurred by the petitioner with regard to the production of the Feature Film subsequent to the agreement dated 31.07.2008.

11. Learned counsel for the first respondent also drew the attention of this Court to the Arbitral Award dated 28.08.2017 and in particular, she referred to paragraphs 35, 36 and 39 of the said award and would submit that only in accordance with the terms and conditions of the agreement dated 31.07.2008, the Arbitral Award has been passed in favour of the first respondent.

12. Learned counsel for the first respondent would also submit that it is settled law that this Court exercising power under section 34 of the Arbitration and Conciliation Act, cannot re-appreciate the evidence and



would also submit that if there are two possible views and if one view is taken by the Arbitral Tribunal, this Court exercising power under section 34 of the Arbitration and Conciliation Act cannot also take a different view.

13. Learned counsel for the first respondent would also submit that the counter claim filed by the petitioner has been rightly rejected by the Arbitral Tribunal on the ground of limitation. She drew the attention of this Court to the discussion paragraphs in the Arbitral Award and would submit that only in accordance with law, the counter claim has been rejected by the Arbitral Tribunal. She would submit that as a production company, it is the responsibility of the first respondent to pay all the expenses under the agreement including the expenses which the petitioner alleges to have spent for the production of the Feature Film. She would submit that no evidence has been placed by the petitioner to prove his counter claim and therefore, according to her, the Arbitral Tribunal has rightly rejected the counter claim.

Discussion:

14. Eventhough in the impugned arbitral award, the issue whether the contract can be terminated under clause 25 of the agreement which stipulates fifteen days notice prior to termination of the contract was



considered and held against the petitioner, the said defence was never raised by the petitioner in his statement of defence filed before the Arbitral Tribunal on 31.01.2015 to the statement of claim made by the first respondent against him.

15. Clause 10 of the Agreement dated 31.07.2008 reads as follows:

“ 10. In the event that SLP does not intend to commence / continue the production of the feature film for whatsoever reason, the DIRECTOR undertakes and agrees to refund the entire amount received as advance / consideration directly to SLP within the period of 2 weeks from the date of letter communication in writing by SLP to the DIRECTORS.”

16. Clause 25 of the Agreement dated 31.07.2008 reads as follows:

“25. That if the director repeatedly or willfully fails and refuses to comply with any of the material terms or conditions of this agreement and notice is served upon the director, then the director shall have fifteen days time from service of notice, to rectify such willful default. If the director fails to do so within that period, SLP shall be entitled to terminate this agreement, engage any director without any reference to present director and complete the film.”



17. As seen from clause 10 of the agreement, the first respondent (SLP) if it does not intend to commence / continue the production of the Feature Film for whatever reason, they have the right to seek for refund of the advance sum paid to the petitioner (Director) after sending a letter of communication to the petitioner (Director) and within two weeks, on receipt of the said letter of communication, (Director) the petitioner shall refund the advance amount to the first respondent (SLP).

18. Mr.V.Ayyadurai,learned Senior Counsel for the petitioner submitted that the said clause is opposed to public policy and it is opposed to sections 23 and 24 of the Contract Act and therefore, the said clause is not binding on the petitioner. The Arbitrator as seen from the Arbitral Award has rightly rejected the said contention of the petitioner.

19. The investment for the production of the Feature Film will have to be entirely made by the first respondent under the agreement dated 31.07.2008. After signing the agreement dated 31.07.2008, as seen from the letter dated 27.04.2009, the first respondent seems to have had a discussion with the petitioner with regard to the present approximate cost of the Feature Film and after the said discussion, the first respondent has come to

know that the budget for production of the Feature Film will be around



Rs.17 Crores to 18 Crores very much above the initial estimate. The first respondent then decided that it is not financially viable to produce the Feature Film at such a high cost and decided to withdraw from the contract by sending the communication dated 27.04.2009 referred to supra to the petitioner exercising its powers to withdraw from the contract under clause 10 of the agreement dated 31.07.2008.

20. Clause 10 of the agreement dated 31.07.2008 and clause 25 are independent clauses. Clause 10 can be exercised when the first respondent (production company) decides for whatever reason to withdraw from the contract either before the commencement or during the production of the Feature Film. As the entire investment for the production of the Feature Film is made only by the first respondent, clause 10 of the agreement dated 31.07.2008 cannot be termed as opposed to public policy and cannot be termed as violation of sections 23 and 24 of Indian Contract Act.

21. While signing the agreement dated 31.07.2008, the total budget for the production of the Feature Film was not known and even before knowing the actual budget, the said agreement was entered into between the parties. In such a scenario, the existence of clause 10 referred to supra

which permits the first respondent to withdraw from the contract without



assigning any reason, cannot be considered to be opposed to public policy and cannot be considered to be violative of Sections 23 and 24 of the Contract Act. Only after coming to know from the petitioner that the project cost will be between Rs.17 Crores and Rs.18 Crores, the first respondent withdrew from the contract through letter dated 27.04.2009 to the petitioner and sought for refund of the advance amount paid under the agreement dated 31.07.2008. No proof has been filed by the petitioner before the Arbitral Tribunal for his claim that he had suffered losses / expenditure on account of the alleged improper termination of the contract by the first respondent.

22. Under the agreement dated 31.07.2008, all the expenses will have to be incurred only by the first respondent. While that be so, the question of having incurred expenditure after the agreement dated 31.07.2008 by the petitioner will not arise.

23. Clause 25 of the agreement dated 31.07.2008 which pertains to the termination of the contract does not apply to the facts and circumstances of the present case. Clause 25 applies only when the petitioner commits breach of contract and in such circumstances, the first respondent will have

to give 15 days notice to the petitioner. But the facts of the present case are



entirely different as the first respondent due to the fact that the project is not financially viable has withdrawn from the contract by exercising its powers under clause 10 of the agreement dated 31.07.2008 which permits it to withdraw from the contract for whatever reason and enables it to seek refund of the advance amount paid to the petitioner. In paragraphs 33 to 39 of the Arbitral Award dated 28.08.2017, the Arbitral Tribunal has discussed the issues raised by the petitioner by giving valid legal reasons for rejecting the said contentions.

24. This Court is in agreement with the reasons given by the Arbitral Tribunal for holding that the first respondent has rightly exercised its power under clause 10 of the agreement dated 31.07.2008 seeking refund of the advance amount of Rs.1,12,77,772/- paid to the petitioner. This court also holds that the invocation of clause 10 by the first respondent is proper and clause 25 is not applicable to the facts of the present case as it is not a case of termination of the contract on account of breach committed by the petitioner, but it is a case of withdrawal from the contract under a mutual agreement as per clause 10 of the agreement dated 31.07.2008.

25. Insofar as the contentions raised by Mr.V.Ayyadurai, learned

Senior Counsel that under the film trade practice, the petitioner being a



Director, will have to incur expenses on account of the first respondent which will have to be reimbursed by the first respondent is concerned, the said contention has rightly been rejected by the Arbitral Tribunal on the ground that none of the terms and conditions of the agreement dated 31.07.2008 supports the contention of the petitioner.

26. The Arbitrator has rightly taken into consideration clauses 3, 6 8, 11 and 21 for coming to the conclusion that the petitioner is not entitled for any expenses which he is alleged to have incurred. The Arbitrator has rightly held that it is very clear that the petitioner (Director) apart from his remuneration fixed under clause 4 and except the 50% of the share in net profit, he shall not be entitled for any other payment. The Arbitrator has also rightly held that even the remuneration fixed under clauses 4 and 5 to the petitioner also have to be adjusted against the Director's (petitioner's) 50% share in the net profit. Only based on the terms and conditions of the agreement dated 31.07.2008 and the evidence available on record, the Arbitral Tribunal has passed the Arbitral Award in favour of the first respondent.

27. Insofar as the rejection of counter claim made by the petitioner

before the Arbitral Tribunal is concerned, the Arbitral Tribunal has rightly



rejected the counter claim and has rightly applied the ratio laid down by the Hon'ble Supreme Court in the case of *Voltas Limited's* case referred to supra by Mr.V.Ayyadurai, learned Senior Counsel for the petitioner.

28. The learned Arbitrator has held, applying the principles laid down in *Voltas Limited's* case referred to supra, that the counter claim made by the petitioner on 11.12.2014 is barred by law of limitation calculated from the judicial date which can be construed as a starting point of limitation namely the date of withdrawal of notice i.e., 27.04.2009.

29. The learned Arbitrator has also taken note of the fact that the petitioner never sought for appointment of arbitrator nor filed any application under section 11 of the Arbitration and Conciliation Act, 1996 with regard to his counter claim and only thereafter, the learned Arbitrator has come to the conclusion that the counter claim is barred by law of limitation.

30. As observed earlier, the expenses claimed by the petitioner in his counter claim are not supported by any documentary evidence. Further, the agreement dated 31.07.2008 also does not stipulate that those expenses which the petitioner claims to have incurred have to be paid by him and then reimbursed by the first respondent.



31. It is settled law as laid down by the following decisions of the Hon'ble Supreme Court in the case of *(a) Associate Builders vs. Delhi Development Authority reported in (2015) 3 SCC 49* and *(b) Ssangyong Engineering and Construction Co. Ltd. vs. National Highways Authority of India reported in (2019) 15 SCC 131* that this Court while exercising power under section 34 of the Arbitration and Conciliation Act cannot re-appreciate the evidence when the Arbitral Tribunal has passed the arbitral award only based on the evidence available on record. This court also cannot take a different view from the Arbitral Tribunal when the view taken by the Arbitral Tribunal is a possible view and is also only in accordance with law. The evidence which is the basis for passing of the impugned Arbitral Award in favour of the first respondent does not call for any interference by this Court under section 34 of the Arbitration and Conciliation Act as the Arbitral Tribunal has rightly applied the terms and conditions of the agreement and there is no misapplication of the clauses contained therein as alleged by the petitioner.

32. Contracts are legally binding agreements that parties voluntarily entered into. Parties always have the option to terminate a contract by mutual consent. With eyes wide open, both the parties had entered into a contract dated 27.04.2009 and as per Clause 10 therein, the first respondent

being the producer has been given the option of withdrawing from the



contract for whatever reason. Clause 10 of the contract dated 27.04.2009 is also not opposed to public policy as the entire investment and expenses are only borne by the first respondent (Producer) under the contract dated 27.04.2009. The petitioner's role is only to direct the feature film for which he will be paid his remuneration and he is also entitled for profit sharing. As per the contract dated 27.04.2009, the petitioner's financial commitment is zero. Having found the contract unworkable due to the high financial budget, which was not expected, the first respondent (Producer) chose to withdraw from the contract. The withdrawal from the contract by the first respondent is not opposed to public policy as any prudent businessman will do the same in similar circumstances. The Arbitrator has rightly rejected the contention of the petitioner.

33. In the result, there is no merit in this petition as there is no infirmity under the impugned Arbitral Award. Accordingly, this Original Petition is dismissed.

Sd./- A.Q.J.,
25/01/2022

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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