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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.02.2022
DELIVERED ON	28.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD)No.1881 of 2021

and

C.M.P. (MD)No.10125 of 2021

M/s.Mahaseman Trust,
Rep. by its Trustee,
Mr.Prabhu Vairavan Pragasam. ...Applicant/Claimant/Petitioner

Vs.

M/s.Kiara Microcredit Pvt. Ltd. ...Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to call for the records of the sole arbitrator in I.A.No.1 of 2021 in Arbitration Case No.9 of 2020 dated 23.09.2021, set aside the same.

For Petitioner :Mr.K.Subramanian,
Senior Advocate, for
Mr.K.Hariharan

For Respondent :Mr.S.Vijaya Kumar, for
Mr.G.Vairava Subramanian

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 23.09.2021 in I.A.No.1 of 2021 in Arbitration Case No.9 of 2020.

2.The parties are referred to as per the rank mentioned before the Court below.

3.A memo has been filed on behalf of the Claimant before the Sole Arbitrator in I.A.No.1 of 2021 in Arbitration Case No.9 of 2020, to close the cross-examination of C.W.1 and continue the Arbitral proceedings further. The said memo was rejected on 23.09.2021. Against the said rejection order, the applicant is before this Court.



4. Heard on either side. Perused the material documents available on records.

5. This Civil Revision Petition is filed on the ground that there is no adequate efficacious alternative remedy available in law to canvass the correctness of the impugned order passed by the sole arbitrator in Arbitration Case No.9 of 2020, dated 23.09.2021 except to approach this Court under Article 227 of Constitution of India. As per rulings of the Hon'ble Supreme Court of India, this Civil Revision Petition filed under Article 227 of the Constitution of India is maintainable.

6. The Applicant/Claimant/Petitioner has filed this Civil Revision Petition to set aside the order, dated 23.09.2021 in I.A.No.1 of 2021 in Arbitration Case No.9 of 2020, passed by the sole Arbitrator.

7. As per agreement between the parties, dated 15.03.2018, in O.P.No.331 of 2020, a sole arbitrator was appointed by this Court on 02.09.2020. Both the parties are agreed to lead oral evidences.

8. C.W.1 was examined in chief and cross in part. At this stage, the revision petitioner has filed a memo on 05.09.2021 to close the cross examination of C.W.1.

9. The petitioner has stated in the memo that the learned Arbitrator has a duty to protect the witness from being harassed or bullied during cross examination. The learned Arbitrator may ensure that the witness is treated fairly and courteously, in as much as a perusal of line of cross examination would disclose that the learned counsel for the respondent is exceeding the bounds of fairness.

10. The petitioner has not raised any objection when C.W.1 was cross examined by the respondent. If, C.W.1 has any objection he can raise at the time of cross examination when there was any irrelevant question.

11. The ingredients of **Section 19(4) of the Arbitration and Conciliation Act, 1996**, is extracted hereunder:

"19(4).Determination of rules of procedure:

The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence. "

Only the Arbitration has power to determine admissibility, relevancy and weight of any evidence.

12. The ingredients of **Section 18 of the Arbitration and Conciliation Act, 1996**, is extracted hereunder:



"18.Equal treatment of parties:

The parties shall be treated with equality and each party shall be given a full opportunity to present his case."

Each party shall be given a full opportunity to present the case.

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13.The learned counsel appearing for the applicant relied upon the Judgment reported in **2020 SCC Online Delhi 228, Sukhbir Sing Vs. Hindustan Petroleum Corporation P. Ltd.**, and the relevant portions are extracted hereunder:

....

"42.It appears that the Model Law was thereafter revised to reflect the above comments. In the Explanatory Note by the UNCITRAL Secretariat on the 1985 Model Law on International Commercial Arbitration, Article 24 is characterised as an illustration of the general principle of equality and full opportunity. Paragraph 32 of the Explanatory Note states as follows:-

"a. Fundamental procedural rights of a party.

32.Article is embodies the principles that the parties shall be treated with equality and given a full opportunity of presenting their case. A number of provisions illustrate those principles. For example, article 24(1) provides that, unless the parties have agreed that no oral hearings be held for the presentation of evidence or for oral argument, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. It should be noted that article 24(1) deals only with the general entitlement of a party to oral hearings (as an alternative to proceedings conducted on the basis of documents and other materials) and not with the procedural aspects, such as the length, number of timing of hearings.

46.Having so held, a word of caution is necessary. The right granted in Section 24 does not require an Arbitral Tribunal to countenance unending cross-examination or oral arguments. It is always open to the arbitrator to determine the length and scope of oral hearings, which



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would necessarily depend upon the facts and circumstances of each case. If a party seeks oral evidence, for example, the Tribunal may be able, after hearing the parties, to determine the points on which evidence is to be led. Similarly, arbitrators can set appropriate time limits for oral arguments. The arbitrators can require an application to be filed by the concerned party, setting out the necessary material to enable the Tribunal to determine these matters. Further, the second proviso to Section 24(1) expressly provides for hearings on a day-to-day basis without unnecessary adjournments."

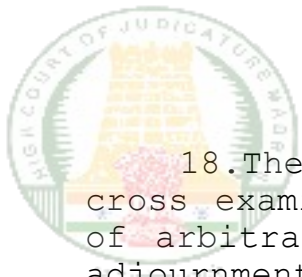
14.As per power given to Arbitration under Section 19(4) only Arbitration can decide the matter not parties to determine the length and validity of cross examination.

15.Further, this Court cannot interfere the powers of Arbitration under Article 226 & 227 of Constitution of India, when there is no exceptional rarity as per Judgment in **C.A.Nos.1098-1099 of 2021 dated 01.05.2021 in Navayuga Engineering Company Vs. Bangalore Metro Rail Corporation Limited**. The relevant portion is as follows:

"4.Despite this Court repeatedly referring to Section 5 of the Arbitration Act in particular and the Arbitration Act in general and despite this Court having laid down in Deep Industries Ltd. Vs. ONGC & Anr. (2020) 15 SCC 706 that the High Court under Article 226 and 227 should be extremely circumspect in interfering with orders passed under the Arbitration Act, such interference being only in cases of exceptional rarity or cases which are stated to be patently lacking in inherent jurisdiction, we find that High Courts are interfering with deposit orders that have been made. This is not a case of exceptional rarity or of any patent lack of inherent jurisdiction."

16.In the instant case, the revision petitioner has not shown any exceptional circumstances to invoke the remedy under Article 227 of the Constitution of India.

17.The Arbitration has every right to interfere the cross examination when irrelevant to the process. If any irrelevant question in cross examination the petitioner has every right to object the question then and there.



18.The revision petitioner cannot seek direction to close the cross examination of C.W.1. On perusal of proceedings in the order of arbitration in I.A.No.1 of 2021, the revision petitioner seeks adjournments in several time.

19.Therefore, the Arbitrator has rightly rejected the Memo.

20.Finally, this Civil Revision Petition is dismissed by confirming the order, dated 23.09.2021 in I.A.No.1 of 2021 in Arbitration Case No.9 of 2020, passed by the Sole Arbitrator. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Arbitrator,
Arbitral Tribunal,
Madras High Court.

+1 CC to M/s.K.HARIHARAN, Advocate (SR-9275[F] dated 01/03/2022)

Order made in
C.R.P. (MD)No.1881 of 2021
28.02.2022

SRR(CO)
TR(10.03.2022) 5P 3C