



C.M.A.No.2979 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2979 of 2013

and

MP.No.1 of 2013

N.Santhosh

...Appellant

Vs.

1. M/s. MAT Systems(India) Pvt. Ltd.,
Managing Director K.Muthusamy
No.105, Sri Lakshmi Towers 2nd Floor,
No.257, Mettupalayam Road,
Coimbatore Pin – 641 043.

2. A.Natarajan

3. N.Sumathy

4. S.Prabhakaran B.A.B.L.,
Advocate/Sole Arbitrator,
312 Lawyers Chambers,
Combined District Court Complex,
Coimbatore – 641 018

...Respondents

Civil Miscellaneous Appeal filed under Section 37 of the Indian Arbitration and Conciliation Act, 1996 against the Judgement and Decree made in Arbitration Original Petition No.277/2007 dated 24.01.2013 on the file of the Principle District Judge, Coimbatore.



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For Appellant : Mr.K,Chakrapani

For Respondent : Mrs.D,.Sathya, for R1
: No Appearance, for R2 to R4

JUDGEMENT

Aggrieved by the Judgement and Decree passed by the Principal District Judge, Coimbatore in Arbitration Original Petition No.277/2007 dated 24.01.2013, in and by which the award passed by the arbitrator has been confirmed, the present appeal has been filed.

2. The case of the appellant is that, he was appointed as trainee sales in the 1st respondent company with effect from 18/3/2005 on the terms and conditions set out in the appointment letter dated 16/3/2005. Further, a tripartite service agreement dated 18/3/2005 was entered into between the petitioner and 1st respondent company along with the 2nd and 3rd respondents, who are the parents of the appellant, who stood as guarantors. As per the service agreement, the appellant was to serve in the 1st respondent company compulsorily for a minimum period of 12 monthly and in case he leaves the job before the said period, the appellant as also the 2nd and 3rd respondents are jointly and severally liable to pay a



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sum of Rs.1,00,000/- to the 1st respondent. The appellant further submitted that, upon entering into the said terms and conditions, the appellant joined the 1st respondent company, however due to ill health, the appellant was forced to submit his resignation by E-mail which was not accepted by the 1st respondent. Since the appellant has violated the terms and conditions set out in the agreement, the appellant as well as the 2nd and 3rd respondents were called upon to honour the payment under service agreement and since they did not come forward to honour the same, arbitration proceedings were initiated before the 4th respondent. The 1st respondent filed a claim statement claiming a compensation of Rs.1,00,000/- along with interest of 18% per annum from 13.09.2005 till realisation on the basis of the agreement, which was resisted by the appellant and the reasons for refusal to pay was also submitted by the appellant in the form of counter. The Arbitrator, after framing the necessary issues and after analysing the documents namely Exs.C1-C12 as also the proof affidavit and the statement of defence and the oral evidence of PW1, held that the 1st respondent is entitled for the compensation receivable in terms of the service agreement along with interest at 18% per annum from 13/9/2005 till date of realisation.



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Aggrieved by the same, the appellant preferred arbitration original petition before the principle District Judge, Coimbatore. The trial court, after considering the award as also the provisions of arbitration and conciliation act and the scope of interference in the petition held that the award passed by the arbitrator is within the scope of arbitration and conciliation act and accordingly rejected the petition, resulting in the filing of the present appeal by the appellant before this court.

3. Learned counsel for the appellant submitted that, though the service agreement is a mere form of security which is not for the purpose of enforcement and the stand of the first respondent company that it had imparted skills to the appellant and thereby it had incurred expenditure has not been established. Moreso, considering the fact that the appellant is a B.E graduate, who has adequate experience and no training was imparted to him. Further, the appellant has resigned his job not for other purposes but on account of his medical condition, which has been established by him and without considering the same, enforcing the security against the appellant as also the respondents 2 and 3 is wholly erroneous. The said fact have not been properly considered by the trial



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Court while dismissing the petition and therefore seeks indulgence of this Court to set side the said order as also the award.

4. Since nobody represented the 1st respondent company, Ms.D.Sathya, learned counsel was appointed as legal aid counsel to defend the case of the 1st respondent company.

5. It is the submission of the learned legal aid counsel appearing for the 1st respondent that once the appellant as also the respondents 2 and 3 has accepted and affixed their signature in the service agreement, they cannot wriggle out of their liability to pay compensation to the 1st respondent under the pretext that, the resignation was on account of medical condition. The award was rightly passed by the arbitrator after appreciating all the documents and the trial Court, advertent to section 34 of the Arbitration and Conciliation act has clearly held that, the ingredients specified therein does not attract the interference with the award passed by the Arbitrator and accordingly dismissed the petition. Therefore, no interference is warranted and accordingly, prayed for dismissal of this appeal.



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6. Heard learned counsel for the appellant and the learned legal aid counsel appearing for the 1st respondent company and perused the material documents placed on record.

7. There is no dispute about the fact that the appellant had entered into the service agreement with the 1st respondent and the 2nd and 3rd respondents, parents of the appellant stood as guarantors. The service agreement provided for the payment of sum of Rs.1,00,000/- along with interest in case the appellant leaves the 1st respondent company before the completion of 12 months.

8. In the case on hand, there is no dispute about the fact that the appellant had joined the 1st respondent company during March 2005 and submitted his resignation citing medical reasons in September 2005 and in odd, the appellant had put in service of around 6 months. The compensation payable under the security agreement is premised on the basis that the company has put in its resources and money to train the appellant for the said job and if the appellant leaves the company before the said period, the amount which the company had put in has to be



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reimbursed and it is only for that purpose, the security agreement has been entered into.

9. There could be no quarrel that if the appellant leaves the job before the said period of 12 months, he is to compensate the company. However, equally a duty is cast on the 1st respondent to establish that it had incurred expenditure for the purpose of training of the appellant so as to have the service agreement enforced. As the appellant is a B.E graduate, is possessed of the necessary technical skills. if any skill over and above the ones which are possessed by the appellant is said to have been imparted by the 1st respondent, then necessarily there would arise a situation where the company would have spent amount on the training imparted to the appellant.

10. In case on hand, there is no material evidence has been produced to establish the fact that amounts have been incurred to impart specialised training to the appellant. Further it is not the case of the first respondent that, the appellant was not possessed of any technical or analytical skills at that time he was appointed and only the company had



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imparted all the technical knowledge to the appellant. When it is the specific case of the appellant that he is resigning on the ground that he has medical complications and he had put in only around 6 months of service, necessarily, a duty is cast on the 1st respondent to establish that it had incurred amount for training the appellant to claim that the said amount has to be reimbursed back to the 1st respondent company on the basis of the service agreement, moreso, when the appellant has established that he is quitting his job on account of his medical condition.

11. The trial court had declined to interfere with the award of the Arbitrator on the ground that, none of the ingredients mentioned in the Section 34 of the Arbitration and conciliation Act stood attracted. However, the Court lost its sight of the case that Section 34B(2) squarely stands attracted, as the arbitrator award is in conflict with the public policy, as the security is only provided to the 1st respondent with no security to the appellant as the service agreement does not contemplate any security to the appellant if he is sent out within the said period.



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12. Therefore, this court is of the considered view that the order passed by the trial court requires interference on the ground that, a security should be both ways and it cannot be only in one way, which is only to the employer and not the employee. Therefore the order passed by the trial court confirming the award of the Arbitrator requires interference.

13. One other aspect which also requires to be looked into is that, there is no appearance on behalf of the first respondent company and a legal aid counsel has been appointed to represent the 1st respondent company. This court is at a loss to understand as to the basis on which the legal aid counsel can be appointed to represent a company, when the Legal services authorities act does not provide for engaging any legal aid counsel on behalf of the company.

14. It is also stated across the bar that the 1st respondent company is not in existence. When such being the case, there would be no purpose in the trial court passing the above order as it would remain unexecuted.



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15. For all the reasons stated above, this court is inclined to set aside the order passed by the trial court confirming the award of the Arbitrator. Accordingly, the appeal stands allowed in the aforesaid terms and the impugned order passed by the Principal District Judge, Coimbatore in Arbitration Original Petition No.277/2007 dated 24.01.2013 as well as the award passed by the arbitrator is set aside. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

04.10.2023

skt

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

1.The Principle District Judge,
Coimbatore.

2.The Section Officer, V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.

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