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C.R.P.Nos.2523 and 2524



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 03.08.2023

Pronounced On : 20.09.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.2523 and 2524 of 2014

and

M.P.Nos.1 and 2 of 2014

Mr.G.Rajendran ...Petitioner/1st Respondent in both C.R.Ps.

Vs.

1.G.Soundararajan

2.G.Selvaraj

3.G.Nirmala

4.V.Sakanthula ...Respondents/Petitioners in both C.R.P.s.

5.C.Velumani

6.K.N.V.Ramani

7.D.Balasundaram

8.C.R.Swaminathan ...Respondents/Respondents in both C.R.P.s.

Prayer in C.R.P.No.2523 of 2014:Civil Revision Petition filed under Article 227 of the Constitution of India r/w Section 115 of CPC against the common order dated 08.04.2014 in A.O.P.No.73/2013 passed by the Principal District Judge, Coimbatore in having reached a conclusion that the award dated 22nd September 2012 passed by the Arbitral Tribunal was liable to be set aside and remitting the dispute back to the Arbitral Tribunal to resume the arbitration



proceedings for consideration so to eliminate the defects in the Arbitral Award dated 22nd September 2012.

Prayer in C.R.P.No.2524 of 2014: Civil Revision Petition filed under Article 227 of the Constitution of India r/w Section 115 of CPC against the common order dated 08.04.2014 in A.O.P.No.72/2013 passed by the Principal District Judge, Coimbatore in having reached a conclusion that the award dated 22nd September 2012 passed by the Arbitral Tribunal was liable to be set aside and remitting the dispute back to the Arbitral Tribunal to resume the arbitration proceedings for consideration so to eliminate the defects in the Arbitral Award dated 22nd September 2012.

In CRP.No.2523 of 2014

For Petitioner : Mr.Sathish Parasaran
Sr.Counsel for M/s.Madhan Babu and
Cibi Vishnu.
For Respondents :
For RR2 and 5 : Mr.Karthik Seshadri
for M/s.Iyer and Thomas
For RR3 and 4 : Mr.P.R.Ramakrishnan
for Mr.R.Pradeep.
For R1 : Mr.M.S.Krishnan
Sr.Counsel for
M/s.Ramasamy Meyappan.
For R6 to R8 : Notice Dispensed With.

In CRP.No.2524 of 2014

For Petitioner : Mr.P.H.Arvind Pandian
Sr.Counsel for M/s.Madhan Babu and
Cibi Vishnu.
For Respondents :
For R1 : Mr.Karthik Seshadri for



M/s.Iyer and Thomas.
 For R4 and R5 : Mr.P.R.Ramakrishnan
 For R2 and R3 : Mr.M.S.Krishnan
 Sr.Counsel for M/s.Ramasamy Meyappan

COMMON ORDER

These civil revision petitions arise against a common order passed by the learned Principal District Judge, Coimbatore in A.O.P.Nos.72, 73 and 134 of 2013 dated 08.04.2014. These are disposed of by this common order.

2.One Mr.Gopal commenced businesses at Coimbatore. He passed away in 1980 leaving behind his widow, Sarojini and three sons and two daughters namely Soundarajan, Rajendran, Selvaraj, Sakanthula and Nirmala respectively. Besides these five siblings, Thiru Gopal and Tmt.Sarojini treated one Velumani as their son.

3.Gopal promoted several businesses. After his death, his business acumen and properties devolved on his children. They promoted several private limited companies namely:-

Year of Incorporation	Name of the company
1989	Chola Pumps Pvt.Ltd.,
1991	Meltech Castings Pvt.Ltd.,
1991	Magna Marketing Pvt.Ltd.,
1996	C.R.I.Pumps Pvt. Ltd.,
1996	Ransar Industries Pvt.Ltd.,



2002

C.R.I. Industries Pvt.Ltd.,

4. There were no issues amongst the parties from 1980 to 2005. In the year 2005, problems arose in the family. Therefore, in order to resolve the dispute amicably between them, a family arrangement was entered into on 06.06.2005. The family arrangement resulted in corporate restructuring. To give effect to the same, the parties approached this court in C.P.No.129 to 134 of 2007. By an order dated 25.09.2007, this court sanctioned the restructuring. This resulted in M/s.Ransar Industries Pvt.Ltd., Meltech Castings Pvt.Ltd. (a company taken over by C.R.I.Pumps) and Magna Marketing being merged with C.R.I.Pumps, Chola Pumps merged with C.R.I.Industries.

5. Apart from these mergers and restructuring, three new entities were incorporated, they were :-

- (I). Nargo Industries.
- (II).CRI Infrastructure Pvt. Ltd., and
- (III).G-4 investments India Ltd.

All these companies were under the fold of CRI amalgamations. The CRI amalgamations acquired 55 per cent shares in the subsidiaries. This was in accordance with the family arrangement.

6. In and about 2010, Mr.G.Rajendran decided to exit from the family



arrangement. For this purpose, a memorandum of understanding was entered into on 01.11.2010.

7.While implementing the family arrangement and the memorandum of understanding, issues arose because Mr.G.Rajendran made a claim over the CRI brand. The parties were not in a position to agree to the same. Therefore, the matter came to a head.

8.Instead of pushing the parties into litigation, which perhaps had they restored to, the necessity of the present litigation could have been avoided, the family decided to refer the matter to arbitration. An arbitration agreement was entered into on 13.07.2011. The relevant clauses are as follows:-

“1.The parties hereby appoint and constitute the Arbitral Forum comprising of three Arbitrators as under:-

(I).Sri K.N.V.Ramani

(II).Sri C.R.Swaminathan

(III).Sri.D.Balasundaram

2.All claims, demands, counterclaims, disputes, differences of opinion of any nature whatsoever concerning the partition/the spinning off/allocation of management of undertakings and properties to Sri.G.Rajendran and consequent restructuring/demerger and terms thereof are referred to the Arbitration of the Arbitral Forum appointed and constituted as per Clause 1.

3.The Arbitrators may conduct the proceedings in the manner they consider appropriate subject to the provisions of the Arbitration and Conciliation Act, 1996.

4.The Parties hereto have entered into this Agreement representing themselves and their respective branches of the families. They undertake



their shareholding, Directorship and Management Control over the companies concerned for the purpose of implementation of the Award by adopting requisite procedures under Company Law as if the companies are parties to this Agreement.

5.The venue of Arbitration shall be Coimbatore and the language of Arbitration shall be English.

6.Since the disputes and their resolution involve several stages of proceedings the parties consent to the Arbitrators giving necessary interim directions of finding of facts all of which will form part of the final award when made.”

9.Mr.G.Rajendran (Petitioner herein) presented his claim statement before the arbitrators and on 17.08.2011. A statement of defence was also filed. To this, a rejoinder was filed on 22.08.2011. After several sittings, an award came to be passed on 22.09.2012. Soon thereafter, not being satisfied with the arbitration award, A.O.P.No.73 of 2013 was filed by;

(1).Mr.G.Soundararajan,

(2).Mr.GSelvaraj,

(3).G.Nirmala and

(4).V.Sakanthula.

Challenging the very same award A.O.P.No.72 of 2013 was filed by G.Sarojini and C.Velumani.

10.In the light of the order that I propose to pass, I am not going into the merits of the award and that of the order passed by the Learned Principal



District Judge.

11.Before the learned Principal District Judge, the following submissions were made:-

(I). The reference itself was flawed.

(II).The dispute is non-arbitrable.

(III).Exercise of discretion by the arbitrators is contrary to public policy and;

(IV).The award is ineffective and in-executable.

12.It was argued on behalf of Mr.G.Rajendran (petitioner herein) that the arbitrators could decide on all issues, claims, counter claims, disputes, differences etc. and therefore the reference was correct. It was further submitted by him that the arbitrators had done, what the equity board created under the family arrangement, could do.

13.It was further argued that if the award is under Section 34 then executability was an automatic consequence, it is not necessary that the award has to be executable, as more than 1 mode are available to the parties, including moving to the High Court for restructuring in terms of the award under Sections 397 and 398 of the Companies Act of 2013. It was also argued that the reference being in the widest terms possible, the arbitrators did not exceed their



14. After extensive arguments and referring to several authorities, the District Judge came to a conclusion that the family arrangement and the business arrangement occupied independent territories and the family arrangement dated 06.06.2005 cannot be treated as a document on the basis of the reference document came into being on 13.07.2011. Therefore, he decided to test the arbitration agreement on its own strength.

“...38.To conclude the discussion on this topic, this court holds that the arbitration agreement dated 13.07.2021 does not bind the non-parties to it and still an award based on the reference cannot have the effect of affecting the rights of non-parties to arbitration agreement. Further as the award is indivisible in its operation as relating to the rights of the parties and non-parties to the arbitration agreement, the entire reference fails.”

16.In other words, the learned Judge was clear and categorical that the reference itself is bad. Having come to the conclusion that the reference is bad, he need not have to proceed further and should have entered upon a judgment holding that the application filed to set aside the award succeeds. Had he done so, this epic battle would have moved to the next phase under Section 37 before



this Court or before the statutory authorities created under the Companies Act.

17. However, finding the issues argued before him brimming with legal niceties and a jurisprudential feast having been presented before him, the learned Judge decided to partake in them & went into the other issues.

18. On the issue of the arbitrators exceeding the jurisdiction, he came to the conclusion that clause (ii) of the referral agreement was wide enough to encompass claims over the CRI brand and concluded that the arbitrators were correct in their conclusion with respect to their jurisdiction.

19. He then took upon the issue of arbitrability and executability. On this issue, he concluded that even if a dispute under Sections 397 and 398 of the Companies Act is referred for arbitration, the arbitrators cannot decide on matters which do not fall in the realm of matters *in rem*. He finally held that the arbitrators cannot have the power under Section 402 of the Companies Act. After a detailed discussion on whether the award is in fact “an award” he came to the conclusion as follows:-

“53.....There are not parallel provisions in Indian Law that it is ineffective and uncertain. The answer to this issue leaves a potential option of terming the conscientious efforts that the arbitrators have undertaken in the instant case as a non-award in law and consequently may touch upon the maintainability of the petition itself, for there then would be no need to challenge a non-award.”

20. Thereafter he took up the issue, if the award was opposed to public



policy. He held that giving a minority shareholder, the right to marginalize the majority, namely the CRI amalgamations in the board of Margo, without losing the advantages of holding in the shareholding and at the same time, competing with the holding company, disturbs his conscience and therefore, held that it is not in conformity with the rules of corporate governance. He would finally hold that the award is not only opposed to public policy but also it is plainly unconscionable.

21. After having come to the conclusion that the award suffers from all the aforesaid vices, without an application from any of the parties, he decided to remit it to the arbitrators for reconsideration.

22. I am extracting his conclusions verbatim;

“A. AOP 72/2013 are adjourned by four months from today and the award dated 22.09.2012 is remitted back to the arbitrators:

1. For providing an appropriate solution that gives effect to the intention of the parties to sever their business relationship permanently and perfectly in a manner that is likely to eliminate the possibility of the award being set aside without disturbing (i) the proposed hiving of units from CRI Pumps Pvt., Ltd., to be merged with Nargo Industries Pvt., Ltd., (ii) the proposal to allot restructured Nargo to the arm of Rajendran, and (iii) his entitlement to obtain a share in the royalty on brand CRI.

2. To formulate a clear mechanism/solution by which payment of share of royalty to GR is achieved in a new environment of mutually independent existence. If it has been already made, arbitrators are required to clarify the same.

B. That there shall be an order of status-quo till the arbitrators resume their proceedings and thereafter parties may move the arbitrators



under Section 17 of the A & C Act for any interim orders. AOP 134/2013 is disposed accordingly.”

23. This is put in test before me.

24. According to Mr.Sathish Parasaran, the finding of the Learned Principal District Judge and remanding the matter to the arbitrators has taken away the right of appeal of the civil revision petitioner to challenge the award under Section 37 of the Arbitration and Conciliation Act, 1956.

25. According to him, he is not in a position to defend the award in a proceeding under Article 227 as the scope is limited viz-a-viz, an appeal as provided under Section 37. He would argue that the Learned Judge should have treated the award as a preliminary award and left the parties to workout their rights before the High Court during the relevant period of time for restructuring the company. He would state that the family arrangement is the sheet anchor for the arbitration reference which ended in the award.

26. Mr.Sathish Parasaran would argue that the revision is only with respect to the portion of remand and as Section 34 has not been concluded, I should set aside the order of the Learned Judge and send it back for disposal all over again. He would argue that the order of the learned Judge does not show that the learned Judge wanted to set aside the award.

27. Mr.P.R.Ramakrishnan, learned counsel appearing for the respondents



would submit that subsequent to the order passed by the learned Judge, the arbitrators issued fresh notice of hearing. However, the matter could not proceed further due to the interim order granted by this Court. In the meantime, out of the three named arbitrators, two arbitrators have gone to their maker and therefore, this Court should take into consideration the subsequent events that have occurred in the matter.

28.The argument of Mr.Karthik Seshadri is that the learned Judge having come to the conclusion that the award is opposed to the public policy, he ought not to have remanded the matter to the arbitrators and should have merely passed an order setting aside the same.

29.I have heard, learned Counsel for the parties and gone through the order of the learned Principal District Judge. I have carefully perused the records.

30.In all the disputes raised by either side, there is one unanimity that either party did not request the court for remand. The power to remit the matter to the arbitrators is available under the Arbitration and Conciliation Act. This is under Section 34 (4) of the said Act. I am extracting the same for ready reference which reads as follows:-

.....



“Section 34 (4).On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

31.The condition precedent under Section 34 (4) is that there must be an application made by any one of the parties for such a remittal. Fortunately, for me in this case, neither the petitioner nor the respondents had requested the learned Principal District Judge for such remittal. Therefore, the exercise of power by the learned Judge under Section 34 (4) of the Act has to be interfered with. Though several authorities were cited on this point, I am not going to refer to them for a simple reason that the condition precedent for exercising the power under Section 34 (4) namely, an application by a party, did not exist. Therefore, the learned Judge erred in that conclusion.

32.Now turning to the aspect of whether the learned Judge intended to treat it as a preliminary award or whether he wanted to sustain the award has to be seen by the reasons given by him. A careful perusal of the award shows the following conclusions arrived at ;

(I).That the dispute was not arbitrable in nature and therefore, the entire reference failed, since it did not make a difference in its operation relating to



the rights of the parties and non-parties,

(II).The award is in-capable of execution.

(III).The award is contrary to public policy and

(IV).The award is against principles of justice and affects the court's sense of justice.

(V).There are adequate elements available to set it aside.

33.Therefore, I am unable to agree with the submission of Satish Parasan and Mr.Arvind Pandian that the Court should have treated it as an interim Award.

34.A careful reading of the order of the learned District Judge makes me to conclude that the learned Judge wanted to set aside the award but eventually remitted it because it affected the rights of persons other than those before the Arbitral Tribunal, who were a part of management and also since the companies involved are social-economic vehicles and are contributors to this nation.

35.Perhaps if it had been a proceeding under Article 226 of the Constitution of India, it would have been much easier to sustain the remittance by the learned Judge. In fact, while considering the arguments of Mr.Sathish Parasaran, in paragraph No.52 of the impugned order, I notice that the learned Judge had taken great efforts to find out if he could treat it as a preliminary



award and came to a conclusion that he cannot do so because of the practical difficulties involved and unpredictable situations that can arise during the implementation of the award. In other words, the learned Judge had attempted to see if the award could be treated as a preliminary award but found that it did not answer the requirements of one.

36.A reading of the entire order persuades me to a conclusion that the learned Judge wanted to give a quietus to the disputes that have arisen between the parties and had made sincere efforts towards resolving the same. However, the difficulty that he faced on issues of reference itself and the award being contrary to public policy and giving unfair weightage to the holdings of the Civil Revision Petitioner, he had remitted the matter, so as to bring it to the light of the arbitrators to come up with a solution so that the civil revision petitioner will permanently exit from the family business. He did so because, as per the memorandum of understanding dated 01.11.2010, it was the intention of the civil revision petitioner to exit from the family, while reducing his shareholding in the holding company namely CRI amalgamations.

37.I am not going into the details of these issues because if I do so, it will affect the rights of the parties while moving an application under Section 37 of the Arbitration and Conciliation Act. Suffice it to say that having come to the



conclusion that the award deserves to be set aside, the learned Judge ought to have set aside the same and stopped there. While one can appreciate his efforts and pains taken in writing the judgment, in order to see a solution is given to the family which has been litigating for the past 13 years, unfortunately his conclusions are not supported by the reasons which he has given. Reading all the reasons given by the learned Principal District Judge, the conclusion I have to arrive at is that the district judge felt award deserves to be set aside.

38. Now coming to the point raised by Mr.M.S.Krishnan, it is clear that the parties had placed a great reliance upon the arbitrators appointed by them in the agreement of reference dated 13.07.2011. Mr.Arvind Pandian would bring to my notice a judgment of the Supreme Court in ***Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla (2016) 3 SCC 619*** to argue that the *factum* that named arbitrators have been appointed does not mean that on the death of one of them, the arbitration should come to an end. In paragraph No.20 of the said judgment an example has been given which I extract hereunder:-

“In the facts of the present case, it is clear that there is nothing in Clause 8 of the consent terms extracted above to show that the resignation of Justice Sujata Manohar would lead to her vacancy not being supplied. All that the parties have done by the said clause is to agree to refer their disputes to the arbitration of an independent retired Judge belonging to the higher judiciary. There is no personal qualification of Mrs Justice Sujata Manohar that is required to decide the dispute between the parties. In fact, she belongs to a pool of independent retired High Court and Supreme Court Judges, from



which it is always open to the appointing authority to choose a substitute arbitrator. One example will suffice to show that Clause 8 in the present case cannot be construed to either expressly or by necessary implication exclude the appointment of a substitute arbitrator. Take the case of a family dispute in which the arbitration clause clearly specifies that a particular grand-uncle of a joint family is the only person in whom all members of the family have confidence as a result of which he has been appointed arbitrator to resolve their disputes. In the case of resignation or death of such grand-uncle, it could possibly be contended that by necessary implication no other person was competent to arbitrate disputes between the family members and that, therefore, on such resignation or death, the arbitration clause would spend its force. In the present case, as has been noted above, we do not have any such factual scenario nor do we have expressions such as “only” which would indicate that the confidence of the parties was in only the named arbitrator and in nobody else.”

39. This *factum* shows that where the parties repose confidence in named individuals and in the absence of named individuals, the only remedy for the party is either to go under Section 15 (2) or under Section 11 of the Arbitration and Conciliation Act. I should not forget that the said judgment arose in a situation where the arbitrator was appointed by an order of the court. It was not a case as in the present one, where in the arbitration agreement itself, the persons had agreed to the three named arbitrators. Therefore, even if I were to sustain the order passed by the learned Judge, it has been rendered otiose on account of the fact that two of the three named arbitrators are no more. It is the duty of the court to take into consideration the subsequent developments that occurs in a matter.

40. The parties are left open to agitate their rights under a proceeding



under Section 37 if they are so advised. Before I conclude, I have to add that I have only dealt with the power of remand of the court under Section 34 (4) in this particular case. The finding of the learned judge on the reference as well as the other issues show that it is not a curable defect. Further, there was no application filed by any of the parties seeking for remand and consequently I have to interfere with that portion of the order alone.

41. There is yet another aspect which cries for my attention. In paragraph No.61.3, the learned Judge has held as follows:-

“This Court has already concluded that there are adequate elements available in the award to set aside it and has decided to remit the matter back to arbitrators. This Court has also held the present award in the present form does not vest any crystallized right in the parties. Consequently GR cannot derive an in present right based on the award to seek any interim reliefs. After all any prayer for an order of interim injunction under Section 9 of A & C Act shall satisfy the triple criteria for grant of interim injunction under Order XXXIX Rule 1 and 2, CPC. With the existence of prima facie case itself in suspect stricto sensu GR would not be entitled to any interim order of injunction even if it were to be couched as an order of status quo.”

42. This shows that the Learned Judge had come to the following conclusion:-

(a). Adequate elements are available in the award to set it aside.

(b). The award in its present form does not vest crystallized right in the civil revision petitioner.



(c).The Civil Revision Petitioner does not derive any right for grant of interim order.

(d).The Civil Revision Petitioner has not made out any *prima-facie* case.

43.In fact, he states that the existence of the *prima-facie* case itself is suspect and therefore, he had held that the Civil Revision Petitioner is not entitled to any interim order.

44.Curiously enough having come to the conclusion that the Civil Revision Petitioner is not entitled to any interim order, he has proceeded to hold in clause B of Part VI under the heading “conclusion” as follows:-

“B.That there shall be an order of status-quo till the arbitrators resume their proceeding and thereafter parties may move the arbitrators under Section 17 of the A & C Act for any interim orders. AOP 134/2013 is disposed of accordingly.”

45. Having held that there is no *prima-facie* case, the learned Judge ought not to have granted an order of status quo. Therefore, this portion of the conclusion also requires my interference.

46.Therefore, the following orders are passed:

(I).Clause VI of the impugned order alone is set aside.

(II).A fresh decree shall be drafted by the Principal District Judge at Coimbatore stating that the award passed by the arbitrators dated 22.09.2012 is set aside.



(III).I make it clear that I have not dealt with the issues whether the disputes are one *in rem* or whether they interfere with the powers of the statutory tribunals created under the Companies Act etc. These are issues that are to be gone into in a separate proceeding if the parties so desire.

47.Therefore, these CRPs are allowed with the above directions. No costs. Connected Miscellaneous Petitions are closed.

.09.2023

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

The

Principal District Judge

Coimbatore.



WEB COPY



C.R.P.Nos.2523 and 2524

V. LAKSHMINARAYANAN, J.
nst

Pre-Delivery Order In

C.R.P.Nos.2523 and 2524 of 2014
and
M.P.Nos.1, 1 and 2 of 2014

20.09.2023