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IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
RVWO/40/2023
IA NO: GA/2/2023
AP NO. 358 OF 2022

VALLABH METAL INDUSTRIES
VS
M/S. UGRO CAPITAL LIMITED

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date: 1st March, 2024

Appearance:
Mr. Aniruddha Bhattacharyya, Adv.
Mr. Arnab Roy, Adv.

Mr. Paritosh Sinha, Adv.
Mr. Swatarup Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. K.K. Pandey, Adv.
Ms. Enakshi Saha, Adv.

The Court:

1. This is an application seeking review of an order dated 22 December, 2022 passed under Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. Briefly, the applicant had been sanctioned a loan for a sum of Rs. 1.4 crores by the respondent finance company. In view of the admitted defaults by the applicants, the principal alongwith interest became due and payable. In such circumstances, the respondent terminated the loan agreement and was compelled to invoke the arbitration clause by issuing a notice under Section 21 of the Act. Since the applicant failed to respond within the mandatory period of 30 days, the respondent filed an application for

appointment of an Arbitrator. The applicant chose to be unrepresented. By an order dated 22 December, 2022, an Arbitrator was appointed under section 11 of the Act. There has been no appeal against the order dated 22 December, 2022.

3. Pursuant to aforesaid, the Arbitrator has commenced arbitral proceedings and the applicant is contesting the same. An application filed under section 17 of the Act for interim reliefs has also been disposed of upon contest by an order dated 12 March, 2023.

4. The only issue raised by the applicant is on the ground of territorial jurisdiction. The grievance of the agreement being insufficiently stamped though pleaded has not been pressed at the hearing of this application. It is submitted that the order dated 22 December, 2022 suffers from an error apparent from the face of the record as no part of the cause of action has arisen within the jurisdiction of this Court. Neither of the parties reside within the jurisdiction of this Court. The mere fact that the place of arbitration has been recorded in the arbitration clause as Kolkata does not confer jurisdiction on this Court to exercise powers under Section 11 of the Act. In this regard, the applicant relies on the decisions in *Hakam Singh Vs. Gammon India Ltd. AIR 1971 SC 740, ABC Laminart Vs. A. P Agencies Salem AIR 1989 SC 1239, Ravi Ranjan Developers Vs. Aditya Kumar Chaterjee (2022) SCC Online SC 568 and Debdas Routh vs. Hinduja Layland Finance Limited AIR 2018 Cal 322.*

5. On behalf of the respondent, it is contended that the review application is not maintainable and there is no mistake or error apparent on the face of the record. The order was passed after giving repeated opportunities to the

petitioner. In the garb of review, the petitioner cannot enter into the merits of the order dated 22 December 2022 and seek full-fledged hearing. There are no grounds which warrant review of the order.

6. Order XLVII Rule 1 of the Code of the Civil Procedure reads as follows:

> *"Application for review of judgment. – (1) Any person considering himself aggrieved,-*
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
> *(b) by a decree or order from which no appeal is allowed, or*
> *(c) by a decree on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the fact of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*
> *(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.*
> *"[Explanation. – The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]"*

7. The grounds enumerated above are specific and well defined.

8. The power to review is a creature of statute. It must be conferred by law either specifically or by necessary implication. Such power should be exercised only within the limits of the statute dealing with the exercise of the power. An application for review cannot be treated as an appeal disguise. It has been repeatedly reiterated that a Court of review has limited jurisdiction and it may allow review on three specific grounds namely; *(i) discovery of new and important matter or evidence, which after the exercise of*

due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or order was made; (ii) mistake or error apparent on the face of the record; or (iii) for any other sufficient reason.

9. The only ground which is raised is one of territorial jurisdiction. Clause 13 of the Master Facility Agreement dated 2nd May, 2019 is as follows:-

> *"13. GOVERNING LAW, JURISDICTION AND ARBITRATION*
>
> *13.1 This Agreement shall be construed in accordance with the laws of India and subject to the arbitration clause below, shall be subject to the exclusive jurisdiction of the competent courts in Kolkata.*
>
> *13.2 In the event of any dispute or difference between the parties under this Agreement, including in relation to the construction or interpretation of this Agreement, the parties shall first endeavour to settle such dispute or difference by amicable negotiations within 30 days of a written notice issued by one party to the other party. If the negotiations do not result in a resolution of the dispute or difference, either party shall be entitled to submit such dispute or difference to arbitration. The Lender shall appoint an arbitrator at its sole discretion or in accordance with the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). Arbitration shall be conducted in accordance 2 with the Arbitration Act. The seat of arbitration shall be Kolkata and the arbitration proceeding shall be conducted in English. The decision of the arbitrator shall be final and binding on the parties."*

10. The term "mistake or error or apparent" by its very own connotation signifies an error which is evident *per se* from the records and does not require an examination, scrutiny and elucidation either of fact or of law. If an error is not self-evident it cannot be termed as an error apparent on the

face of the record. A decision which is erroneous in law is certainly not a ground for review. In exercise of the jurisdiction under Order 47 Rule 1 of the Code of Civil Procedure, it is not permissible for an erroneous decision to be "reheard and corrected". [See: *SASI (Dead) Through Legal Representatives Vs. Aravindakshan Nair & Ors. (2017) 4 SCC 692, Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715, Thungabhadra Industries Ltd. Vs. Government of Andhra Pradesh Represented by The Deputy Commissioner of Commercial Taxes, Anantapur AIR 1964 SC 1372*].

11. There are no grounds whatsoever which have been made out warranting exercise of review of the order dated 22 December, 2022. Repeated opportunities had been granted to the applicant and the applicant deliberately chose to be unrepresented. The order dated 22 December, 2022 is reasoned. None of the contentions, which are now sought to be raised, were raised at the time of passing of the order. In the garb of review, it is not permissible for a Court to rehear and correct an erroneous decision. A Court exercising review jurisdiction does not sit in appeal over its own order.

12. For the above reasons, there are no grounds to entertain this application. There is no error nor mistake on the face of the record or any other reason which permits review of the order dated 22 December, 2022. In such circumstances, RVWO/40/2023 stands dismissed. However, there shall be no order as to costs. The connected application being GA/2/2023 also stands disposed of as infructuous.

(RAVI KRISHAN KAPUR, J.)

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