IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
21.12.2023	19.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.506 OF 2010

M/s. Velan Textiles Ltd.
Rep. By its Managing Director
577/1, Palladam Road
Thiruppur 641 605. .. Appellant

- Vs -

1. Cotton Corporation of India Ltd.
Rep. By its General Manager
Having Branch Office at No.1057
Thiruchi Road, Ramanathapuram
Coimbatore 641 045.

2. Sri. B.Kali, Arbitrator
18, Easwaran Nagar
Vadamadurai, Coimbatore 641 017. .. Respondents

Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, against the order of the learned I Addl. District Judge, Coimbatore, dated 21.7.2009, made in A.O.P. No.226 of 2005 refusing to set aside the award of the learned Arbitral Tribunal, the sole Arbitrator at Coimbatore dated 31.3.2001 made in A.P. No.7 of 2000.

For Appellant : Mr. V.Vignesh

For Respondents : Mr. Anirudh Krishnan, for M/s.Sarvabhauman Associates for R-1
No Appearance for R-2

JUDGMENT

Assailing the order of the I Addl. District Judge, Coimbatore in A.O.P. No.226 of 2005 refusing to interfere with the award passed by the Arbitral Tribunal in A.P. No.7 of 2000, the present appeal has been filed by the unsuccessful appellant.

2. The brief facts, which culminates in the filing of the present appeal are set out hereunder :-

The 1st respondent/claimant is engaged in the purchase and sale of cotton to various textile and spinning mills on cash and carry basis. The appellant herein and the 1st respondent entered into contracts on various dates for the purchase of 1600 bales of cotton and in pursuance to the purchase, the appellant lifted 864 bales of cotton and the balance 736 bales were not taken delivery by the appellant, inspite of the repeated reminders sent by the 1st respondent. In view of the same, according to the 1st respondent, the appellant became liable to pay carrying charges to the 1st respondent as per the terms of the agreement with regard to the unlifted bales of cotton. Thereafter, the appellant raised quality dispute with regard to the cotton purchased, which according to the 1st respondent is barred by the agreement. A final reminder dated 17.2.1999 was issued to the appellant by the 1st respondent to lift the cotton bales by paying the carrying charges, but instead of paying the carrying charges and lifting the cotton bales, the appellant sought for waiver of carrying charges, which resulted in the 1st respondent exercising its right of resale and, accordingly, sold the 736 bales to third parties and the statement of lass dated 12.10.1999 was sent to the appellant to make good the loss by issuing legal notice on 7.11.1999 quantifying the damages to the tune of Rs.30,90,693/- together with interest at 15.40% from 1.10.1999. Since the amount was not paid, the matter was referred to arbitration.

3. Before the arbitrator, the appellant herein filed counter denying the contract raising various contentions, including the quality of the cotton sold by the 1st respondent. Further contention was raised that the samples shown were not from the cotton bales at the spot but was shown at the office and, therefore, there was stark difference between the two samples. It was further contended that the carrying charges were high and that the godown was provided by the appellant and, therefore, no carrying charges could be levied. It was further contended that the sales tax debit was already collected from the appellant and, therefore, the additional debit towards sales tax has to be given credit to the appellant. For all the above deficiencies, the appellant incurred a loss of Rs.5 Lakhs and, therefore, claimed the said sum along with the return of deposit of Rs.7,75,000/-.

4. The matter was heard by the arbitrator in which the 1st respondent/claimant marked Exs.P-1 to P-79 and examined P.W.1, while the appellant marked Exs.R-1 to R-37 and examined R.W.1. On appreciating all the oral and documentary evidences placed, the learned Arbitrator awarded a sum of Rs.10,44,489 along with interest at 18% p.a. from 30.09.1999 by award dated

31.3.2001 and by an additional award dated 21.8.2001 awarded a sum of Rs.5,03,490/-.

5. Aggrieved by the said award, the appellant herein filed A.O.P. No.226/2001 before the court below. The court below, taking into consideration all the materials in the form of oral and documentary evidences, which were placed before the arbitrator and also considering the submissions advanced by the learned counsel on either side, refused to interfere with the award passed by the learned Arbitrator. Aggrieved by the same, the present appeal has been filed by the appellant.

6. Learned counsel appearing for the appellant submitted that the findings rendered by the court below that the appellant, though had not signed the subsequent agreements, would not be the basis to defeat the rights of the 1st respondent, as the subsequent purchase of the cotton bales by the appellant from the 1st respondent should be construed as an acceptance of the agreement between the parties. According to the learned counsel, the said finding is wholly erroneous on account of the fact that the mere purchase of cotton bales from

the 1st respondent by the appellant cannot be taken to mean that the appellant had agreed to the terms of the agreement and had, in fact, accepted the agreement. When the agreement is not signed, deemed acceptance cannot be construed merely because there has been subsequent purchase.

7. It is the further submission of the learned counsel that the court below failed to consider the inaction on the part of the 1st respondent in enforcing the resale. It is the submission of the learned counsel that though the 1st respondent was entitled, as per the terms of the agreement, to go for resale of the cotton bales, which are alleged to have not been taken by the appellant, however, the 1st respondent had kept silent for more than a year and, thereafter, had gone for resale of the said cotton bales, that too at a very low cost and at a time, when the market was not favourable recipient of the cotton. It is the further submission of the learned counsel that the 1st respondent had not taken any concrete steps to mitigate the loss within a reasonable time and the delay in realising the amount by the resale of cotton, has in fact caused detriment to the appellant and, therefore, to the said extent, the court below should have kept

the interests of the appellant at heart while confirming the award passed by the arbitrator.

8. It is the further submission of the learned counsel that the additional award passed by the arbitrator is hit by the provisions of the Arbitration and Conciliation Act, as the 1st respondent had not pointed out the provision under which the delay could be eschewed by the arbitrator. The court below has not given any finding with regard to the said contention raised by the appellant.

9. It is the further submission of the learned counsel that even as per the agreement, the rate of interest was agreed at 15.3%, however, the learned Arbitrator had awarded interest at 18% p.a., which is totally against the terms of the agreement. It is the further submission of the learned counsel that sales tax has been collected by the 1st respondent and, therefore, the Central sales tax, charged for the second time is wholly erroneous and to that extent credit has not been given by the learned Arbitrator. All the aforesaid issues have not been properly considered by the court below, while refusing to interfere with the order passed by the learned Arbitrator and, therefore, it requires interference.

10. Per contra, learned counsel appearing for the 1st respondent submitted that merely because the appellant had not signed the agreement would in no way invalidate the agreement for the simple reason that without signing the agreement, the appellant had proceeded to take delivery of the cotton bales, which clearly shows that the appellant had agreed to the agreement. It is the further submission of the learned counsel that even the very first agreement, Ex.P-1, which has been admitted by the parties, provides for arbitration in the event of dispute and, accordingly, the 1st respondent had enforced the arbitration and, therefore, the stand of the appellant that arbitration had not been agreed is wholly misconceived.

11. It is the further submission of the learned counsel that the contention with regard to the delay on the part of the 1st respondent to go for resale of the cotton is not sustainable for the reason that the 1st respondent had been sending the appellant reminder to take delivery of the cotton bales and also to pay the carrying charges for which the appellant had sought for waiver of carrying charges. The continuous correspondence between the 1st respondent and the

appellant will show that all along the 1st respondent was under the impression that the appellant would take delivery of the cotton bales. Therefore, the appellant cannot now try to take a stand that the delay is fatal to the 1st respondent, as there is no delay on the part of the 1st respondent and it was a continuous flow of correspondence from the appellant, which prevented the 1st respondent to proceed further.

12. It is the further submission of the learned counsel that insofar as the additional award passed by the arbitrator beyond the period prescribed, which according to the appellant, is barred by limitation, is wholly unacceptable for the reason that the error, which had crept in the initial award had been corrected by the arbitrator and, therefore, the delay in correcting the clerical error and passing the additional award would not attract the rigour of limitation and, therefore, the said contention has no legs to stand.

13. It is the further submission of the learned counsel that insofar as the award of interest at 18% by the arbitrator over and above the 15.3% agreed in the agreement, the arbitrator is well within his power to award interest and the

agreement with regard to interest between the parties will not bind the arbitrator and, therefore, the award of interest is just and reasonable considering that the transaction is of the year 2000.

14. It is the further submission of the learned counsel that the allegation with regard to double charge with regard to central sales tax, the said tax has not been charged twice and this aspect of the matter has been rightly appreciated by the learned arbitrator on the basis of materials and the present award was passed, which has been considered in its entirety by the court below and the court below had come to the definitive conclusion that there exists no infirmity or perversity in the award warranting interference and had rightly refused to interfere with the same and, therefore, the said order does not call for any interference.

15. In support of the aforesaid submissions, learned counsel for the 1st respondent placed reliance on the following decisions :-

i) *Cox & Kings Ltd. – Vs – SAP India Pvt. Ltd. & Anr. (Arb. Petition (Civil) No.38 of 2020(;*

ii) *Bharat Petroleum Corporation Ltd. – Vs – The Great Eastern Shipping Co. Ltd. (2008 (1) SCC 503);*

iii) *Mahanagar Telephone Nigam – Vs – Canara Bank (2020 (12) SCC 767);*

iv) *Associate Builders – Vs – Delhi Development Authority (2015 (3) SCC 49);*

v) *Swan Gold Mining Ltd. – Vs – Hindustan Copper Ltd. (2015 (5) SCC 739);*

vi) *Associate Builders – Vs – Delhi Development Authority (2015 (3) SCC 49);*

vii) *Ssangyong Engineering and Construction Company Ltd. – Vs – NHAI (2019 (15) SCC 131);*

viii) *BGSCTPL– Vil Consortium - Vs – Airports Authority of India (2019 SCC OnLine Del 7212);*

ix) *Gambhirmull Mahabirprasad – Vs – The Indian Bank Ltd. (1960 SCC OnLine Cal 52);*

x) *Union of India – Vs – India Proofing & General Industries, Kanpur (AIR 2000 Bom 292);*

xi) *Yarlagadda China Rattaya & Anr. – Vs – Donepudi Venkataramayya (1958 SCC OnLine AP 272);*

xii) *MSK Projects India JV Ltd. – Vs – State of Rajasthan (2011 (10) SCC 573);*

xiii) *Maharashtra State Electricity Distribution – Vs – DSCL Enterprises Pvt. Ltd. (2009 SCC OnLine Bom 413);*

xiv) *State of Kerala – Vs – K.Bhaskaran (1984 SCC OnLine Ker 198);*

xv) *Navayuga Engineering Company Ltd. – Vs – Union of India (2021 SCC OnLine Ker 5197);*

xvi) *J.G. Engineers Pvt. Ltd. – Vs – Union of India (2011 (5) SCC 758);*

xvii) *Kothari Industrial Corporation Ltd. – Vs – Southern Petrochemicals Industries Corporation Ltd. (2021 SCC OnLine Mad 5325);*

xviii) *Naresh Purushotham & Ors. – Vs – TVS Finance & Services Ltd. & Ors. (2021 SCC OnLine Mad 2245);*

xix) *3i Infotech Ltd. – Vs – Mr. P.Balasubramaniam & Ors. (O.P. No.487 of 2015 – Madras);*

xx) *3i Infotech Ltd. – Vs – Mr. P.Balasubramaniam & Ors. (O.SA (CAD) 38 of 2021 – Madras);*

xxi) *Mitra Guha Builders (India) Co. – Vs – Oil & Natural Gas Corpn. Ltd. (2020 (3) SCC 222); and*

xxii) *Harsha Constructions – Vs – Union of India (2014 (9) SCC 246)*

16. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on behalf of the parties.

17. Though very many decisions have been relied upon by the learned counsel appearing for the 1st respondent, however, the whole issue canvassed before this Court touches upon the facts of the case and the material documents, which are the fulcrum to decide the issue and, therefore, this Court is not dwelling into any of the decisions relied upon.

18. On the first issue relating to the non-signing of agreements by the appellant, a perusal of the order of the court below reveals that the court below has exhaustively dealt with the various purchases made by the appellant and the delivery taken by the appellant with regard to the same. The court below had, threadbare, analysed the various documentary evidence, more particularly the exhibits relating to the delivery of cotton to the appellant and had rendered a categorical finding that the appellant had taken delivery of the cotton bales, which clearly show that there was implicit admission by the appellant with regard to purchase of bales and merely because the appellant had not subscribed his signature in the agreement will not absolve the appellant of his liability to honour the agreement. The analysis done by the court below of the

various exhibits show that a clear and conscience effort had been taken by the court below to arrive at the said finding, which is just, reasonable and proper and deserves to be sustained. Therefore, the first contention is answered against the appellant.

19. Insofar as the second contention relating to the drawal of samples, which, according to the appellant was done from the office and not from the godown and, therefore, the items did not adhere to the sample is concerned, the court below had considered Ex.P-18, under which the sample was sent, which was approved by the representative of the appellant under Exs.P-19 and P-20 and similarly other documents of the same stature to come to a conclusion that the samples were approved by the appellant and such being the case, the appellant cannot be permitted to wriggle out by making a technical objection that the goods supplied did not adhere to the sample approved. Further, Ex.P-10, the letter written by the 1st respondent to the appellant requesting the appellant to visit the spot to take the samples. When the 1st respondent had requested the appellant to visit the spot and take the samples to approve it and if the appellant had not done so, now it is not open to the appellant to claim that

the cotton supplied were of poor quality and it did not adhere to the samples, which were given by the 1st respondent. The various exhibits in the form of Ex.R-15, P-39 and R-8 show that all along the appellant was ready to take delivery of the bales and had not raised any quarrel with regard to the poor quality of the cotton. Such being the case, it is clear that for the purpose of defeating the claim of the 1st respondent, the inferior nature of cotton has been pressed into service by the appellant. Therefore, the purchase of bales as per the samples approved by the appellant under the various exhibits clearly fasten the liability on the appellant to honour the value towards the said purchase and the said finding cannot be said to be erroneous.

20. Insofar as the right to resell the cotton is concerned, it cannot be disputed by the 1st respondent that the right to resell was exercised only after one year after giving adequate notices under Exs.P-9 to P-58 to the appellant to take delivery of the cotton. However, a categorical finding has been recorded by the court below that inspite of various letters by the appellant to lift the cotton, however, the appellant had not lifted the cotton, which only goes to show that based on the said letter of the appellant, the 1st respondent had not

exercised its right to resell, all along believing that the appellant would lift the cotton. However, under Ex.R-59, all of a sudden, the appellant had requested for waiver of the carrying charges and even Ex.P-53 shows that no issue was raised with regard to poor quality of the cotton and the appellant had only requested for some more time to life the cotton bales.

21. In fact, the court below had adverted to the reply notice in Ex.P-62 of the appellant, wherein the appellant had stated that it was surprised by the act of the 1st respondent in reselling the cotton without the knowledge of the appellant inspite of the requisition of the appellant to extend the time through various letters. This clearly shows that the 1st respondent, on the assurance of the appellant, had waited long enough to resell the cotton and inspite of the assurances given by the appellant to lift the bales, as the assurance were not honoured, the 1st respondent had taken steps to resell the cotton after a period of one year, which delay is not attributable to the 1st respondent; but rather it is attributable to the appellant as only because of the sugar coated assurances of the appellant, the delay had occasioned. Further, even after the resale had taken place, through the notice the appellant had questioned the 1st respondent, as to

why it had gone for resale and had not put them on notice, which is a clear indicator of the intention of the appellant is to drag the issue, rather than settling the issue. Further, the notice of the appellant also cuts through the case of the appellant that it had not entered into the agreement, but the notice had questioned as to why the 1st respondent had resold the cotton without the knowledge of the appellant as the appellant had only sought time to take delivery. In such circumstances, the court below has given a finding that the delay is not attributable to the 1st respondent and negatived the contention of the appellant, which also does not require any interference.

22. Insofar as the contentions touching upon the aspect of limitation in filing the amendment based on which additional award has come to be passed, it is to be pointed out that the court below has considered the issue and rendered a finding that the limitation to be reckoned from the date of receipt of the award by the 1st respondent and not from the date of passing of the award, which is the correct proposition of law and as such the said finding does not warrant any interference.

23. Insofar as the contention relating to central sales tax being levied twice, it is the mere allegation of the appellant and towards establishing the same, no material has been placed and in such circumstances, the said contention does not deserve any discussion and it is summarily rejected.

24. On a holistic consideration of the entire issue, this Court is of the considered view that the order passed by the Court below does not suffer the vice of any illegality, irregularity, perversity or unreasonableness and it is based on sound appreciation of the material documents placed before it and proper and justifiable reasons have been given by the court below for arriving at the said conclusion. Therefore, the said order does not require any interference at the hands of this Court.

25. However, when the appeal was entertained, this Court had directed deposit of the award amount, which order has been complied with excluding the interest component. When the matter was taken up for hearing on 7.12.2023, learned counsel appearing for the appellant appealed to this Court to direct the 1st respondent to consider the plight of the appellant in the light of the heavy loss

faced by the cotton industries and also the issues in running the industries and the financial crisis plaguing the cotton industries and consider the case of the appellant under the Vivajse Scheme announced for the welfare of the contractors by the Cotton Corporation.

26. Though this Court granted time to the learned counsel for the 1st respondent to seek instructions, however, no instructions are forthcoming. Further, considering the issue is of the year 2001 and almost two decades have passed and the issue is being dragged on without reaching any solution and though the appellant had come forward to settle the entire amount, but only seeks relaxation from payment of interest, necessarily, to render substantial justice to either parties, a balance has to be struck so that it would be beneficial to both the parties.

27. In the aforesaid backdrop, the civil miscellaneous appeal is disposed of confirming the award passed by the Arbitrator as affirmed by the court below insofar as the amount of loss suffered by the 1st respondent is concerned, which has already been deposited before this Court. However, insofar as the

component of interest, which is ordered to be paid at the rate of 18% p.a., this Court modifies the same and directs the appellant to pay interest at the rate of 4.5% p.a. from the date of award till the date of deposit of the amount before this Court. There shall be no order as to costs in this appeal.

19.01.2024

Index : Yes / No

GLN

To

1st Addl. District Judge
Coimbatore.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY JUDGMENT IN C.M.A. NO.506 OF 2010

Pronounced on

19.01.2024