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C.M.A. No.1854/2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.12.2024	20.12.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.1854 OF 2012

1. M/s. Sri Durga Industries
Rep. By its Managing Partner
M.Thangavelu

2. M.Thangavelu
3. T.Meenambal
4. T.Sampath

.. Appellants

- Vs -

1. Sri Pavalambigai Paper & Boards
Private Ltd. Rep. By its
Managing Partner
G.K.Palanisamy, S/o Kuppusamy
59, Avvaiyar Street, Erode – 11.

2. G.K.Palanisamy

.. Respondents

Civil Miscellaneous Appeal filed u/s 37 (1)(b) of the Arbitration & Conciliation Act against the judgment and final order passed on 6.3.2007 as amended by order in I.A. No.170/2011 dated 11.4.2011 and furnished on



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23.6.2011 in A.O.P. No.65 of 2004 on the file of the Principal District Judge, Erode, confirming the arbitration award dated 12.6.2004 passed by the Arbitral Tribunal.

For Appellants : Mr. N.C.Ramesh, SC, for
Mr. N.Damodaran

For Respondents : Mr. Pranav V.Shankar, for
M/s. Ramani & Shankar

JUDGMENT

Challenging the order of dismissal of the arbitration original petition by the Principal District Judge, Erode, filed by the appellant, who was the contractor, as against the arbitral award, the present appeal has been filed before this Court.

2. The 1st appellant is the company and the other appellants are the Directors of the 1st appellant. The 1st respondent entered into an agreement with the 1st appellant for fabricating and erection of machineries for establishing a paper mill, which was signed on 26.9.1994 and as per the terms of the agreement, the 1st appellant had to supply the machineries by end June, 1995 and erection of the same to be completed by September, 1995. Towards the total cost, 50% of the cost of the machineries was to be paid by the 1st



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respondent to the 1st appellant in advance, but due to delay in sanction of loan, the amount was paid only by 29.3.1995 and the civil works were completed only by 26.7.1996, which is beyond the agreed time for fabrication and erection.

3. Due to the aforesaid delay, the 2nd respondent stopped the 20% retention amount payable to the 1st respondent towards fabrication and erection and the 2nd respondent, as Managing Director of the 1st respondent, filed a claim petition u/s 406 of the Companies Act, which was referred by the Company Law Board to the arbitrator, one Mr. R.L.Asawa, who was later replaced by one Mr.Jayaraman.

4. The arbitrator inspected the work site and after receiving the statement, counter statement, the documents and after affording an opportunity of personal hearing, passed his final award on 12.6.2004 awarding a sum of Rs.25,00,000/- payable by the 1st appellant herein to the 1st respondent herein.

5. Being not satisfied with the said arbitral award, the 1st appellant herein preferred the arbitration original petition before the appellate court contending



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that the arbitral award is against the principles of natural justice, public policy, is vitiated and the same is beyond the scope of arbitration. It was further assailed that the findings were without any evidence and the reasons for the delay have not been properly considered and the conclusion arrived at by the arbitrator is erroneous and that the losses stated by the 1st respondent are based on no evidence. It was the further stand of the 1st appellant that the 1st appellant is not responsible for the delay in supplying and erecting the machineries as High Tension Electricity was provided only on 14.12.1996 and commercial production commenced only after 14.12.1996. Therefore, the arbitration original petition was filed seeking to set aside the arbitral award.

6. Framing the necessary issues for consideration, the appellate court, after considering all the aforesaid submissions, though held that the arbitrator has not given any calculation for the alleged damages to the tune of Rs.25,00,000/-, while awarding the said sum, however, concluded that the same was awarded after conducting due enquiries and the technical qualifications and experience of the arbitrator coupled with the findings relating to the damages, does not render the non-furnishing of qualification arbitrary and held that there



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is no violation of principles of natural justice and, accordingly, dismissed the original petition. Aggrieved by the same the present appeal has been preferred before this Court.

7. Learned senior counsel appearing for the appellants submit that the award is highly perverse, as the confirmation of the award of the arbitrator has not been properly appreciated by the court below, as there was no findings rendered by the arbitrator while arriving at the damages.

8. It is the further submission of the learned senior counsel that there is no basis in the award, as the sum total alleged by the 1st respondent is without proper materials and the arbitrator, without rendering any proper finding, has quantified the damages payable to the 1st respondent. It is the further submission of the learned senior counsel that the claim made by the 1st respondent under the various heads towards damages is not supported by any documentary evidence.



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9. It is the further submission of the learned senior counsel that the author of Ex.R-6, which had formed the basis to award damages has not been examined before the arbitral tribunal and the non-examination of the said person had defeated the rights of the appellants to cross-examine the said individual with reference to Ex.R-6. It is the further submission of the learned senior counsel that the report given under Ex.R-6 does not form part of the arbitral award, though the said report had formed the basis to quantify the damages payable to the respondents. It is the submission of the learned senior counsel that the report under Ex.R-6 is very much in favour of the appellants, as Ex.R-6 has clearly spoken about the machineries installed and the capacity of the machineries to turn out the production. The vital report not having been annexed with the arbitral award, it is clearly a violation which affects the substratum of the arbitral award.

10. It is the further submission of the learned senior counsel that Ex.R-6 clearly speaks about fulfilment of the obligations of the appellants under the agreement entered into between the parties. However, the said Ex.R-6 has not been properly considered while passing the arbitral award. The vital aspects



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have not been properly considered by the court below while confirming the arbitral award, which requires interference.

11. It is the further submission of the learned senior counsel that the amount of Rs.10,00,000/- claimed by the respondents for carrying out modifications with outside agencies due to non-fulfilment of obligations by the appellants is not supported by any materials and the mere assertion towards spending the said amount cannot form the basis to quantify the said amount and award the same to the respondents.

12. It is the further submission of the learned senior counsel that the award of Rs.10,00,000/- runs counter to Ex.R-6, where there is a clear finding rendered that the production of quantity with the machineries is as per the agreement and, therefore, there was no necessity for the arbitral tribunal to award the said amount. However, the court below has failed to appreciate the crucial aspects in the arbitral award, which stares very much in favour of the appellants so as to enable the court below to cause interference with the award.



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13. It is the further submission of the learned senior counsel that excepting the claim for a sum of Rs.15 Lakhs by the respondents, there is no material which has been placed by the respondents to sustain the claim, notwithstanding the fact that there is a clear reference in the report Ex.R-6 with regard to the capacity of the machinery to turn out production as per the terms in the agreement. The contentions raised by the appellants have not been properly considered by the court below while confirming the award of the arbitrator.

14. It is the further submission of the learned senior counsel that the judgments relied on by the respondents have been taken into consideration by the court below, without first addressing the issue of adequacy of evidence and in the absence of there being positive evidence, which proves the case of the respondents, the decisions relied on by the respondents would in no way further the case of the respondents.

15. It is the further submission of the learned senior counsel that no documentary evidence has been produced by the respondents except making



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claim of Rs.15 Lakhs, which has been awarded by the Arbitral Tribunal, which runs counter to Ex.R-6. Further, the claim of the respondents to a sum of Rs.27 Lakhs for the period April, 1997 to October, 1997 towards rectifying, refabricating and repairing the machinery to make it workable and achieve reasonable level of production was not established by producing relevant bills.

16. It is the further submission of the learned senior counsel that the findings of the Arbitral Tribunal and the conclusion arrived on the said basis is on rough and ready basis without any proper proof and the same reveals total non-application of mind on the part of the Arbitral Tribunal while passing the award.

17. It is the further submission of the learned senior counsel that the court below failed to appreciate its stand in the reply statement and counter claim that an opportunity was sought for by the appellant to prove that the machinery installed by the appellant is capable of producing 7.5 Mts of Kraft Paper or Kraft Board out of the waste paper, but the said opportunity has been denied without any proper reason.



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18. It is the further submission of the learned senior counsel that Section 24 of the Arbitration and Conciliation Act (for short 'the Act') has not been followed by the Arbitrator and that the award of the Arbitrator is in defiance of Section 18 of the Act as no opportunity was granted to the appellants to cross examine, inspite of a specific request made by the appellants.

19. Learned senior counsel further submitted that the authenticity of Ex.R-15 report is doubtful as it does not contain the signature and, therefore, the same cannot be relied on by the arbitrator and coupled with the fact that there is inconsistency in the quantum as could be evidenced from the arbitral award and in the absence of any material to substantiate the claim, the finding recorded by the arbitrator is perverse. However, all the aforesaid facts have not been properly considered by the court below, while dismissing the original petition and, therefore, the same requires to be interfered with by this Court by setting aside the arbitral award.

20. In support of the aforesaid contentions, learned senior counsel placed reliance on the following decisions :-



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- i) *Union of India & Ors. – Vs – M.Rajkumar (O.P. No.582/2012 – Date 1.11.2016 – Madras High Court);*
and
- ii) *State Industries Promotion Corporation of TN – Vs – Ircon International Ltd. (2010 (1) CTC 369).*

21. Per contra, learned counsel appearing for the respondents submit that the impugned order passed by the court below is perfectly in order and so long as the petitioner has not pleaded any fraud or corruption on the part of the respondent in the award passed by the arbitral tribunal, in the absence of the ingredients mandated u/s 34 of the Act not being made out, the court below was completely justified not to interfere with the award passed.

22. It is the further submission of the learned counsel that merely because break-up with regard to the quantification is not made out, that will not invalidate the award, more particularly, u/s 34 of the Act, as it is necessary that the ingredients in Section 34 of the Act have to be made out to have an award set aside. There being no contention advanced on infraction of conditions mandated



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u/s 34 of the Act, no interference is warranted with the findings recorded by the court below.

23. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *Associate Builders – Vs – Delhi Development Authority (2015 (3) SCC 49);*
- ii) *MMTC Ltd. – Vs – Vedanta Ltd. (2019 (4) SCC 163);*
- iii) *UHL Power Company – Vs – State of HP (2022 (4) SCC 116); and*
- iv) *Atlanta Ltd. – Vs – Union fo India (2022 (3) SCC 729)*

24. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, more particularly Section 34 of the Act to which this Court's attention was drawn, which deals with the provision for setting aside arbitral awards.

25. There could be no dispute about the fact that for setting aside the arbitral award, recourse ought to be taken by the aggrieved party to Section 34 of



the Act and the circumstances under which an arbitral award could be interfered with by the Court are spelt out therein. For better appreciation Section 34 of the Arbitration and Conciliation Act is quoted hereunder :-

“Application for setting aside arbitral awards.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--

(a) the party making the application ¹[establishes on the basis of the record of the arbitral tribunal that]--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only



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that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that--

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by



the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(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.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.



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(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

26. A careful perusal of the above reveals the circumstances, which, if infringed, could clothe the aggrieved party with the ammunition to knock on the doors of the courts of justice to have the arbitral award set aside. More particular, the circumstances, that would prevail upon the courts to set aside the arbitral award are that the arbitration agreement is not valid; that no proper notice was given to the party prior to the appointment of an arbitrator or commencement of the arbitral proceedings; that the dispute, which is dealt with is not contemplated under the arbitration and is beyond the scope of arbitration; that the composition of the arbitral tribunal or the procedure adopted are violative; that the subject matter of dispute is not capable of settlement under arbitration.

27. There is no quarrel with the fact that the parties to the dispute, viz., the appellant and the respondent are signatories to a contract, which provides



for arbitration. Dispute with regard to the work done by the appellant and the resultant actions of the respondent has resulted in the invocation of the arbitration clause by the respondent by appointment of arbitrator. There is no quarrel with the aforesaid facts, nor the appellant has any quarrel with regard to the appointment of arbitrator.

28. The circumstances, which have been mandated under sub-section (2) of Section 34, where the courts can set aside the arbitral award, as extracted above. None of the circumstances envisaged under sub-section (2) to Section 34 have been put in issue for setting aside the arbitral award. In fact, the appellant has not even whispered that there was violation in the conduct of the arbitration proceedings or that the dispute, which has been arbitrated does not fall within the scope of arbitration. Neither it is the case of the appellant that there is no clause for arbitration or that no notice was issued prior to arbitration or that he was not issued notice with regard to conduct of arbitral proceedings. Therefore, it is manifestly clear that none of the circumstances spelt out under Section 34 (2) of the Act is put in issue before the court below.



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29. What is put in issue before this Court to assail the order passed by the court below is that each claim made by the appellant has not been considered either by the arbitrator or the court below. It is the further case of the appellant that a perfunctory order has been passed, wherein the court below has held that it does not find any justifiable reason to interfere with the arbitral award.

30. The mandate of Section 34 (2) is implicitly clear and the circumstances enunciated under the said provision alone would come into play when the court considers the arbitral award. The appellant may have umpteen grievances, but so far as what is mandated under the Act has been followed, the legality of the arbitral award cannot be interfered with. The court is bound to decide the case within the four corners of law and it cannot traverse beyond the boundaries which have been prescribed under the Act to the likings of either party. When there is no infraction of the provisions of Section 34 (2), as is evident from the order of the court below and in fact it is also not even the case of the appellant that there is infraction of the provisions mandated under Section 34 (2), the order passed by the court below, could, by no stretch of imagination, be branded to be illegal or unsustainable.



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31. The party to the *lis* may want the Court to deliberate a case in a different tangent, which does not have the approval of law and if it has not been considered in that manner, the said order cannot be said to be vitiated, as what the duty of the court is to travel only within the boundaries prescribed under the Act and not otherwise. In fact, if the court below had traversed beyond the boundaries, as had been contended by the appellant, only then could the order be held to be illegal and impermissible. The court had travelled within the boundaries and had held that the arbitrator had considered all the issues and the court had found no justifiable reason to interfere with the award. The said finding cannot be said to be perverse or arbitrary, warranting interference at the hands of this Court.

32. The whole case of the appellants is premised on the manner in which the evidence has been appreciated so as to quantify the damages payable to the appellant. According to the appellants, the arbitral tribunal has not properly appreciated the materials placed before it and though the said fact was brought



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to the notice of the court below, yet, the court below has not properly considered the same, while passing the impugned order.

33. In this regard, the manner in which the evidence has to be appreciated by the Arbitral Tribunal and the extent of powers of the Court while adjudicating on the same has been succinctly explained and set at rest by the Apex Court in *Associated Builders case (supra)* and for better appreciation, the relevant portion of the said decision is as under :-

"33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares and Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. MANU/SC/1248/2011 : (2012) 1 SCC 594, this Court held:



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“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second Respondent and the Appellant are liable. The case as put forward by the first Respondent has been accepted. Even the minority view was that the second Respondent was liable as claimed by the first Respondent, but the Appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the Appellant did the transaction in the name of the second Respondent and is therefore, liable along with the second Respondent. Therefore, in the absence of any ground Under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

34. From the above, it is clear that the view of the arbitrator, who is the ultimate master of quantity and quality of evidence to be relied upon and the award based on the said evidence cannot be put in issue before a trained legal



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mind to invalidate the same, would be wholly arbitrary and capricious, as appreciation of evidence is solely within the domain of the arbitrator.

35. Applying the aforesaid ratio to the facts of the present case, the arbitrator having analysed and appreciated the evidence and has come to the conclusion that the act of the appellants has caused damage to the respondents and had quantified the damages payable, merely because such quantification is not segregated and given under different heads cannot be the reason to interfere with the said order. Further, the appreciation of evidence by the arbitrator, who, even according to the court below, is a person with rich technical knowledge this Court cannot sit in appeal over the said appreciation so long as no perversity or arbitrariness is pointed out in the said order.

36. Though certain other decisions have been quoted in support of the plea of the appellants and some additional decisions have also been placed by the respondents, in view of the ratio laid down in *Associated Builders case (supra)* by the Apex Court, there arises no necessity for this Court to explore all



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the other decisions, when, on facts the decision in the aforesaid case, squarely clinches the issue with regard to arbitral awards.

37. Further, this Court cannot go beyond the four corners of the Act to deal with each and every individual claim, which has been attacked to be erroneous by the appellants. It is for the arbitral tribunal to dwell into the said exercise, which the arbitral tribunal had done and had passed the arbitral award. Therefore, this Court finds that the order passed by the court below is just and proper and it finds no reason to interfere with the same.

38. For the reasons aforesaid, this Court finds no infirmity in the impugned order dismissing the original petition filed by the appellants against the arbitral award and, accordingly, this appeal fails and the same is dismissed. There shall be no order as to costs.

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Index : Yes / No

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To

The Principal District Judge
Erode.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
C.M.A. NO.1854 OF 2012**

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