



Arb.O.P.(Com.Div.)No.196 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P.(Com.Div.)No.196 of 2024

and

A.No.2651 of 2024

M/s.Vidarbha Tractors,
M-49, Akola Growth Centre,
MIDC Phase-4, Dist Akola,
Akola 444 104,
Rep by its Partner, Mr.Ajay Khemka.

... Petitioners

Vs.

1.M/s.Tractors and Farm Equipment Limited,
77, Nungambakkam High Road,
Chennai 600 034,
Rep by its Authorized Representative, Manu Sehgal

2.Justice Mr.R.Balasubramanian,
Retd. High Court Judge/Arbitrator.

... Respondents

Prayer:

Arbitration Original Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 read with Section 2(1)(c)(i) of the



Arb.O.P.(Com.Div.)No.196 of 2024

Commercial Courts Act, 2015 to set aside the award of the 2nd respondent dated 09.03.2024.

For Petitioner : Mr.R.Hemaragav

For Respondents : Ms.V.Nithyasri,
for M/s.S.Ramasubramanian & Associates
for R1

ORDER

This Arbitration Original Petition has been filed to set aside the award passed by the learned Arbitrator dated 09.03.2024.

2. When this matter was taken up for hearing on 05.06.2024, this Court passed the following order:

This Arbitration Original Petition is coming up for Admission today.

2. Mr.M.Deivanandam, learned counsel for the petitioner would submit that the petitioner, M/s.Vidarbha Tractors has challenged the Arbitral Award passed by the learned Arbitrator, dated 09.03.2024, inasmuch as the learned Arbitrator had terminated the counter claims of the



petitioner/respondent solely on account of non-payment of Arbitrator's fee.

3. However, on a perusal of records, it is seen that the learned Arbitrator during the fourth sitting/hearing that was held between the parties on 06.05.2023, in Arbitration Case No.1 of 2023, directed the petitioner/respondent to deposit a sum of Rs.5,00,000/- towards his fee (Arbitrator's fee), failing which, the Application Nos.2 to 7, comprising of counter claims of the respondent would be heard on merits. However, it appears that since the petitioner/respondent has not complied with the said condition, the learned Arbitrator, after showing much indulgence terminated their counter claims in exercise of power available under second proviso to Section 38 (2) of the Arbitration and Conciliation Act vide e-mail dated 28.02.2023 and that it was only thereafter the petitioner/respondent sought for recalling the order terminating their counter claims and came forward to make part payment of Rs.50,000/-, however, the learned Arbitrator not accepted the part payment, and subsequently, during minutes of proceedings held on 09.03.2024, affirmed the order dated 28.02.2024 terminating the counter claims of the respondent. Aggrieved against the said order dated



09.03.2024, the present Arbitration Original Petition is filed by the respondent.

4. Thus, it appears that the petitioner/respondent had caused much inconvenience to the learned Arbitrator by not paying his fee, which was in fact, determined in accordance with Schedule IV of the Act rather indulged in questioning the correctness of the fees structure determined by him. Therefore, this Court makes it clear that unless and until, the petitioner deposits a sum of Rs.5,00,000/- as directed by the learned Arbitrator vide Minutes of Fourth proceedings held on 06.05.2023, the present Arbitration Original Petition will not be entertained by this Court.

5. Accordingly, the petitioner is directed to make a payment of Rs.5,00,000/- towards arbitral fee to the learned Arbitrator on or before 11.06.2024 and shall produce a proof for having made such payment before this Court on the next hearing date. The learned counsel for the petitioner is further directed to serve notice enclosing a copy of this order on the learned counsel, who appeared on behalf of the respondent before the Arbitral Tribunal.

List the matter on 12.06.2024”



WEB COPY

3. The learned counsel for the petitioner would submit that the counter claims filed by the petitioner were rejected by the learned Arbitrator since the petitioner had failed to pay the arbitral fees. Further, he would submit that pursuant to the above order, the petitioner made the payment of a sum of Rs.5,00,000/- towards arbitral fee to the learned Arbitrator and they had also filed a proof with regard to the same before this Court. Hence, he requests this Court to set aside the award dated 09.03.2024 passed by the learned Arbitrator to the extent of rejecting the counter claims dated 29.06.2023 filed by the petitioner before the learned Arbitrator.

4. The learned counsel for the respondent would submit that he has no objection in allowing this petition.

5. Heard the learned counsel for the petitioner and the respondent and perused the entire materials available on record.

6. In the present case, the petitioner had filed their counter claims before the learned Arbitrator on 29.06.2023. However, due to the non-payment of arbitral fee, the counter claims filed by the petitioner were rejected by the learned Arbitrator vide award dated 09.03.2024. Hence, this



Arb.O.P.(Com.Div.)No.196 of 2024

Court, vide order dated 05.06.2024, directed the petitioner to pay a sum of Rs.5,00,000/- towards arbitral fee on or before 11.06.2024. As per the said order, today, the learned counsel for the petitioner filed a proof with regard to the payment of arbitral fee of a sum of Rs.5,00,000/-.

7. This Court is of the view that normally, the counter claims filed by the party have to be adjudicated by providing opportunities of hearing. Further, considering the submissions made by the petitioner and on perusing the proof filed by the petitioner with regard to the payment of arbitral fee, this Court is inclined to set aside the award.

8. Accordingly, the award dated 09.03.2024 passed by the learned Arbitrator is set aside. The learned Arbitrator is directed to take the counter claims filed by the petitioner on record and deal with the same in accordance with law.

9. At this juncture, both the learned counsel would submit that the Mandate of the learned Arbitrator is going to be expired on 28.06.2024 and



Arb.O.P.(Com.Div.)No.196 of 2024

hence, they requested this Court to extend the Mandate of the Arbitrator.

WEB COPY

10. Considering the above submission, this Court is inclined to extend the Mandate of the learned Arbitrator. Accordingly, the Mandate of the learned Arbitrator is extended for a period of 9 months from the date of expiry of the existing Mandate i.e., 28.06.2024.

11. With the above directions, this Arbitration Original Petition is disposed of. No cost. Consequently, the connected application is also closed.

12.06.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

nsa



WEB COPY



Arb.O.P.(Com.Div.)No.196 of 2024

KRISHNAN RAMASAMY.J.,
nsa

Arb.O.P.(Com.Div.)No.196 of 2024
& A.No.2651 of 2024

12.06.2024