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O.P.Nos.524 & 525 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.12.2024
Pronounced on : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.P.Nos.524 & 525 of 2014

O.P.No.254 of 2014:

Saju Kalilyuvilayil Varghese

... Petitioner

VS.

M/s.Financial Software & Systems (P) Ltd.,
502-A, 5th Floor, South Block,
Tidel Park, No.4, Canal Bank Road,
Chennai – 600 013 and having its
Registered Office at “Saradha”,
Ground Floor, No.42, Third Main Road,
Gandhi Nagar, Chennai – 600 020 and
Corporate Office at G4, 1st cross Street,
SIPCOT, IT park, Rajiv Gandhi Salai (OMR),
Siruseri, Navalur,
Chennai, Tamil Nadu – 603 103.

2.Rahul Thanaji Pol

3.Sanjay Gonsalves

4.Gadi Appa Rao

5.Mr.Justice N.V.Balasubramaniyan

... Respondents



O.P.Nos.524 & 525 of 2014

PRAYER: Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the impugned ex-parte Arbitral Award dated 02.08.2011.

For Petitioner : Mrs.Lakshmipriya
and Mr.C.Manohar Gupta
for M/s/Gupta & Ravi

For Respondents : Mr.M.S.Murali
for M/s.R & P Partners

O.P.No.525 of 2014:

Rahul Thanaji Pol

... Petitioner

vs.

1.M/s.Financial Software & Systems (P) Ltd.,
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For Petitioner : Mrs.Lakshmipriya
and Mr.C.Manohar Gupta
for M/s/Gupta & Ravi

For Respondents : Mr.M.S.Murali
for M/s.R & P Partners

COMMON ORDER

These original petitions are filed at the instance of two employees of the respondent Company.

2.It is the case of the petitioners that the ex-parte award came to be passed by the learned Arbitrator. The petitioners moved the learned Arbitrator seeking to set aside the ex-parte award against them. However, even the setting aside applications came to be rejected by the learned Arbitrator and therefore, the petitioners have come up by way of challenge to the said award by means of the above respective original petitions.



3.I have heard Mrs.Lakshmipriya and Mr.C.Manohar Gupta, learned counsel for the petitioners and Mr.M.S.Murali, for M/s.R & P Partners, learned counsel for the respondents in both the original petitions.

4.The learned counsel for the petitioners would attack the award of the learned Arbitrator on the ground that the petitioners were not put on notice by the arbitration proceedings and the learned Arbitrator erroneously refused to entertain the applications to set aside the ex-parte award as well. Further, according to the learned counsel for the petitioners, the learned Arbitrator has not applied his mind to any of the claims and has merely endorsed the claims made by the respondent by passing the awards as prayed for, without going into the merits and legalities in the claims made by the respondents.

5.The learned counsel for the petitioners would further submit that even if the respondents had chosen to remain ex-parte, it was still incumbent for the Arbitrator to decide the claims on its merits. In this regard, the learned counsel for the petitioners would take me through the award to fortify her contention that there has been absolutely no discussion



whatsoever, as to how and why the respondents are entitled to succeed to the claims made in the petitions. The learned counsel for the petitioners would also take me through the relevant documents with regard to non service of the copy of the award and as to how the copy of the award came to be obtained by the petitioners, which alone enable them to challenge the award before this Court.

6.The learned counsel for the petitioners would also refer to Section 31(3) of the Arbitration and Conciliation Act, 1996 and contend that it is a clear violation of the mandate of Section 31(3), warranting interference. The learned counsel for the petitioners would also refer to the following decisions in support of her contentions:

1.P.Nagarajan Vs. Southern Structurals Limited and Others (MANU/TN/0532/1995).

2.Toshniwal Brothers (p) Limited Vs. Eswarprasad, E and Others (MANU/TN/0511/1996)

3.Weiler International Electronics Private Limited Vs. Punita Velu Somasundaram (MANU/MH/0657/2002).

4.R.Babu & Others Vs. TTK LIG Limited (2004 (2) CTC 684).

5.Percept D'Mark (India) Private Limited Vs. Zaheer Khan and Others ((2006) 4 SCC 227).

6.American Express Bank Vs. Priya Puri (MANU/DE/2106/2006).



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O.P.Nos.524 & 525 of 2014

7.UCMAS Mental Arithmetic Vs. Akademi Sempoa & Others (2014 (4) CTC 548).

8.Lister Technologies Private Limited Vs. Mukundhan Dakshinamurthi & Others (MANU/TN/3558/2014).

9.Amica Financial Technologies Private Limited Vs. Hip Bar Private Limited (2022 (1) CTC 631).

10.Rochem Separation Systems (India) Private Limited Vs. Nirtech Private Limited (MANU/MHOR/21331/2023).

7.Per contra, Mr.M.S.Murali, learned counsel for the respondents would submit that the original petition is hopelessly barred by limitation referring to Section 34(3) of the Act. The learned counsel would further submit that the award has to be challenged within a period of three months with a grace period of 30 days and according to the learned counsel for the respondents, the petitioners came to be aware of the award dated 02.08.2011 having been passed even as on 15.09.2011. When the petitioners came to be aware of the award dated 02.08.2011 in September 2011, the original petition filed in the year 2014 is hopelessly barred by limitation. The learned counsel for the respondents would further submit that the Arbitrator has discussed the documents filed by the claimants/respondents and therefore it is not as if the Arbitrator has not applied his mind before passing of the award. He would therefore pray for dismissal of the original petition.



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8.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records produced by way of typed set of papers and the pleadings as well as the impugned award.

9.The respondents made the following claims before the Arbitrator:

(i) Permanent injunction restraining the petitioners herein from using/misusing and/or disclosing confidential information and trade secrets of the claimant either directly/indirectly or in any other manner whatsoever without the prior written consent of the claimant; and

(ii) Directing the petitioners to pay Rs.7,50,000/- together with interest at 18% per annum from 3rd November 2008 till the date of payment and costs of the arbitration.

10.Admittedly, the respondent did not appear before the Sole Arbitrator and on 02.08.2011, the Arbitrator proceeded to pass an award in favour of the respondent. On 19.09.2011, the Arbitrator has sent a E-mail to



the parties informing them that one S.R.Sundaram, learned counsel for the petitioners has filed an application to set aside the ex-parte award dated 02.08.2011 and that the respondent herein was called upon to file counter by 19.10.2011. By notice dated 01.02.2012, the Arbitrator directed the respondent to arrange for a sitting on 29.02.2012 to proceed to hear the setting aside applications. However, at request of the petitioners herein, the matter was adjourned to 06.04.2012 and subsequently to other dates. Finally, the learned Arbitrator proceeded to dismiss the setting aside applications on 21.08.2012. Thereafter, a request was made by the petitioners seeking duly scanned award copy, in and by a letter dated 27.08.2013. In response to the said request, the Arbitrator issued a notice dated 31.08.2013, enclosing a scanned copy of the award as requested by the petitioners and at the same time pointing out that the petitioners were aware of the award dated 02.08.2011, as admittedly filed application to set aside the ex-parte award on 15.09.2011 and that it was only the petitioners who had not remitted Rs.1000/- for preparation and sending of the award. After obtaining the copies from the Arbitrator, the above petitions have been filed.



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11.It is not in dispute that the above original petitions filed within the period of three months as permitted under Section 34(3) of the Arbitration and Conciliation Act, 1996 after receiving the award copy from the Arbitrator in September 2011.

12.The main contention of the learned counsel for the respondent is that the petitioners were aware of the award even in September 2011 and therefore the original petitions filed in October 2013 were clearly and hopelessly barred by Limitation. Section 34(3) of the Act is extracted hereunder for easy reference:

“ Section 34(3):- Application for setting aside arbitral awards.

(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.”



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13.A plain reading of Section 34 of the Act makes it clear that when a party aggrieved by the award intends to challenge the same by way of Section 34 petition, the said application for setting aside the award has to be necessarily made within three months from the date of receipt of the arbitral award by such party aggrieved and there is further 30 days window period provided for making an application beyond the permissible 90 days period. As far as dates are concerned, it is clear that the original petition has been filed beyond 120 days from the date of passing of the award or even the date on which the petitioners admittedly had knowledge of the passing of the award. However, the question that remains to be answered is as to whether the relevant date would be the date of knowledge of the passing of the award or the date of receipt of the copy of the award. The language employed under Section 34 leaves no room for any discretion.

14.It is clear that Section 34 application would have to be made within three months from the date of receipt of the copy of the award by the party aggrieved by the award and intends to challenge the same. Therefore, in my opinion, imputing date of knowledge of the award on the petitioners



would not be relevant in determining the question of limitation. In any event, in the light of the discussion to be made hereunder, it would only make it abundantly clear that the original petitions cannot be thrown out on the ground of limitation. The award was admittedly passed ex-parte, for non appearance of the respondent.

15.It is the specific case of the petitioners that the petitioners had engaged a counsel by name, S.R.Sundaram who had entrusted the case to his junior by name Premkumar, Advocate to conduct the arbitration proceedings and that the petitioners were never aware of any of the hearing dates including the passing of the ex-parte award under bonafide impression that the award being passed ex-parte could be set aside on the advice of their counsel, S.R.Sundaram. The petitioners moved an application for setting aside the ex-parte award dated 02.08.2011. However, the said application filed by the petitioners was also dismissed on 31.08.2013.

16.It is the further specific case of the petitioners that the original award was never received by them until 05.09.2013. According to the petitioners, they are deprived of an opportunity of contesting the claim of



the respondent and in any event, the impugned award was passed without adhering to not only the principles of natural justice but also was perverse and contrary to the equity and justice and good conscious. The learned counsel for the petitioners would vehemently contend that the respondent had to show the positive evidence before the Tribunal that the petitioners had made use of trade secrets and had rendered themselves liable to suffer the award for injunction and damages.

17.I would first take up the issue regarding limitation. As contended by the learned counsel for the petitioners, the original petition was filed within the stipulated time under Section 34(3) of the Act, on receipt of a copy of the award in September 2013. However, a strong objection taken to the filing of the original petitions by the learned counsel for the respondent on the ground that the petitioners had knowledge of the ex-parte award dated 02.08.2011 even in September 2011 when they admittedly approached the Arbitrator seeking to set aside the ex-parte award passed against them. As I have already found the clear language employed under Section 34(3) is 'only the date of receipt of the copy of the award' therefore the date of knowledge cannot be substituted in the place of date of receipt of the copy



of the award to deny the petitioners right to challenge the award. However, it is seen from the records that admittedly, neither the Arbitrator in the various correspondence by way of E-mails with the petitioners nor the respondent have been able to establish that the copy of the award was only served on the petitioners immediately after the award came to be passed in August 2013.

18.In fact, it is contended that at the centre where the arbitration proceedings took place, they had updated the software and therefore no records were available with them also. Further, the Arbitrator himself has stated that his computer was attacked by virus and he was also not in a position to retrieve any of the records pertaining to service of copy of the award on the petitioners herein. In fact, even in the award, I find that the Arbitrator has recorded that a counter statement was filed along with the restoration petitions dated 06.06.2011 raising certain preliminary issues alone and that the said counter statement would not have been signed by the petitioners herein but only of their counsel who had not even filed a vakalat nor produced any Power of Attorney to represent the petitioners and since the respondent had not appeared, the Arbitrator did not choose to award costs as well.



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O.P.Nos.524 & 525 of 2014

19. Therefore, in the light of the above and the materials available on record, it is clear that there was no objection for the petitioners herein to receive the copy of the award before September 2013 and consequently, the filing of the original petitions in October 2014, within the time frame stipulated under Section 34(3) of the Act. This question is answered in favour of the petitioners.

20. Coming to the challenge to the award on its merits, as rightly contended by the learned counsel for the petitioners, the award is literally one paragraph award, where the Arbitrator refers to filing of proof affidavit enclosing filed documents, the nature of the filed documents are set out and the Arbitrator merely proceeds to hold that since there is no contra evidence to the oral evidence and the claimant has proved the case and therefore are entitled to both the reliefs of permanent injunction as well as compensation.

21. As I have already set out the reliefs prayed for in the claim petition by the respondents, the Arbitrator ought to have fundamentally discussed the reliefs and whether the respondents herein is entitled to the reliefs based



on the available materials. The first prayer pertains to a permanent injunction to restrain the petitioners herein from disclosing confidential information and trade secrets. In order to entitle to the said relief, the claimant would have to necessarily show that the petitioners were in the know of any confidential information or trade secrets of the respondents Company as employer and that they had used or other misused such confidential information. Therefore, strong evidence had to be let in by the respondents claimants to before becoming entitle to the relief of permanent injunction. However, there is absolutely no discussion in the award as to any of such requirements having been met by the claimants.

22. Similarly, with regard to the relief of compensation for damages to the tune of Rs.7,50,000/-, together with interest also there is absolutely no evidence on the side of the claimants as to how they have become entitled to loss as result of any act of omission on the part of the petitioners, leave alone quantifying the loss suffered by them, the Arbitrator has merely endorsed the claims made by the respondent and passed an award in their favour.



23.The learned counsel for the petitioners has placed reliance on the judgement of the Hon'ble Division Bench of this Court in *Transtunnelstroy – Afcons (JV) and Others Vs. Chennai Metro Rail Limited* reported in 2023 (3) CTC 266, where the Division Bench of this Court held that referring to Sections 18 and 24(3) of the Arbitration and Conciliation Act that full opportunity is not given to any of the parties then it would be a ground for setting aside the arbitral award under Section 34(2)(a)(iii) of the Act, elaborating on the phrase “unable to present the case”. The Division Bench further held that the parties should be given full opportunity under Section 18 of the Act and that even under Section 24(3), false statement/documents or other information supplied to or application made to the Tribunal to one party shall be communicated to the other party and if any materials are taken behind the back of the parties by the arbitral Tribunal, on which the parties had no opportunity to comment would amount to a parties otherwise being unable to present the case.

24.Reliance is also placed on the decision of the Hon'ble Supreme Court in *Asma Lateef and Others Vs. Shabbir Ahmad and Others* reported in 2024 (1) CTC 520, where the Hon'ble Supreme Court referring to the



decision in *Balraj Taneja and Another Vs. Sunil Madan and Another* reported in (1999) 8 SCC 396, the Hon'ble Supreme Court held that the judgment should contain the concise statement of the case, points for determination and the decision thereof and the reasons for such decisions and that in judicial proceedings there cannot be arbitrary orders and a Judge cannot say merely the suit decreed or dismissed and the whole process of reasoning has to be set out for deciding the case one way or the other. The above said decisions would squarely apply to the facts of the present case.

25.Next, the learned counsel fo the petitioner would place reliance on the decision of the High Court of Kerala in *Devchand Construction Vs. Union of India, Rep. by the Deputy Chief Engineer, Southern Railway, Kannur* passed in *Arb.A.No.29 of 2018*, where the Division Bench of Kerala High Court referring to Section 73 of the Contract Act and held that when a contract is broken the party who alleges breach and seeks compensation has to prove that such breach of contract was occasioned because of the other party and that such breach resulted in direct loss or damage suffered.



26. Here as already discussed, the Arbitrator has not discussed the entitlement of the compensation claimed by the respondent for the alleged breach. In fact, as rightly pointed out by the learned counsel for the petitioners, the respondents have not even proved that there has been any leaking of confidential information with the petitioners in the first place leave alone such confidential information being used or misused by the petitioners, thereby resulting in losses suffered by the respondents.

27. It is settled law that under Section 31(3) of the Arbitration and conciliation Act, the arbitral award shall state the reasons upon which the award is passed. The only exceptions to such requirement are when the parties themselves have agreed that no reasons need to be given or where the award is passed on agreed terms between the parties under Section 30. Both the exceptions are not applicable in the present case and therefore, the requirement of reasoned award is not dispensed with. Unfortunately, the award, as already discussed above, is an one paragraph award, merely discussing the proof affidavit and documents filed therein and no reasons have been assigned for the decision taken by the learned Arbitrator to pass the award. Therefore, it is clear that there is no patent illegality or perversity



O.P.Nos.524 & 525 of 2014

in the award, warranting under Section 34 of the Arbitration and Conciliation Act, 1996.

28.For all the above reasons, both the original petitions are liable to be allowed.

29.In fine, both the Original Petitions are allowed and the award dated 02.08.2011 is hereby set aside. There shall be no order as to costs.

21.12.2024

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Index : Yes / No

Internet : Yes / No



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O.P.Nos.524 & 525 of 2014

P.B.BALAJI, J.,
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O.P.Nos.524 & 525 of 2014

21.12.2024