IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-12-2024

CORAM:

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A. (CAD) No.75 of 2024

AKR Events
represented by its Proprietor
M. Ravishankar @ Rafiq
No.13/16, Dr. Subbaraya Nagar VIII Street
Kodambakkam
Chennai 600 024 ... Appellant

vs.

JSB Film Studios
represented by its Proprietor, J. Satishkumar
No.45/1, Thirupathi Nagar
I Main Road Extension
Kolathur
Chennai 600 099 ... Respondent

Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2013, read with Section 37 of the Arbitration and Conciliation Act, 1996, seeking to set aside the order dated 04.06.2024 in Arb.O.P. (Comm. Div.) No.57 of 2023.

For appellant	Mr. K.V. Babu
For respondent	Mr. P.V. Balasubramaniam, Sr. Advocate for Mr. S. Ranjith Kumar

JUDGMENT

(Delivered by the Hon'ble The Chief Justice)

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, arising out of an order dated 04.06.2024 passed under Section 34 of the Act. By the impugned order, the learned Single Judge was pleased to dismiss the appellant's challenge to the award given by a Sole Arbitrator on 30.11.2022.

2. The dispute, in short, between the parties, was the appellant and respondent had entered into an agreement dated 29.05.2019 by which respondent agreed to organise A.R. Rahman's live in concert in Chennai. The date of performance was 10.08.2019. The scope of appellant was to arrange artist for a fee to be paid to appellant. Respondent agreed to pay a sum of Rs.3,05,00,000/- plus GST, which was referred to as artist fee in instalments. The said agreement dated 29.05.2019 provided for settlement of disputes arising out or in connection with the agreement or its performance, if not settled amicably, through arbitration.

3. Thereafter, due to certain developments into which we need not go

for the purpose of this matter, communications were exchanged between the parties inasmuch as by a letter dated 11.07.2019 from appellant on a 100 rupee stamp paper addressed to respondent, appellant took over the entire event. Seven communications formed a part of this arrangement and all those communications were marked as Exs. C.3 to C.9. The following issues were framed by the Arbitral Tribunal:

> "1. Whether the respondent has violated Clause 9 of the Agreement dated 29.05.2019 and if so, whether the claimant is entitled to the sum of Rs.50 lakhs as claimed by him in respect of that breach?
>
> 2. Whether the amount of Rs.50 lakhs quantified in the claim statement (covered by issue 1) is based on any relevant data?
>
> 3. Whether Ex.C.3 to Ex.C.9 are integral part of Ex.C.2 Agreement?
>
> 4. Whether Ex.C3 to Ex.C.9 either independently or jointly constitute a valid contract enforceable in law?
>
> 5. Whether on facts the claimant is entitled to the sum of Rs.2,75,10,000/- as loss on account of breach, if any, committed by the respondent under agreement dated 29.05.2019 read with Ex.C.3 to Ex.C.9?
>
> 6. Whether the claimant is entitled to interest as claimed?"

4. This Arbitral Tribunal was formed pursuant to an order dated 25.07.2022 passed by a learned Single Judge in the first round of petition filed under Section 34 of the Act. Paragraph 17 of the said order reads as under:

"17. The following consent order is made:

a. Impugned award i.e., award dated 30.11.2021 bearing reference arbitration proceedings Re O.P.No.548 of 2020 is set aside;

b. By consent, both parties would go for re-arbitration before two Arbitral Tribunals to be constituted by one sole Arbitrator. One Arbitral Tribunal qua Ex.C.2, i.e., Concert Agreement dated 29.05.2019. Second Arbitral Tribunal shall be qua title sponsor for Chennai show which has come into existence in the light of communications exchanged between the parties between 11.07.2019 and 02.03.2020 *inter alia vide* Exs.C.3 to C.9;

c. Constitution of two Arbitral Tribunals will not mean that it is not open to the parties to raise the issue as to whether Exs.C.3 to C9 and other correspondence exchanged between the parties constitute an integral part of Ex.C.2 or as to whether these have to be treated as separate and distinct agreements;

d. Hon'ble Mr. Justice R. Balasubramanian (Retd.), former Judge of this Court residing at No.5, Tiger Varadachari I Road, Kalakshetra Colony, Besant Nagar, Adyar, Chennai 600 090 (Ph.24465599, Mob. 94443 53535) is appointed as sole Arbitrator to constitute two Arbitral Tribunals, one qua Concert agreement dated 29.05.2019 (Ex.C.2) and the other *inter alia* pertaining to *inter alia* title sponsor *vide* communications exchanged between the parties between 11.07.2019 and 02.03.2020. Hon'ble Arbitrator is requested to enter upon reference qua 29.05.2019 concert agreement besides subsequent communications regarding title sponsor, adjudicate upon arbitrable disputes that have arisen between the parties based on pleadings, documentary evidence (exhibits which are already on record) *qua* AT which made the impugned award, which has now been set aside;

e. Arbitration shall be Fast Track arbitration under Section 29B of A & C Act;

f. Hon'ble Arbitrator is requested to hold sittings in 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) by applying Madras High Court Arbitration Proceedings Rules 2017 and fee of the Hon'ble Arbitrator for each of the two Arbitral Tribunals shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017 for each of the two Arbitral Tribunals."

5. The subject matter of the appeal before us is basically issue nos.3,4 and 5 of the issues framed by Arbitral Tribunal. Arbitral Tribunal gave its finding on this. Paragraphs 4 and 5 of the award read as under:

> "4. The claimant in para 5 of the claim statement pleaded that when he started looking out for a title sponsor to invest for the show to be held in Chennai, the respondent has promised the claimant that he will buy the show and committed by his letter dated 11.07.2019, a consideration of Rs.4.25 crores which was later on reduced by the respondent by his letter dated 24.07.2019 to Rs.4 crores plus taxes. However, it is seen from the statement of defence that the respondent had denied that he agreed to bring a title sponsor and added that the alleged letter of sponsorship was brought about under duress and coercion. The Tribunal is not going into that question at this stage whether the plea of duress and coercion is proved or not, suffice it to say that those communications relied upon by the claimant in this context clearly show that it is a "fall-out" of Clause 8 of the contract, *i.e.,* instead of the claimant looking out for an event sponsor, the respondent had undertaken that responsibility by paying a consideration as promised by him. Ex.C.2 is the agreement and Ex.C.3 to Ex.C.9 are not totally extraneous to the contractual terms incorporated in Ex.C.2. In fact, in Ex.C.4 letter dated 24.07.2019, there is a reference to the proposal given by the claimant for a live concert show to be held on 10.08.2019 at YMCA grounds. It is the claimant's case that based on that assurance, he did whatever he could do under the agreement dated 29.05.2019 to take the proposed live show on 10.08.2019 to its logical end. It is his case that he had done so on the belief and the representation made by the respondent that he will pay the promised amount. Except pleading that the letter of assurance referred to above is the result of duress and coercion brought about by the claimant, the respondent had not proved that fact in any manner. Further, it is not the case of the respondent that the claimant had fixed his own event sponsor and with his association

the live show on 10.08.2019 in Chennai was held. There is no dispute that the live concert was held in Chennai on 10.08.2019. Exs.C.3 to C9 definitely throw light, on their apparent reading, that the respondent was involved in taking over the entire show including finalizing an event sponsor. Therefore, it cannot be held that Ex.C.3 to C.9 has nothing to do with Ex.C.2. Those documents establish beyond doubt that the respondent has finalized the event sponsor and promised to make the payment commencing from the following date. If the respondent had not promised the consideration for taking over the event, the claimant would not have definitely proceeded further without an event sponsor fiinalized by him under the contract. Under these circumstances, the Tribunal answers this issue holding that Ex.C.3 – C.9 are integral part of Ex.C.2 agreement.

5. Ex.C2 is a binding contract between the parties to the dispute. Among Ex.C.3 to C9, two documents namely Exs.C.3 and C4 would be most relevant to be taken into account immediately in deciding the issue. The starting words in Ex.C.3 is "further to our Artist agreement dated 29.05.2019 regarding AR Rahman live in concert for Chennai city scheduled on 10th August, we would like to buy out the show from you for a consideration of Rs.4.25 crores." In Ex.C.4 dated 24.07.2019, the starting words are "based on the proposal given by you for AR Rahman live in concert show to be held on 10.08.2019 at YMCA grounds, our client has agreed to be as Title sponsor for the show". Ex.C5 to C9 is in continuation of the promises made in Ex.C3 and C4. Therefore, a conjoint reading of Ex.C2, C3 and C4 would establish beyond doubt that they constitute a contract legally enforceable unless the plea of coercion taken by the respondent is established."

6. The learned Single Judge dismissed the challenge to the award on the ground that the award did not suffer from any patent illegality so as to warrant interference under Section 34(2-A) of the Act. The reason for such conclusion was that the learned Single Judge found that the Arbitrator came to the conclusion that the contract in Ex.C.2, *i.e.,* agreement dated 29.05.2019 and

the communications at Exs.C.3 to C.9 were integrally connected with one another and the conclusion arrived at by the Arbitrator was a possible conclusion and not an implausible or improbable conclusion in the given facts and circumstances of the case. We entirely agree with the learned Single Judge.

7. In ***Ssangyong Engineering and Construction Co. Ltd. vs. National Highway Authority of India***[1], the Court held that the ground of patent illegality is available only where the view taken by the Arbitral Tribunal is an impossible view while construing the contract between the parties or where the award of the tribunal lacks any reasons. The Court further held that an award can be set aside only if an Arbitrator/Arbitral Tribunal decides the question beyond the contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the parties.

8. That apart, the scope of interference under section 34 of the Act is very limited. This Court can neither sit as a court of appeal or re-appreciate the evidence placed before the Arbitral Tribunal or substitute the finding of the

1 *(2019) 15 SCC 131*

Arbitral Tribunal with its own conclusion on facts or evidence. In this connection, the decision of the Honourable Supreme Court in ***The Project Director NHAI vs. M. Hakim***[2] is invited, wherein, it was held that the power to set aside an Arbitral Award under Section 34 of the Act does not include the authority to modify the award. It further held that an award can be set aside only on limited grounds as specified in Section 34 of the Act and it is not an appellate provision. It further held that an application under Section 34 for setting aside an award does not entail any challenge on merits to an award.

9. The Supreme Court, in ***Patel Engineering Ltd vs. NEEPCO***[3], held that patent illegality as a ground for setting aside an award is available only if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at the same or the construction of the contract is such that no fair or reasonable person would take or that the view of the Arbitrator is not even a possible view.

10. The Supreme Court, in ***Sutlej Construction Ltd. vs. UT of***

2 (2021) 9 SCC 1
3 (2020) 7 SCC 167

Chandigarh[4], held that when the award is a reasoned one and the view taken is plausible, re-appreciation of evidence is not allowed while dealing with the challenge to an award under Section 34 of the Act for setting aside an award. It further held that the proceedings challenging the award cannot be treated as a first appeal against a decree passed by a trial court

11. In ***Sheladia Associates Inc. V. TN Road Sector Project II, represented by its Project Director***[5], the court reminded itself of the Hodgkinson principle which has been explained by the Supreme Court in the oft-quoted and celebrated Associate Builders case being ***Associate Builders V. Delhi Development Authority***[6]. It held that Hodgkinson principle in simple terms means that the Arbitral Tribunal is the best judge with regard to quality and quantity of evidence before it. It further held that if there is no infraction of Section 28(3) of the Act, the question of challenge on the grounds of public policy does not arise.

12. Having considered the documents, we are also satisfied that the

4 (2018) 1 SCC 718
5 2019 SCC OnLine Mad 17883
6 (2015) 3 SCC 49

view taken by the learned Arbitrator is not an impossible view. While construing the contract between the parties, the Arbitral Tribunal has arrived at its conclusion based on evidence and documents filed by the parties.

13. The Arbitrator, as held in *Associate Builders* (supra), is the best judge with regard to quantity and quality of evidence before him. As held by the Supreme Court in *Sutlej Constructions* (supra), re-appreciation of evidence is not permissible while dealing with the challenge to an award under Section 34 of the Act when the award is a reasoned one and the view taken is plausible.

In the circumstances, appeal is dismissed with costs quantified at Rs.5 lakhs payable to respondent within a period of four weeks. No costs.

(K.R.SHRIRAM, C.J.) **(SENTHILKUMAR RAMAMOORTHY, J.)**
03-12-2024

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE

and

SENTHILKUMAR RAMAMOORTHY, J.

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