



O.S.A(CAD)No.45 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

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Ms/.Sree Basaveshwar Sugars Ltd.,
Having Corporate Office at
274-C, Thuraiyur Road
Perambalur - 621 212.

... Appellant

Vs.

M/s.Uttam Industrial Engineering Pvt. Ltd.,
Having Office at
A-8, Meerut Road
Industrial Area
Ghaziabad - 201 003
Uttar Pradesh.

.. Respondent

Original Side Appeal filed under Clause 15 of Letters Patent read with Order XXXXVI Rule 1 of Original Side Rules and Section 37 of Arbitration and Conciliation Act, 1996, read with Section 13(1) of the Commercial

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Courts Act, 2015, praying to set aside judgment and decree dated 30.06.2021 made in O.P.No.39 of 2020 by allowing this Original Side Appeal.

For Appellant : Mr.T.Mohan, Senior Advocate
instructed by Mr.S.Ramachandran
For Respondent : Mr.Rahul Balaji

J U D G M E N T

[Judgment of the Court was made by M.SUNDAR, J.,]

Captioned intra-Court appeal i.e., 'Original Side Appeal' {hereinafter 'OSA' for the sake of brevity} is under Section 37 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

2. Short facts (shorn of particulars not imperative for appreciating this order) are that the appellant before this 'Commercial Appellate Division' {'CAD' for the sake of brevity} is engaged in the business of manufacturing, producing and distributing Sugar and its by-products; that the appellant shall hereinafter be referred to as 'SBSL' denoting 'Sree Basaveshwar Sugars Limited'; that the respondent before this CAD is a company which is



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engaged in the business of designing, manufacturing and supplying / selling plant, machinery and equipment required for sugar plants; that the respondent before CAD shall hereinafter be referred to as 'UIEPL' denoting 'Uttam Industrial Engineering Private Limited'; that short facts / abbreviations are deployed for the sake of brevity and convenience; that fulcrum or in other words nucleus of *lis* between the parties is a 'contract dated 05.05.2011' {hereinafter 'said contract' for the sake of brevity}; that vide said contract, UIEPL {to be noted, 'UIEPL' shall be referred to as 'contractor' also for the sake of brevity and convenience} was to design and supply Sugar Mill House Equipments for sugar factory of SBSL {to be noted, 'SBSL' shall be referred to as 'employer' also for the sake of brevity and convenience}; that under the said contract, contractor was to supply employer in Karnataka all material and equipments so as to enable erection and commissioning of Mill House equipments including Cane Handling on or before April 2012; that said contract broadly had three aspects included in it namely, (i) Commercial Terms and Condition for supply at site, (ii) Technical Terms and Conditions and (iii) Data Sheet and Annexure; that under the said contract, contractor UIEPL supplied the sugar house



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equipments till May 2012; that thereafter, said contract ran into rough weather as according to the contractor, employer did not make payments though clause 1.14.6 of the said contract stipulates that employer has to pay as per invoice without making deductions unless the details of such claims have already been communicated to the contractor; that according to the contractor, as per clause 1.14.1(d) of said contract, money should have been settled within 15 days; that this Court is on a legal drill under Section 37 of A and C Act and therefore it is really not necessary to delve into numbers in terms of claims with specificity and exactitude; that it will suffice to say that employer in and by a notice dated 12.02.2012 terminated the said contract; that this lead to eruption of arbitrable disputes and constitution of a three member 'Arbitral Tribunal' {'AT' for the sake of brevity}; that before AT, UIEPL contractor was claimant and SBSL employer was respondent; that contractor as claimant made a claim for a sum of a little over Rs.4.43 Crores stating that the same are monies due from employer SBSL for supply of machinery and equipments supplied during the period of 23.12.2011 to 15.03.2018 under said contract; that this amount of a little over Rs.4.43 Crores (Rs.4,43,56,687/- to be precise) was claimed with interest at 14% per



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annum; that employer SBSL as respondent before AT resisted the claim and also made a counter claim for Rs.5 Crores saying that the same is towards damages said to have been suffered by SBSL for breach of terms of said contract; that this damages of Rs.5 Crores was claimed by employer SBSL with 18% interest per annum; that AT, after full contest, made an 'award dated 03.08.2019' {hereinafter 'impugned award' for the sake of brevity} *inter alia* returning a verdict in favour of claimant / contractor / UIEPL in a sum of Rs.4,43,56,687/- together with 12% interest per annum besides costs of Rs.6 Lakhs; that as regards the counter claim of employer SBSL i.e., counter claim of Rs.5 Crores, the entire counter claim was dismissed as a case of no evidence {no pleadings with specificity too}; that the employer SBSL assailed the impugned award under Section 34 of A and C Act vide O.P.No.39 of 2020 and Section 34 Court in and by an 'order dated 30.06.2021' {hereinafter 'impugned order' for the sake of brevity} dismissed the Section 34 petition; that against the impugned order of Section 34 Court, captioned OSA has been filed by SBSL employer; that the captioned appeal was heard out in full;

3. Mr.T.Mohan, learned Senior Counsel, instructed by



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Mr.S.Ramachandran, counsel on record for appellant and Mr.Rahul Balaji, learned counsel for respondent were before this CAD.

4. Mr.T.Mohan, learned Senior Counsel drew our attention to evidence of one Mr.Rajeev Chandra Shah, who deposed as C.W.1. on behalf of contractor UIEPL. After advertng to various parts of depositions (to be noted, depositions are in the form of Questions and Answers), learned counsel emphasized that delay on the part of contractor has been admitted but the same has been brushed aside by AT and Section 34 Court did not interfere. Learned Senior Counsel submits that the damages can be claimed by a Juristic person also. Learned Senior counsel relied on *Aneeta Hada* case {*Aneeta Hada Vs. Godfather Travels and Tours Private Limited* reported in (2012) 5 SCC 661} to say that person includes a juristic person. *Datar Switchgear* case {*Maharashtra State Electricity Distribution Company Limited Vs. Datar Switchgear Limited and others* reported in (2018) 3 SCC 133} was relied on to say that once termination on the ground of breach of contract is justified, a contracting party whose contract is so terminated is entitled to damages. *Reliance Infrastructure* case {*Reliance Infrastructure Limited Vs. State of Goa* reported in (2024) 1 SCC 479}



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was relied on to say that document which changes fundamentals of a contract should be looked at as novation. ***Delhi Metro Rail case {Delhi Metro Rail Corporation Limited Vs. Delhi Airport Metro Express Private Limited reported in 2024 SCC OnLine SC 522}*** was pressed into service to say that vital evidence cannot be ignored.

5. Per contra, Mr.Rahul Balaji, learned counsel submitted that there cannot be re-appreciation of evidence. In any event, learned counsel submitted that evidence has been correctly appreciated by AT. Learned counsel drew our attention to paragraph Nos.12 and 15 of impugned award and submitted that it is a clear case of admission and correspondence between parties has been looked into and appreciated by AT to make the impugned award.

6. We carefully considered the rival submissions.

7. Before proceeding further, we deem it appropriate to make it clear that Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a mere challenge to an arbitral award under 8 grounds (these grounds have been described as 'pigeon holes' by this Court). Section 34 of A and C Act is a delicate balance between the



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sanctity of 'finality of arbitral award' and 'limited judicial intervention' ingrained in Sections 35 and 5 (respectively) of A and C Act on one side and judicial review forming integral part of due process of law on the other side. The test is whether a challenge to an arbitral award fits nay snugly fits into any one or more of the 'legal slots' described by this Court as 'pigeon holes'. If the answer is in the affirmative, arbitral award will be dislodged. If it is negative, the arbitral award will be sustained. Section 34 of A and C Act has been described as default clause which provides for exceptional cases of interference in Arbitral Award and it is only qua anyone of 8 pigeon holes adumbrated in Section 34 of A and C Act.

8. We now revert to the legal drill on hand. We find that Section 34 Court has *inter alia* (in paragraph No.12 of the impugned order) neatly set out an adumbration of 8 pigeon holes. Thereafter, Section 34 Court has clearly held that there is no error in AT as the entire matter is borne out by documents. In any event, re-appreciation of evidence is forbidden as regards patent illegality ground.

9. A careful perusal of case file in the light of submissions brings to light that the entire challenge to impugned award is predicated on patent



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illegality vide Sub-Section (2A) of Section 34 of A and C Act. As regards patent illegality, re-appreciation of evidence is forbidden and even mere erroneous application of law should pass muster. The case on hand does not even remotely touch upon erroneous application of law and therefore that leaves us with re-appreciation of evidence. Re-appreciation of evidence is clearly forbidden. Review of arbitral award on merits is clearly outside the Section 34 Statutory perimeter.

10. Reverting to the case laws which were pressed into service, as regards *Aneeta Hada* case that arises under 'the Negotiable Instruments Act, 1881' {hereinafter 'NI Act' for the sake of brevity} and with regard to criminal liability qua Section 141 of NI Act, while explaining the term 'person' it was held that the 'person' does include a juristic person. This does not come to the aid of the appellant employer i.e., SBSL in the case on hand. In *Aneeta Hada* case, facts are that the appellant, as a authorised signatory of a company, had issued a cheque in favour of the respondent and the same was dishonoured. Therefore, a criminal complaint under section 138 of NI Act was lodged before the judicial magistrate concerned and the learned Magistrate took cognizance of the offence against the appellant, however the



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company was not arrayed as a accused. Therefore, the issue involved in appeals was whether the company could have been made liable for prosecution without being impleaded as an accused and whether the Directors could have been prosecuted for offences punishable under the aforesaid provisions without the Company being arrayed as an accused. It is a case of no evidence qua damages and therefore juristic person point pales into insignificance.

11. As regards **Datar Switchgear** case, facts are that the respondent was awarded a contract by the appellant for installation of low tension load management systems (LTLMS) at various locations. During the execution of the contract, some disputes arose between the parties. According to respondent, the appellant had committed two kinds of breaches, namely, the appellant did not supply the list of location where the contract objects had to be installed and further, the appellant did not renew the letter of credit through which the lease rentals were being paid for the installed objects. A series of correspondence were exchanged between the parties. Thereafter, the respondent by letter dated 21.4.1999 terminated the contract in its entirety and refused to maintain even the equipment installed by them. A



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Arbitral Tribunal was constituted and the arbitral tribunal passed a final award directing the appellant to pay a sum of Rs.1,85,97,86,399/- to the respondent as damages. However, it did not find fault with the appellant as regards non-renewal of the LC observing that the respondent had terminated the contract in its entirety on 21.04.1999 whereas the LC was valid up to 30.04.1999. The application filed by the appellant under section 34 of A and C Act was dismissed by the learned Single Judge. The intra-court appeal preferred by the appellant was also dismissed. Aggrieved by the same, the appellant has preferred appeal before Hon'ble Supreme Court. In **Datar Switchgear** case, termination was held to be valid and it was held to be attributable to breach of contract but that is not the case on hand. In the case on hand, termination vide letter dated 12.02.2012 has not been held to be valid, correct much less predicated on breach by AT. Therefore, **Datar Switchgear** case also does not come to the aid of the appellant.

12. The next case law was **Reliance Infrastructure** case and as already alluded to supra, it was pressed into service to say that correspondence resulted in change of fundamentals of contract. Facts in **Reliance Infrastructure** case are the claimant Reliance Infrastructure



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entered into a Power Purchase Agreement dated 10.01.1997 with the respondent Government of Goa to commission and operate a 39.8 MW capacity power generation station for a period from 14.08.1999 to 13.08.2014. As per the agreement, the power station was to use 'Naphtha' as fuel to generate electricity but it was allowed for the use of alternate fuel. The claimant started commercial operation on 14.08.1999. Multiple supplementary agreements were entered into between the parties. One such amendment was the conversion of the power station from Open Cycle Generating Station into Combined Cycle Generating. In the year 2013, due to rising power costs, the respondent intended to stop purchasing power from the claimant. The claimant proposed switching to Regasified Liquefied Natural Gas (RLNG) as an alternate fuel, providing a cost formula based on the fluctuating prices of RLNG and the US dollar exchange rate. Some disputes arose between the parties leading to arbitration proceedings. The Arbitral Tribunal passed an award in favour of the claimant. The award was challenged by the respondent under section 34 of A and C Act before the Commercial Court and the award was upheld. The appeal made under Section 37 was allowed and substantial and material parts of the findings of



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the Award was reversed. Aggrieved over the same, the claimant has approached Hon'ble Supreme Court. **Reliance Infrastructure** case is one that turns on novation and novation is nobody's case in the case on hand and therefore, **Reliance Infrastructure** case also does not come to the aid of the appellant employer / SBSL in the case on hand.

13. Lastly, as regards **Delhi Metro Rail** case, it is a judgment rendered in curative petition and facts are that a dispute arose between the Delhi Metro Rail Corporation [DMRC] and Delhi Airport Metro Express Private Limited [DAMEPL] over the termination of a concession agreement. The concession agreement envisages a public private partnership for providing metro rail connectivity between New Delhi Railway Station and Indira Gandhi International Airport and other points within Delhi. It is alleged that DMRC failed to cure defects pointed out by DAMEPL within 90 days. DMRC initiated arbitration proceedings. The Arbitral Tribunal held in favour of DAMEPL. DMRC has preferred a application under section 34 of A and C Act before Delhi High Court and the same was dismissed. Aggrieved by the order of learned Single Judge, the appeal preferred under section 37 of A and C Act was partly allowed by Hon'ble Division Bench of



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Delhi High Court. DAMEPL carried the matter to Hon'ble Supreme Court under Article 136 of the Constitution of India. A two member Bench of Hon'ble Supreme Court allowed the appeal and restored the award. A review petition was also dismissed. Thereafter, this curative petition has been preferred. In any event, **Delhi Metro Rail** case ratio is that AT ignored specific terms of termination clause but in the case on hand there is no such issue. In other words, such an issue does not arise at all. Therefore, **Delhi Metro Rail** case also does not come to the aid of the appellant in the endeavor to say that the impugned award is unreasoned and that vital evidence has not been looked into. On the contrary, as already alluded to supra, paragraph Nos.12 and 15 of the impugned award bring to light that evidence has been looked into, appreciated and impugned award has been made.

14. On a careful perusal of impugned order of Section 34 Court, we find that Section 34 Court has correctly dealt with the challenge to the impugned award and come to the conclusion and returned the verdict that there is no ground to interfere with the impugned award as Section 34 Court has gone by 8 pigeon holes theory about which there is delianation supra.



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15. Before we conclude, we make it clear that post ***Ssangyong*** case [***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India*** reported in (2019) 15 SCC 131] i.e., review on merits qua an award is impermissible. This CAD also makes it clear that in dealing with case laws, we have applied time honoured ***Padma Sundara Rao*** case law [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in (2002) 3 SCC 533]. To be noted, ***Padma Sundara Rao*** case law is an authority as to how a citation or case law has to be referred. On facts ***Padma Sundara Rao*** case pertains to Land Acquisition proceedings and the question as to whether State gets a fresh period to make declaration on initial notification being quashed was considered. It is also to be noted that ***Padma Sundara Rao*** case law was rendered by a Hon'ble Constitution Bench and therefore, it is not just a ratio but declaration of law. Relevant paragraph in ***Padma Sundara Rao*** case law is paragraph No.9 which reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact



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situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

16. Therefore, considering the limited legal drill or in other words limited Statutory perimeter within which legal drill under Sections 34 perambulates leaves us with no iota of doubt that the order of Section 34 Court i.e., impugned order does not warrant interference much less interference in a Section 37 legal drill.

17. As regards Section 37 legal drill, a judgement of Hon'ble Supreme Court in ***UHL Power Company*** case {***UHL Power Company Limited Vs. State of Himachal Pradesh*** reported in (2022) 4 SCC 116} can be respectfully referred to. In ***UHL Power Company*** case, Hon'ble Supreme



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Court held that jurisdiction conferred on Courts under Section 34 is fairly narrow and when it comes to the scope of an appeal under Section 37, the jurisdiction of an Appellate Court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.

Ergo, the sum sequitur of narrative, discussion and dispositive reasoning thus far is captioned appeal fails and the same is dismissed. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

The Sub-Assistant Registrar

Original Side

High Court, Madras.



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