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C.R.P.(PD)No.4756 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.12.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4756 of 2024

and

C.M.P.No.26622 of 2024

In the matter of :

Prince Hatchery,

Represented by Mr.Vinod Rathi & Mrs.Sushila Devi

Having its registered office at

VPO Village Sahanpur,

Tehsil Safidon District Jind,

Haryana-126 112.

.. Petitioner

..Vs...

Aviagen India Poultry Breeding Company Pvt. Ltd,

Represented by D.Vijayakumar,

Director & Company Secretary,

Elayamattur, Gandhinagar,

Udumalpet Taluk,

Tiruppur, Tamil Nadu-642 124.

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the present Civil Revision Petition and set aside the impugned order dated 24.07.2024 passed in I.A.No.01 of 2024 in A.No.5902 of 2023 in Arb.O.P.(Comm.Div.) No.347 of 2023 passed by the Sole Arbitrator.



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For Petitioner : Mr.Gopalakrishnan T.C.
For Respondent : Mr.S.Muthucharan Sundresh

ORDER

This civil revision petition challenges the order passed by the learned arbitrator in I.A.No.1 of 2024 in A.No.5902 of 2023 in Arb.O.P.No. (Comm.Div.) No. 347 of 2023 dated 24.07.2024.

2. The civil revision petitioner is the respondent in the arbitration proceedings. The respondent herein is the claimant. For the sake of convenience, the parties shall be referred to as claimant and the respondent.

3.The claimant initiated proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') before this Court. The basis for filing this petition is the alleged dues for the supply of eggs that had been made by the claimant to the respondent.

4.The claimant pleaded that the supplies commenced from 20.11.2018 and went on till 21.01.2019. The overall dues was about Rs.1,95,69,000/- .The claimant pleaded that it had sent an e-mail to the respondent



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reminding about the outstanding dues. A response was given by the respondent stating, on account of the circumstances which prevailed during the pandemic caused by Covid-19, they were not in a position to make payment. As the demands remained unsatisfied, a notice under Section 21 of the Act was sent to the respondent. There was no reply. Hence, the claimant was constrained to initiate proceedings under Section 11 of the Act.

5. The application under Section 11 was numbered in Arb.O.P. (Com.Div.) No.347/2003. It came to be allowed on 15.09.2023. Thereafter, the respondent preferred a review petition in Appln.No. 5902/2023. The review was disposed of, permitting the respondent to initiate proceedings under Section 16 of the Act and liberty to raise all the pleas and defenses, before the learned Arbitrator.

6. On the strength of the liberty granted by this Court, the respondent filed I.A.No.1 of 2023 under Section 16 of the Act. A reply was received from the claimant. The arbitrator proceeded to pass an order on 24.07.2024. The learned Arbitrator relegated the issues raised by the petitioner herein to trial. He permitted the parties to raise all the issues



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during that stage. Aggrieved by the same, the present civil revision petitioner is before this Court.

7.I heard Mr.T.C.Gopalakrishnan for the civil revision petitioner on 29.11.2024. I requested Mr.Gopalakrishnan to serve papers on Mr.S.Muthucharan Sundresh who had represented the claimant before the Arbitrator. The said counsel has been served with the papers and he has entered appearance for the claimant.

8. I took up the revision for final disposal. I heard Mr.T.C.Gopalakrishnan and Mr.S.Muthucharan in the revision.

9. Mr.Gopalakrishnan made the following submissions:

- (i) Section 16(5) is mandatory and it is not open to an arbitrator to defer the issues raised in the application at the time of Trial.
- (ii) For the very fact that the learned Single Judge under Section 11(6) has come to a conclusion that an arbitration clause exists does not mean that the arbitrator himself cannot decide on his jurisdiction, when an application is filed under Section 16.
- (iii) No arbitration agreement exists between the parties and what has been presented before the Court is only an unsigned agreement.
- (iv) The claimants Mr.Vinod Rathi and Mrs.Sushila Devi are not partners of the respondent, on the date on which the alleged supplies had been made by the claimant to the respondent.



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(v) Finally he points out that if the arbitrator had come to the conclusion that an expert report that had been filed by the respondent is a unilateral one, the learned arbitrator himself should have appointed an expert and should have received a report.

10. Per contra, Mr.S.Muthucharan pleads that the scope of revision under Article 227 of the Constitution of India against an order passed by an Arbitrator is maintained only on two grounds viz.,(i) perversity or (ii)patent illegality. Since both do not exist in the present case, the revision cannot be sustained. He draws my attention to Section 5 of the Act and urges that the interference by a judicial authority in arbitration proceeding is limited and this Court should not interfere with the order, unless and until, the aforesaid vices exists in the order. Finally, he points out that under Section 16, the plea that the signature of Mr.Vinod Rathi is forged and that there was retirement of a partner from the respondent's firm, are alien to Section 16. Hence, he submits the learned arbitrator had rightly relegated the parties to trial.

12. I have carefully considered the submissions of either side and I have perused the records.

13. It is an interesting case where I have to agree with both the



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claimant and well as the respondent on the legal submissions.

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14. While agreeing with Mr. Gopalakrishnan that the finding of the Court under Section 11 of the Act that there exists an arbitration agreement is not final and conclusive, it is always open to the Arbitrator, after the parties had appeared before him to decide, whether in fact an arbitration agreement exceeds or not. This is the purport of Section 16 of the Act. Under Section 16(5), as rightly submitted by Mr. Gopalakrishnan, an Arbitral Tribunal has to take a decision on the issues that have been presented under Section 16(2) and Section 16(3) of the Act.

15. Under Section 16(2), the respondent in the proceeding can point out to the Tribunal that it does not have jurisdiction with the dispute referred to it. Under Section 16 (3), any party can point out to the Tribunal that while an arbitration agreement exists between the parties, the arbitrator does not have the jurisdiction to deal with the issue that has been raised before him, as it exceeds the scope of the Arbitration Clause. Section 16(5) is circumscribed on two grounds, one jurisdiction and the other exceeding the scope of the authority creating the tribunal. Having agreed Mr. Gopalakrishnan on this, I will also have to agree



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Mr.Muthucharan that the scope of a revision under Article 227, while dealing with an order passed by the Arbitral Tribunal is limited. At this stage, I have to take into consideration Section 5 of the Act. The scope of Section 5 is that a judicial authority should not interfere with an arbitration proceeding other than to the extent provided under the Act. By virtue of Section 5 of the Act, the jurisdiction of this Court as Constitutional Court, exercising the power under Article 227 of Constitution of India, is not divested. No Statute can bar the jurisdiction of this Court under Article 227. Yet, there are several restrictions in matters relating to arbitration. This Court will not interfere with the procedural orders or with the orders which do not suffer from the twin vices of perversity or illegality.

16. Having agreed with both sides on law, let me now look into the issues which the petitioner presented before the arbitrator. It is the case of Mr.Gopalakrishnan that neither Mr.Vinod Rathi nor Sushila Devi were partners of the respondent Firm on the date of which alleged supplies were made by the claimant. This is a plea which has to be taken as the defense to the claim. Section 16(2) and 16 (3) deal with the power and jurisdiction of the Arbitrator. They do not deal with the merits or



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demerits of the claim. The plea raised by Gopalakrishnan is that his clients are not members of the Firm. This is an issue of misjoinder of parties or non joinder of necessary parties. Even in civil proceedings, in terms of Order I Rule 9 of the Code of Civil Procedure, for the mere fact that certain parties are not impleaded does not mean that the proceedings will have to fail. The Code makes it clear in case of the non joinder of necessary parties, the situation would be different. Taking the cue from the said provision, I can conclude that for the mere fact a plea has been raised that the impleaded respondents are not members of the firm does not must mean that the arbitrator does not have jurisdiction. I should also point out that the claimant can always claim the benefit of Section 32 of Indian Partnership Act, 1932. This section demand a person, who is a relieving partner, to make a public notice regarding his retirement. This, being a disputed question of fact and not the matter dealing with jurisdiction, obviously the Arbitrator has deferred this issue to a later date. Therefore, the Tribunal has in my view rightly concluded that disputed questions of fact cannot be decided under Section 16.

17. With respect to the next plea of Mr.Gopalakrishnan that the Tribunal should have appointed a handwriting expert to confirm the letter dated 30.06.2019 [which he has been kind enough to produce



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before this Court as an additional typed set], I have to point out that there is a contradiction in the plea. The plea originally being the signature of one Vinod Rathi had been forged. However, a perusal of the letter dated 30.06.2019 shows that it does not contain the signature of Vinod Rathi but of letter of one Mrs. Sushila Devi. This letter allegedly confirms the outstanding between the parties. Vinod Rathi and Sushila Devi are obviously are two different persons. When it is not the case of the claimant that the Vinod Rathi did sign it, the question of sending the document to have his signature compared does not arise.

18. While the Arbitrator has the power to appoint an expert, if he so desires to ascertain the matter in issue before him, he is entitled to the discretion when he wants the exercise that power. The grund norm_ of Act is autonomy of the parties. If, by an agreement the parties had agreed, that in case a document is disputed, such a document has to be referred to examination prior to going into the main issues, then the arbitrator necessarily has to undertake that exercise. Hence, no exception can be taken to the view of arbitration. There is no such agreement in the present case.



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19.This is simple case of recovery of money for the supplies. The learned arbitrator has not foreclosed the right of the respondent to take out an application for the expert. He has merely stated that he is not going to exercise that power, at the stage of Section 16. I should remember that the Arbitrator in the present case has been a Chief Justice of a High Court. He is the person with lot of experience in such matters. When an order is passed by a person of such eminence, this Court should obviously give room for the discretion exercised by the said authority. Where it is the matter relating to the exercise of discretion and the discretion has been exercised in a correct manner, it will certainly fall outside the twin vices of perversity or illegality.

20.Finally, I have to state that in terms of Section 16 of the Act, the Tribunal cannot give a finding on the matters, which have to be gone into, after trial. Therefore, whether Vinod Rathi or Sushila Devi were members of the firm on the date on which the alleged supplies were made or not, obviously has to be gone into at the stage of Trial.

21. I do not find reasons to interfere with the reasoning of the learned arbitrator. This civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.



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Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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To

Aviagen India Poultry Breeding Company Pvt. Ltd,
Represented by D.Vijayakumar,
Director & Company Secretary,
Elayamattur, Gandhinagar,
Udumalpet Taluk,
Tiruppur, Tamil Nadu-642 124.

LAKSHMINARAYANAN,J.

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