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O.S.A.No.142 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

O.S.A.No.142 of 2020

Raja Bahadur International Limited
represented by its authorized representative
S.K.Jhunhunwala
Hamam House, 3rd Floor
Ambalal Doshi Marg
Mumbai 400 001

.. Appellant

v.

Pioneer Wincon Private Limited
Division – Pioneer Asia Wind Tubines
30/1A, Harringron Chambers, 2nd Floor
'A & B' Block
Abdul Razak 1st Street, Saidapet
Chennai 600 015

.. Respondent

Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent, against the fair and decretal order of the learned single Judge dated 26.08.2019 passed in O.P.No.680 of 2012 on the file of this Court.



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For Appellant :: Mr.S.K.Srinivasan

For Respondent :: No appearance

JUDGMENT

(Judgment of the Court was made by S.S.SUNDAR,J.)

This original side appeal is directed against the order dated 26.08.2019 passed by the learned single Judge of this Court in an application filed under Section 34 of the Arbitration and Conciliation Act in O.P.No.680 of 2012.

2. Despite notice being served on the respondent, there is no representation for the respondent.

3. Brief facts that are necessary for the disposal of this appeal are as follows:-

(a) There was an agreement between the appellant and the respondent for installation of windmill generators. It is the case of appellant that the respondent, who has ensured minimum production of electricity from the generator, entered into a contract with specific undertaking that the appellant



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will be compensated if there is shortfall in generation. After installation, a dispute arose. Admittedly, the respondent has failed to compensate the appellant for the difference in number of units, being the shortfall, as agreed between the parties. The case of appellant is that the appellant is entitled to compensation for the shortfall in generation of power as per the agreement. The windmills generated an average of only 16,30,642 units every year instead of 23 lakh units. When a total demand of about Rs.2.08 crores was made against the respondent, the respondent sent a reply disputing the claim and in turn, made a counter claim for a sum of Rs.2,68,146/-.

(b) When the matter was referred to arbitration, the Arbitrator, though allowed the claim of appellant for the shortfall in generation for the first two years, however, declined to grant the relief for compensating the shortfall for the subsequent years, by the award dated 27.06.2012. As against the award of Arbitrator, the appellant filed the original petition in O.P.No.680 of 2012 before the learned single Judge and by order dated 26.08.2019, the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act was dismissed confirming the award. Aggrieved by the same, the appellant has preferred the above appeal.



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4. Heard the learned counsel appearing for the appellant. Despite service of notice, there is no representation for the respondent.

5. The learned counsel appearing for appellant has referred to several documents to establish that the appellant's claim towards shortfall was not disputed on the ground that there is no shortfall.

6. However, the contention of the respondent before the Arbitrator was in the nature of explaining reasons for the shortfall, after admitting the shortfall in the generation of captive power as ensured by the respondent.

7. The learned Judge, however, passed an order rejecting the claim of the appellant only on the ground that the appellant has not produced any document to show that there was actually a shortfall. Once the shortfall as alleged by the appellant is not in issue and it is admitted, the award of Arbitrator rejecting the claim of the appellant is obviously false. However, the question that requires to be decided is whether this Court can modify the



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award? When the Arbitrator has allowed the claim of appellant partly and rejected a portion of the claim, this Court or the learned single Judge cannot modify the award, especially having regard to the scope of Section 34 of the Arbitration and Conciliation Act. If we set aside the award, the appellant will lose the benefits that is conferred pursuant to the award. In such circumstances, this Court is unable to interfere with the order of the learned single Judge confirming the award, even though we agree with the appellant that the appellant's claim for shortfall of generation ought to have been allowed by the Arbitrator, as no proof is required when shortfall is admitted. Therefore, the original side appeal is dismissed. No costs.

Index : yes/no
Neutral citation : yes/no

(S.S.S.R.,J.) (K.R.S.,J.)
30.08.2024

ss

To

The Sub Assistant Registrar (O.S.)
High Court, Madras



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S.S.SUNDAR, J.

AND

K.RAJASEKAR,J.

SS

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