



C.M.A.(MD)Nos.1193 to 1202, 1289 to 1293 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 24.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)Nos. 1193 to 1202, 1289 to 1293 of 2024
and C.M.P(MD)Nos. 13887 to 13890, 13778 to 13782, 12532, 12533,
12535 to 12537, 12541, 12543 to 12545 and 12547 of 2024

In CMA(MD)No.1193 of 2024:

K.C.Thangavel

... Appellant/1st Respondent

Vs.

Tamilnadu Newsprint and Papers Limited,
(A Government of Tamil Nadu Enterprise),
Kagithapuram – 639 136
Karur District

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, against fair and decreetal order dated 23.02.2023 passed in Arbitration O.P.No.71 of 2021 on the file of the Principal District Judge, Karur.

In all the appeals:

For Appellant : Mrs.P.Jessi Jeeva Priya

For Respondent : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.M.P.Senthil



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COMMON ORDER

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The appeals have been filed under Section 37 of the the Arbitration and Conciliation Act, 1996, challenging the orders passed under Section 34 of the Arbitration Act.

2. The issue involved in all the appeals is one and the same and therefore, all the appeals are taken up together.

3. The facts leading to the filing of these appeals are as follows:

a) The appellants had entered into a lease agreement with the respondent on various dates in the years 2011 and 2012, by which, they agreed to hand over the land for lease to the respondent for a period of six years;

b) As per the agreement, during the period of lease, the respondent would be permitted to plant eucalyptus/pulp trees; and the appellants would be entitled to a lease rent of Rs.4,000/- (Rupees four thousand only) per annum for an acre of land;

c) The respondent could not adhere to the terms of the agreement as they could not cultivate the land for certain reasons, and hence, they terminated the agreement unilaterally even before the expiry of six years.



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The appellants were aggrieved by the said action.

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d) The agreement contains an arbitration clause. Therefore, the appellants sought for appointment of an Arbitrator and the Arbitrator was appointed by this Court.

e) The Arbitrator found that the respondent had committed breach of contract and directed the respondent to pay damages equivalent to the lease rent for the balance lease period, damages for the loss caused since the appellants had no opportunity to plant the second crop and towards expenses incurred for plucking out and removal of roots and flattening the land.

f) The respondent challenged the Arbitrator's award before the District Court under Section 34 of the Arbitration Act. The District Court found that the award is liable to be set aside in respect of compensation under two heads (ie) towards damages caused due to the inability to plant second crop and towards expenses for plucking out and removal of roots as it was against the basic notions of justice. However, the District Court confirmed the award as regards the direction to pay the lease rent for the balance lease period.

g) The instant appeals have been filed challenging the said order passed under Section 34 of the Arbitration Act by the District Court.



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4.a) Mrs.Jessi Jeeva Priya, learned counsel for the appellants

would submit that the award of the Arbitrator is in accordance with law; that in any case, it is neither perverse, illegal or opposed to public policy and therefore ought not to have been interfered with under Section 34 of the Arbitration Act.

4.b) The learned counsel submitted that as per the agreement, the respondent was bound to maintain the land in such a manner, so that at the end of the lease period, the appellants are able to cultivate the land; that because of non-maintenance, they could not cultivate the land and lost the opportunity to plant the second crop; and therefore, the compensation awarded by the Arbitrator cannot be called perverse or opposed to public policy and hence the District Court under Section 34 of the Arbitration Act ought not to have set aside the award under two heads.

4.c) The learned counsel further submitted that the Arbitrator had awarded the compensation by invoking the provisions of the Contract Act and not as per the terms of the agreement as erroneously found by the District Court and therefore, the order under Section 34 of the



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Arbitration Act is liable to be set aside.

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5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the respondent, per contra, submitted that under the lease agreement, the appellants would at the best be entitled to the lease rent for a period of six years; that even assuming that the respondent committed a breach, the appellants would be entitled to damages equivalent to the rent for the balance lease period left after the termination, which has been rightly ordered by the Arbitrator; that the Arbitrator had awarded the compensation under the other heads (ie) loss towards the second crop and loss due to the expenses incurred for flattening the land, which were neither contemplated under the agreement nor in law; and that therefore, the District Court was right in setting aside the award under those two heads; and hence the appeals deserve to be dismissed.

6. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

7. The admitted facts are that the appellants and the respondent



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entered into a lease agreement for a period of six years. As per the terms of agreement, the respondent was permitted to plant eucalyptus/pulp trees and entitled to remove it at the end of the lease period and the lease period could be extended for a further period of six years, if there is a mutual agreement. The fact that the respondent terminated the lease agreement before the expiry of the agreement unilaterally is not in dispute.

8. The only question is as to what would be the compensation payable to the appellants for the said breach. As per the agreement, the appellants are not entitled to receive any amount from the respondent at the end of the lease period except for the lease amount. However, this clause cannot be pressed into service because the lease was terminated even before the lease period. Hence, the appellants would certainly be entitled to the compensation for the breach under Section 73 of the Contract Act. As per the terms of the agreement, if the lease had continued for the entire period contemplated under the appellants, the appellants would have been entitled to lease rent of Rs.4000/- (Rupees four thousand only) per annum for six years. This has been awarded by the Arbitrator as damages after deducting the lease amount paid already



and has been rightly confirmed by the District Court.

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9. However, in addition to the said compensation, the Arbitrator had also awarded an additional sum towards the loss that had been purportedly caused due to the denial of opportunity to plant and harvest the second crop. The agreement does not contemplate payment of damages for the said reason. The agreement would state that during the period of lease, the respondent has to maintain the land in the best possible manner and hand it over at the end of the period of six years. The award of compensation towards denial of opportunity to plant the second crop is based on an erroneous appreciation of the evidence and contrary to Section 73 of the Contract Act. The terms of the agreement does not guarantee any such right or opportunity to the appellants. Section 73 of the Contract reads as follows:

"73.Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the



breach".

The above provision makes it clear that the compensation cannot be given for any remote or indirect loss or damage sustained by reason of the breach even assuming that the appellants would have suffered a remote or indirect loss. The possession of the land was handed over before the expiry of the lease period and the appellants were also awarded the lease amount for the total period of six years. Therefore, this Court is of the view that apart from the lease rent, the appellants had not suffered any other loss and the award passed by the Arbitrator suffered from patent illegality. Therefore, the District Court was right in setting aside the compensation under the said head in an application under Section 34 of the Arbitration Act as it was vitiated by an illegality apparent on the face of the award.

10. As rightly pointed out by the learned Senior Counsel, this would not amount to modification of the award. The law in the regard is well settled that if the award is passed under one or more heads, compensation under anyone of those heads can be set aside and it would not amount to modification.



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11. The District Court had set aside the award under another head namely, the expenses incurred by the appellants for plucking and removing the roots and flattening the land and building of the bunds. The award under the said head by the Arbitrator is not perverse or opposed to public policy. Therefore, the District Court had no jurisdiction to set aside the award under that head under Section 34 of the Arbitration Act. The appellants are therefore entitled to compensation awarded under the head towards plucking and removing of roots and flattening the land.

12. In paragraph No.51 of the award, the Arbitrator has given a tabulation of the heads of compensation under which the appellants are entitled to. Out of the three heads mentioned, the appellants are entitled to compensation mentioned in S.Nos.1 and 3, which relates to the lease amount and expenses towards plucking and removal of roots and flattening of land. The damages for loss caused because of inability to plant second crop is mentioned in S.No.2, which is set aside by the District Court and confirmed by this Court. Therefore, the appellants are not entitled to compensation under the said head.

13. This Court by an earlier order dated 26.09.2024 directed the



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respondent to pay their admitted liability, which pertains to the lease rent payable to the appellants within a period of three weeks. However, it is reported that the respondent has not paid the said amount even as on date. The learned counsel for the respondent expressed difficulty in complying with the said order. There cannot be any excuse for delaying the said payment and hence that portion of the amount shall be paid on or before **05.11.2024**. As regards the compensation towards plucking out, removal of roots and flattening the land, which is the other head of the compensation to which the appellants are entitled to, the respondent shall pay the same within a period of three weeks from the date of receipt of a copy of this order.

14. In fine, these appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

Index : Yes / No

Neutral Citation : Yes / No

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Note: Registry is directed to upload this judgment in the official web-site on **29.10.2024**



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To

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1. The Principal District Judge, Karur.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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