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Arb.O.P(Com.Div.) No.333 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.12.2024

Pronounced on : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P(Com.Div.) No.333 of 2024

& E.P.No.13 of 2024

& E.P.DR.No.155146 of 2023

Mr.Narayanan Ramasamy
Sole Proprietor,
Sri Thenandal Films,
Regd. Office No.2/8, Eighty Feet Road,
Devar Garden, Saligramam,
Chennai – 600 093.

... Petitioner

VS.

SUN TV Network Limited,
Murasoli Maran Towers,
No.73, MRC Nagar Main Road,
MRC Nagar,
Chennai – 600 028
Rep. by its authorized signatory
Mr.M.Jyothi Basu

... Respondent

PRAYER: Arbitration Original Petition filed under Sections 11(6) of the Arbitration and Conciliation Act, 1996, (a) to set aside the Final Award dated 29.08.2023 passed in Arbitration O.P.(Comm.Div.) No.253 of 2022 passed by Mr.Justice V.Bharathidasan, Former Judge, Madras High Court as



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Sole Arbitrator in its entirety (b) to direct the respondent to pay the cost.

For Petitioner : Mr.S.Karthikei Balan

For Respondent : Mr.Jose John
for M/s.King & Partridge

ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Final Award dated 29.08.2023 passed in Arbitration O.P.(Comm.Div.) No.253 of 2022 passed by Mr.Justice V.Bharathidasan, Former Judge, Madras High Court, as Sole Arbitrator, in its entirety and to direct the respondent to pay the cost.

2.The dispute arise out of a Theatrical Distribution Agreement pertaining to the film 'Sarkar' vide Agreement dated 26.10.2018. The parties had agreed on a minimum guarantee sum of Rs.79,50,00,000/- payable by the petitioner. The petitioner being unable to pay the minimum guarantee would come up with a payment of Rs.29,00,00,000/- alone, leaving a balance of Rs.51,00,00,000/-. In order to settle the disputes, the parties negotiated for an amicable settlement and a Memorandum of Compromise was entered into between the parties on 23.09.2021, in and by which, the



petitioner transferred his immovable properties in favour of the respondent towards part settlement of dues to the respondent, leaving a balance of Rs.33,74,90,090/-. The Memorandum of Compromise contains arbitration clauses (clauses 10 and 11). The petitioner did not honour the said compromise and disputes arose between the parties.

3.The respondent/claimant made a claim before the Arbitral Tribunal and after trial, the Arbitral Tribunal has awarded a sum of Rs.1,08,97,380/- in favour of the respondent/claimant. Aggrieved by the said award and challenging the same on the ground that the relief granted to the claimant is illegal and unsustainable, being outside the scope of arbitration in terms of Section 28 of the Act r/w Section 34(2)(a)(iv) and 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, the present Original Petition has been filed.

4.I have heard Mr.Karthikei Balan, learned counsel for the petitioner and Mr.Jose John, learned counsel for M/s.King Partridge, for the respondent.



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5.The learned counsel for the petitioner, Mr.Karthikei Balan, would invite my attention to the Memorandum of Compromise dated 23.09.2021, more specifically clause 10 of the said Memorandum of Understanding which limits the arbitrable dispute to clause 10 of the Memorandum of Compromise alone. He would therefore contend that the reliefs granted by the learned Arbitrator are beyond the scope of arbitration and not arbitrable disputes in the first place. He would further contend that the award is opposed to public policy and hit by Section 34 of the Act. He would refer to the written submissions of the respondent where it is said to have been admitted by the respondent that the movie 'Sarkar' has made only a collection of Rs.62,34,94,760.04/- and hence, there could have been no net receipts generated in the theatrical distribution of the film and the award is clearly contrary to the said admitted position.

6.The learned counsel for the petitioner would also refer to Income Tax returns where the respondent has admitted to have forfeited the amounts to the tune of Rs.1,08,97,380/-. Also referring to the decision of the Hon'ble Supreme Court in *Suresh Shah Vs. Hipad Technology India Private*



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Limited reported in (2021) 1 SCC 529, the learned counsel for the petitioner would contend that the eviction of tenancy being a matter granted by a special statute, disputes are non arbitrable. The relief granted to the respondent/claimant includes the reliefs for handing over possession and the learned counsel for the petitioner would argue that the award is patently illegal and also oppose to public policy and hence, liable to be set aside.

7.Per contra, Mr.Jose John, learned counsel for the respondent would submit that the petitioner had approached the respondent for grant of exclusive license for theatrical distribution of film 'Sarkar' and an agreement was entered into on 26.10.2018, styled as Theatrical Distribution Agreement, granting a worldwide exclusive right to the petitioner to distribute the film for a period of one year. The financial terms agreed between the parties required the petitioner to pay a minimum guarantee of Rs.79,50,00,000/-, inclusive of GST, out of which, Rs.16,00,00,000/- has to be paid on the effective date and the remaining amount of Rs.63,50,00,000/- to be paid prior to the proposed release date agreed upon between the parties, namely 05.11.2018. It is further agreed that the minimum guarantee was payable even if the net receipts generated by the film was less than the



minimum guarantee amount of Rs.79,50,00,000/-. It was further agreed between the parties that any net receipts over and above the minimum guarantee amount would be shared equally between the petitioner and the respondent.

8.The learned counsel for the respondent would invite my attention to the failure on the part of the petitioner to fulfill his obligations under clause 3.3.1 of the Theatrical Distribution Agreement, which required the petitioner to give daily, weekly and monthly accounts of net receipts to the respondent. The learned counsel for the respondent would invite my attention to news reports reporting the huge success of the film and the film having entered two hundred crore collection club even by day six of its release. The learned counsel for the respondent would also invite my attention to the Joint Memorandum of Compromise dated 16.11.2018, in and by which, not only the petitioner but also his wife and sisters acknowledged a sum of Rs.51,00,00,000/- to be due to the respondent and the same was exclusive of GST and interest.

9.According to the learned counsel for the respondent, the petitioner had failed to honour clause 10 of the Joint Memorandum of Compromise by



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making due payments to the respondent, necessitating the respondent to initiate arbitration proceedings. He would further refer to clause 11 of the Memorandum of Compromise which enables the parties to raise disputes between the learned Arbitrator with respect to issues raised in clause 10 of the Memorandum of Compromise as well. He would further contend that the claims were not outside the scope of arbitration as contemplated by the parties. Further, when the petitioner had denied vacant possession of two properties conveyed to the respondent, by way of adjustment of the outstanding amount dues, the petitioner was only in wrongly occupation, without even paying any rent or any other charges and therefore, the respondent was well within its rights to claim recovery of possession in respect of the said two properties, besides various other reliefs.

10.The learned counsel for the respondent would further submit that Section 34(2)(a)(iv) of the Act which has been invoked as one of the grounds to set aside the award, dealing with the dispute not contemplated or not falling within the terms of submission of the arbitration or containing decisions on matters beyond the scope of submission to arbitration would not arise in the present case since the Joint Memorandum of Compromise



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was entered only in respect of the total amounts due and since the petitioner was unable to cough up the entire amount, the petitioner voluntarily came forward to transfer its immovable properties, the value of which was adjusted in the total amount due and payable to the respondent. Therefore, the contention of the learned counsel for the respondent is that the claims were only pertaining to the acknowledgment made by the petitioner in the Joint Memorandum of Compromise and clearly fell within the terms of submission to arbitration in clause 10 which is further strengthened by clause 11 of the Joint Memorandum of Compromise. Therefore, according to the learned counsel for the respondent, there is no contravention to Section 34(2)(a)(iv) and hence, the award cannot be set aside on this score.

11.The learned counsel for the respondent would place reliance on Section 28(3) of the Arbitration and Conciliation Act, 1996, requiring the Arbitral Tribunal to take into account the terms of the contract and trade usage applicable to the transaction while deciding and making an award. The respondent claimant had sought interest only on Rs.33,74,90,090/- from the date of Theatrical Distribution Agreement i.e., 26.10.2018 in respect of Rs.51,00,00,000/- which according to the learned counsel for the respondent



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was only an inadvertent omission and such omission would not waive or restrict the respondent's right to receive interest as per clause 10 of the Memorandum of Compromise. He would further contend that the petitioner had full opportunity to reply the claim of interest of Rs.51,00,00,000/- and the Tribunal has afforded a fair and proper opportunity to both the parties before passing the award and therefore, the inadvertent omission cannot prejudice the case of the parties, especially in the light of the categorical acknowledgment to pay interest on Rs.51,00,00,000/- made by the petitioner in the Joint Memorandum of Compromise. The learned counsel for the respondent would therefore conclude that the award does not suffer from any illegality warranting interference under Section 34 of the Arbitration and Conciliation Act.

12.The learned counsel for the respondent would place reliance on the decision of the Hon'ble Supreme Court in *National Highways Authority of India Vs. ITD Cementation India Limited* reported in (2015) 14 SCC 21, where the Honble Supreme Court held that construction of terms of a contract is for the Arbitrator to decide even if it gives rise to determination of a question of law and the arbitrator construes the terms of a contract in a



reasonable manner, then the award cannot be set aside. In other words, the Court can interfere only in case of a perverse interpretation i.e., only if the Arbitrator ends up construing the contract in such a way that it would be said to be something that no fair-minded or reasonable person would do. The Hon'ble Supreme Court further held that the Court exercising the power under Section 34 does not sit in appeal over findings and decisions of the Arbitrator.

13.The Hon'ble Supreme Court, in *Nayarayan Prasad Lohia Vs. Nikunj Kumar Lohia and Others* reported in (2002) 3 SCC 572, held that the Arbitration and Conciliation Act provides for challenging the competence, impartiality and jurisdiction of the Arbitral Tribunal before the Tribunal itself under Sections 12, 13 and 16 and under Section 16, the Arbitral Tribunal can rule on any objection, not only with respect to existence of validity of the arbitration agreement, not confined to the width of the jurisdiction and also goes to the root of its jurisdiction and when no objection was raised under Section 16 before the Arbitral Tribunal, there is a deemed waiver of a right to object. This decision is pressed into service to fortify the contention of the learned counsel for the respondent by way of an



answer to the petitioner's arguments that the Tribunal had no jurisdiction to grant the relief of possession and the same being beyond the scope of arbitration and hit by Section 16 of the Arbitration and Conciliation Act.

14.In the present case on hand, the petitioner has not raised any objections regarding the jurisdiction of the Arbitral Tribunal as available under Section 16 and applying the mandate of Section 4, it can only be held that the petitioner waived its right to object to the jurisdiction of the Arbitral Tribunal, despite being clearly put on notice about the reliefs prayed for by the claimant.

15.Further, no application under Section 16 of the Arbitration and Conciliation Act has already been filed. Also, the requirement of handing over possession was not on account of any Lease Agreement or any eviction notice issued by the respondent/claimant. The relief warranting handing over possession was only stemming from the fact that the petitioner had offered these properties towards adjustment of his dues to the respondent and both these properties were assigned specific market values which were justifiable only when the properties were encumbrance free and the



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respondent/claimant had full benefit of the transfer of said properties, including possession of the said properties. Therefore, I am in agreement with the argument of the learned counsel for the respondent that the reference to arbitration under clause 10 clearly relates only to the outstanding amount of Rs.33,74,09,090/- which would consequently and automatically attract the other clauses 4 and 11 of the Joint Memorandum of Compromise.

16.The contention of the learned counsel for the petitioner is that the reference was only in respect of clause 10 and any other claim or consequent award in favour of the claimant was beyond the scope of the arbitration reference itself. Though the learned counsel for the petitioner had placed reliance on the decision of the Hon'ble Supreme Court in *Suresh Shah Vs. Hipad Technology India Private Limited*, reported in 2021 1 SCC 529, regarding non arbitrability of tenancy or eviction issue, I do not find the said decision applying to the fact of the present case where the issue is not even arising out of a lease or tenancy agreement.

17.In fact, in a later decision of the Hon'ble Supreme Court, in *Vidhya Drolia and Others Vs. Durga Trading Corporation* reported in



(2021) 2 SCC 1, the Hon'ble Supreme Court has held that even landlord tenant disputes governed by the Transfer of Property Act are arbitrable since the provisions of the Transfer of Property Act do not expressly or by implication / arbitration and as long as such disputes are not covered and governed by rent control institutions, the same would be arbitrable.

18.The Hon'ble Supreme Court in *Ssangyong Engineering & Constructions Co.Ltd.*, reported in 2019 15 SCC 131, has held that so long as disputes raised or within the ken of the arbitration agreement or the disputes submitted to the arbitration, then they cannot be said to be disputes which are either contemplated by nor fall outside the arbitration agreement. It is further reiterated that where matters, though not in issue or connected with matters in issue, they would not readily be held to be matters that could be considered to be outside beyond the scope of arbitration. The said ratio laid down by the Hon'ble Supreme Court in the above said case would squarely apply to the facts of the present case. As already discussed and held, the claim in monetary terms was the dispute which was referred to arbitration and there has been admittedly transfer of properties towards adjustment of the amounts due and payable to the respondent. There is a



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short fall and also in view of the fact of not handing over vacant possession, prejudice has been caused to the claimant, especially in view of the warranty regarding the market value of the two properties which sum has been adjusted from and out of the total amount due to the respondent. Therefore, this is certainly within the ken of arbitration as held by the Hon'ble Supreme Court and cannot be said to be beyond the scope of arbitration.

19.Further, the Hon'ble Supreme Court also in *Ssangyong Engineering's case*, has held that if an Arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, then it would be a jurisdictional error which could be corrected on the ground of patent illegality. However, to bring in, by back door grounds referring to Section 28(3) of the Arbitration and Conciliation Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as Section 34(2)(a)(iv) would have to be construed narrowly and while so construing, the Court must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal.



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20. In view of the above, I do not find that the awarded claims by the Arbitral Tribunal are beyond the scope of the reference to arbitration and therefore, cannot be said to be hit by Section 34(2)(a)(iv) of the Arbitration and Conciliation Act.

21. In *Suryadev Alloys's* case, the Division Bench of this Court, on a judgment dated 12.04.2024, has held that interfering with the grant of interest would amount to modification of the award, which is impermissible. However, if the award consisting of several claims is severable from other parts of the award, then some of the claims alone can be set aside while sustaining the other claims awarded. This decision is relied on by the learned counsel for the respondent in respect to the interest claim made for restricted sum of Rs.34,74,90,090/- odd, instead of Rs.51,00,00,000/-.

22. In fact, the Hon'ble Supreme Court has confirmed the said decision of this Court in the above said case, as well in *Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta* reported in 2021 7 SCC 209, where the Hon'ble Supreme Court, construing accounts expressions 'relating to' and 'arising out of', held that such words can have different meaning, depending on the



subject and context and phrases 'arising out of' and 'relating to' have been given a expansive interpreted in several cases and therefore, it is necessary to bear in mind the context in which the phrases have been used.

23.Keeping in mind the ratio laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court, I do not find that the Arbitral Tribunal has exceeded its jurisdiction and has traveled beyond the reference to award claims in favour of the respondent. The claims awarded are certainly related to clause 10 of the Joint Compromise and cannot be said to be extraneous and non arbitrable as contended by the learned counsel for the petitioner.

24.Even with regard to the interest component, the petitioner has challenged the award of interest from the date of the Theatrical Distribution Agreement on Rs.51,00,00,000/-, when the claim itself was only in respect of Rs.34,74,90,090/- odd. The parties were already loggerheads and with a view to purchase peace, they had entered into a Joint Memorandum of Compromise on 23.11.2018 which was in fact made part of a common decretal order passed by this Court in A.Nos.8786 & 8787 of 2018. The said



Joint Memorandum of Compromise, more specifically at clause 10, the petitioner and his relatives had agreed to pay interest at 12% on the balance minimum guarantee amount of Rs.51,00,00,000/- that was outstanding then.

25.It is certainly by sheer inadvertence that the said figure of Rs.51,00,00,000/- has been incorrectly mentioned as Rs.33,74,90,090/-, which is only the balance amount, after adjusting the value of two immovable properties. Though there is a typographical error in mentioning the amount on which interest is payable, it would not take away the vested right to claim interest on Rs.51,00,00,000/-, in terms of clause 10 of the Joint Memorandum of Compromise and the award of such interest by the Arbitral Tribunal is certainly a plausible view and cannot be said to be perverse or patently illegal. Therefore, even on this ground, I am unable to accept the argument of the learned counsel for the petitioner that the award is unsustainable and is liable to be interfered with. Even in respect of the factual aspects that have been argued, especially relating to the net receipts, GST, etc., the Arbitral Tribunal has discussed the available oral and documentary evidence and assessed the terms of the Joint Memorandum of Compromise in a proper and plausible perspective and thereby there is absolutely no reasons or grounds available to set aside the said award.



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26.For all the above reasons and especially keeping in mind the ratio laid down by the Hon'ble Supreme Court, for interfering under Section 34, the award must strictly fall within the pigeonhole rule of the grounds available and enumerated under Section 34, failing which the award is not liable to be interfered with by this Court exercising power and jurisdiction under Section 34 of the Act.

27.In fine, the Original Petition is dismissed. However, there shall be no order as to costs. Registry is directed to number E.P.DR.No.155146 of 2023, if it is otherwise in order and list the same along with E.P.No.13 of 2024 for further hearing on 13.02.2025.

31.01.2025

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Index : Yes / No

Internet : Yes / No



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P.B.BALAJI, J.,
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