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OSA(CAD) No.141 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.(CAD) No.141 of 2023

Gopal Krishan Rathi

.. Appellant

Vs

Dr.R.Palani

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of the Original Side Rules and Section 37 of the Arbitration and Conciliation Act, 1996 and Section 13(1A) of the Commercial Courts Act, 2015 to set aside the impugned order dated 26.04.2023 passed in Arb.OP (Comm.Div) No.36 of 2022.

For Appellant : Mr.Jayesh B.Dolia
Senior Counsel
for M/s.Aiyar and Dolia

For Respondent : Mr.Muralikumaran
Senior Counsel
for Mr.R.Gopinath
for M/s.Mc Gan Law Firm



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JUDGMENT

(Delivered by the Hon'ble Chief Justice)

This appeal impugns an order dated 26.4.2023 passed by a learned Single Judge rejecting the original petition filed by appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (the said Act) to set aside the award dated 21.7.2021 passed by a Sole Arbitrator. Various grounds were raised before the learned Single Judge and after considering the submissions of the parties, the learned Single Judge was pleased to reject the challenge to the award. It is that order which is in appeal before us.

2. Shri Dolia raised two grounds of challenge to the award: (a) that no personal hearing was granted by the learned Arbitrator, though it was sought for by appellant; and (b) that all documents of appellant were not considered in the award.

3. On the first ground that no personal hearing was granted, though in the petition filed under Section 34 of the said Act almost 31 grounds were raised, this was not one of the grounds. Moreover, Shri Dolia, to a



specific query posed by us, was candid that this ground was not raised before the learned Single Judge. Therefore, in our view, this cannot be raised now at the stage of appeal under Section 37 of the said Act, appellant having accepted the position.

4. As regards the non-consideration of all documents filed by appellant, the learned Single Judge has considered the submissions and given his findings. We find no perversity in the findings given by the learned Single Judge.

Moreover, in our view, the learned Arbitrator has considered all the 28 documents. Paragraph 3 of the award dated 21.7.2021 contains the list of 28 documents filed by appellant. The Arbitrator has also stated that all documents filed by both parties, as stated in the award, were taken on record and issues were decided. The Arbitrator has also dealt with the documents and culled out the relevant documents which required consideration. In paragraph 8 of the award, the Arbitrator has observed *“The documents and emails produced by the respondent in an endeavour to*



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shift the liability to third persons to this dispute or to treat the amount in dispute as investment fails as those documents and emails do not have any material to deny or disprove the loan which is the subject matter of this dispute.”

Paragraphs 9 and 10 of the award read as under:

“9. Analysing the documents produced by the respondent as well as the claimant would show and prove that the clause 3 of the subject MOU dated 28th August 2015 between parties pertain to adjustments of rentals and cost of equipment's in lieu of interest and it would not per se fix any percentage of interest portion for the borrowings hence the said amount Rs.7,40,000/- per month mentioned therein cannot be taken as interest portion in total. However the same clause also mentions that there was an element of interest agreed between parties though the percentage was not seen evidently fixed. Therefore the amount of 7,40,000/- per month cannot be accepted as interest and that leaves this tribunal to decide on the question of interest.

10. Upon plain reading of clause 1 of the said MOU as well as reading the same in the light of the documents submitted by the respondent, I am able to see that it is not an investment as claimed by the respondent but only a loan as admitted and signed by both parties to the MOU.”

5. This also indicates that the learned Arbitrator has analyzed the documents submitted by appellant and has given his findings.

6. It is trite that an award cannot have any specific format. As every judge writes his/her judgment in a particular style, the learned Arbitrators



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also write in different styles. The Apex Court in *Dyna Technologies (P) Ltd v. Crompton Greaves Ltd*¹ emphatically held as under:

“29. There is no gainsaying that arbitration proceedings are not per se comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. In this regard, we need to understand that the intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration.

...

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside

¹ (2019) 20 SCC 1



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in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy or reasons in an award and unintelligible awards.”

[emphasis supplied]

7. The reasoning given in the award, in our considered view, is proper, intelligible and adequate. We find nothing wrong in the method this award has been written. One thing is certain that the documents submitted by appellant have been considered and the learned Arbitrator has applied his mind to the contents thereof and the submissions of appellant based on those documents.

For the foregoing reasons, appeal is dismissed. There shall be no order as to costs.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY, J.)

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THE HON'BLE CHIEF JUSTICE
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