
(2014) 10 MAD CK 0318
In the Madras High Court
Case No : O.P. No. 79 of 2011

Goel Industries

APPELLANT

Vs

Revathi Enterprises

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2014) 10 MAD CK 0318

Hon'ble Judges : Sanjay Kishan Kaul, C.J

Bench : Single Bench

Judgement

Sanjay Kishan Kaul, C.J.—The present dispute has a checkered history and arises from the Consignment Agency Agreement dated 05.07.1995, under which the petitioner was to supply goods on credit and the respondent was to sell the goods and was entitled to commission. Unfortunately, disputes arose inter se the parties and in view of the undisputed arbitration clause existing between the parties, being Clause 17, disputes were referred to Arbitrator in O.P.No. 467 of 1997 to Justice A.Abdul Hadi (Retd.) as Arbitrator.

2. The Arbitrator published an award dated 09.08.2002. This award is said to have been assailed in O.P.No. 30 of 2006 under Section 34 of the Arbitration and Conciliation Act, 1996, by the respondent. The objections were dismissed by the learned Single Judge, vide order dated 13.06.2006, which was appealed against by the respondent in O.S.A.No. 220 of 2006. This appeal was allowed with a direction to the parties to appoint a fresh Arbitrator. The Special Leave Petition (Civil) C.C.No. 20435 of 2009 filed by the petitioner was dismissed on 02.08.2010 and even the Special Leave Petition filed by the respondent assailing the aspect of leave to appoint a fresh Arbitrator also stands dismissed, being S.L.P.(Civil) CC No. 801-802 of 2010, vide order dated 11.02.2010.

3. In view of the aforesaid position, the petitioner sent a communication through counsel dated 10.11.2010 to Justice K.P.Sivasubramanian (Retd.) seeking his willingness to act as Arbitrator, which consent was granted on 12.11.2010. The

respondent was put to notice of the same vide letter dated 20.11.2010 seeking his concurrence. This started a communication between the respondent and the proposed Arbitrator, where the respondent raised queries about the genuineness of certain communications. The result was that the proposed Arbitrator decided not to act as the Arbitrator, which has necessitated filing of the present petition.

4. In the counter-affidavit filed by the respondent, the aforesaid sequence of facts is not denied. There is an issue of whether the material in affidavit placed on record by the respondent constitutes criminal contempt, which would be examined separately.

5. However, so far as the merits of the present petition are concerned, the plea of the petitioner is that 13 years elapsed from 1997 to 2010 leaving the disputes unresolved and making allegations against the petitioner of having defeated the remedy of arbitration.

6. On hearing the learned counsel for the petitioner and the respondent in person and a perusal of the orders of the Division Bench dated 07.07.2009, it is quite clear that the parties are given liberty to approach for appointment of a fresh Arbitrator. The parties are not ad idem on who should be the Arbitrator and even in Court, when a query is put to the two parties, the result is the same.

7. In view of the aforesaid facts and circumstances, I appoint Mr. Justice N.V. Balasubramanian, a Retired Judge of this Court, as the Sole Arbitrator, to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne equally by both the parties.

8. Accordingly, the original petition is allowed, leaving the parties to bear their own costs.

9. In so far as the issue arising from the averments in the counter-affidavit in Book-III by the petitioner, which, prima facie, sought to scandalize the past and present judges are concerned, the petitioner stood by the same, as recorded in the order dated 12.09.2014.

10. This Court had appointed an amicus to assist the Court. Learned amicus seeks some time to examine the matter in detail and assist the Court on the next date, when both the counsel for the petitioner and the respondent in person will remain present.

11. List on 21.11.2014.