

(2016) 01 KAR CK 0089
In the Karnataka High Court
Case No : M.F.A. No. 7233 of 2010 (AA)

Karnataka Soaps and Detergents Ltd., Bangalore	APPELLANT
Vs	
Olivia Impex Private Limited, Mumbai and another	RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2016) 2 AirKarR 232

Hon'ble Judges : N.K. Patil;S. Sujatha, JJ.

Bench : Division Bench

Advocate : Thomas Vellapally, Advocate, Served and Unrepresented, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J. - The appellant herein, being aggrieved by the judgment dated 3rd December, 2009, passed in A.S. No. 19/2008, by the VI Additional City Civil Judge, Bangalore City (CCCH-11), dismissing the Arbitration Suit filed by the plaintiff/appellant under Section 34 of Arbitration and Conciliation Act, 1996 and confirming the award passed by the learned Sole Arbitrator dated 5th March, 2008, has presented this appeal.

2. Brief facts of the case as stated in the memorandum of appeal are, the appellant-M/s. Karnataka Soaps and Detergents Limited is a Government of Karnataka undertaking and a Company incorporated under the Companies Act, 1956 (hereinafter called Company for short), engaged in the manufacture of soaps, detergents, fatty acids, sandal wood oil, agarbattis and other allied products. For the purpose of production of soaps and other allied products, the appellant/Company had issued a Tender Notification dated 30th May, 2003, calling for supply of 2000 MTS quantity of Palm Fatty Acid Distillate (hereinafter referred to as PFAD) vide Annexure-B. Pursuant to the same, the first respondent/Private Limited Company submitted its bid vide its letter dated 9th June, 2003 for supply of 2000 MTS quantity of PFAD, quoting PFAD at the rate of

RS. 19,775/- per Metric Ton vide Annexure-C.

3. In pursuance of the said quotation submitted by the first respondent, the first respondent was invited for further negotiation for supply of 2000 MTS quantity of PFAD and after negotiation, the first respondent offered to supply the said quantity at the rate of RS. 19,075/- per Metric Ton vide its letter dated 11th June, 2003. In view of the best price quoted by the first respondent for supply of 2000 MTS quantity of PFAD, the appellant/ Company placed the Purchase Order No.4073 dated 12th June, 2003 with certain terms and conditions along with a delivery schedule of 1000 MTS each during September and November 2003, vide Annexure-D. The first respondent, in turn, agreed to deliver the goods/ items (i.e., 2000 MTS quantity of PFAD) as per the terms and conditions attached to the said Purchase Order. As a consequence thereof, the first respondent delivered 1000 MTS quantity of PFAD during September 2003 i.e., 500 MTS on 21st September, 2003 and 500 MTS on 27th September, 2003 and thereafter requested the appellant/Company on 2nd December, 2003 to extend the delivery schedule upto January 2004 for supply of the remaining 1000 MTS, vide Annexure-E.

4. But, the appellant/Company could not wait upto January, 2004 and therefore, it asked the first respondent to immediately supply the remaining 1000 MTS quantity of PFAD as per the tender before the end of December, 2003 by its letter dated 3rd December, 2003 vide Annexure-F.

5. In spite of the said demand by the appellant/Company, the first respondent requested the appellant/Company to extend the delivery schedule upto January, 2004 stating that there was some difficulty in supplying the material, by its letter dated 5th December, 2003 vide Annexure-G. Thereafter, since the first respondent was unable to make delivery of the remaining quantity of material within the scheduled time frame, it sent one more letter dated 29th December, 2003 vide Annexure H, requesting the appellant/Company to extend the delivery schedule upto 15th February, 2004 as it had specifically stated that it would require at least 10 to 15 days to deliver the goods to the appellants factory if the shipment takes place during the end of January, 2004.

6. Considering the request of the first respondent the appellant/Company having been left with no other option and in good faith, agreed to extend the delivery schedule of 1000 MTS quantity of PFAD upto 15th February, 2004, by their letter dated 3rd January, 2004 vide Annexure J, and informed the first respondent to supply as early as possible since the stock of PFAD is very" low in the appellant/ Company, by the said letter vide Annexure-J.

7. As the stock of PFAD was depleting in the appellant/Company, thereby hampering the production of the appellant/Company and the supply was not forthcoming from the first respondent, the appellant/Company was left with no other option but to float another tender on 31st January, 2004 for procurement of remaining 1000 MTS of PFAD giving last date of opening of tender on 11th

February, 2004. Further, the appellant/Company also requested the first respondent to quote best price to the said tender, by its letter dated 9th February, 2004 and further requested to extend the Bank Guarantee upto 30th June, 2004 vide Annexure-K. Meanwhile, during first week of February, 2004, the appellant/Company had discussed with the first respondent and expressed urgency for the materials, but the first respondent had orally informed the appellant/Company that they need two to two and half months time to supply the material.

8. When things stood thus, to the shock and surprise of the appellant/Company, it received a letter from the first respondent dated 12th February, 2004, vide Annexure L, in complete bad faith, wholly untenable and an attempt to escape from their contractual obligation. In reply to the same, the appellant/Company sent a letter to the first respondent, one on 14th February, 2004 by fax instructing them to supply the materials before 16th February, 2004 as they can extend the delivery schedule upto 16th February, 2004 and informed them that they have made full payment as per the letter dated 21st October, 2003 issued by first respondent to the appellant Company. Therefore, it is the case of the appellant/Company that there is no question of pending payment to be made to the first respondent and further informed that they have not received any communication regarding extension of Bank Guarantee. The Appellant/Company also requested the concerned Bank to extend the Bank Guarantee upto 30th June, 2004 since the first respondent had not executed the ordered quantity till that date vide Annexure-R.

9. Thereafter, the appellant/Company once again sent a letter dated 21st February, 2004 to the first respondent giving last chance to supply the material before 10th March, 2004 and also requested them to extend the Bank Guarantee till 30th June, 2004 vide Annexure-S. Thereafter, the appellant/Company received an untenable letter from first respondent dated 24th February, 2004, vide Annexure-T, stating that they cannot extend the Bank Guarantee as the purchase order in question has stood cancelled. In response to the same, the appellant/Company wrote a letter dated 2nd March, 2004 and even requested the first respondent to supply the material before 10th March, 2004 vide Annexure-U.

10. Meanwhile, due to non supply of material by the first respondent in time and shortage of material in stocks for production as per another (new) tender dated 31st January, 2004, the appellant/Company placed the purchase order bearing No.603 dated 13th February, 2004 to another Company namely M/s. General Foods Ltd. Bombay, where the cost per Metric Ton of PFAD was RS. 27,600/-, which was higher than the agreed rate by first respondent in the above tender (i.e., RS. 19,075/- per MT of PFAD). Due to the new tender formality, the appellant/Company incurred loss to an extent of RS. 85,25,000/-.

11. As per the binding contract of the Purchase Order bearing No.4073 dated 12th June, 2003, the first respondent had to supply the material during

November, 2003 itself, but as per their request by their letter dated 2nd December, 2003 regarding extension of delivery schedule, the appellant/Company had given extension upto end of December, 2003 taking into consideration the stock position in the appellant/Company, as a special case. But, the first respondent failed to execute the ordered quantity even after extending the delivery schedule up to end of December, 2003. Again, the first respondent sent a letter dated 29th December, 2003 requesting appellant/Company to extend the delivery schedule upto 15th February, 2004. Even though the stock of PFAD was very low, the appellant/Company extended the delivery schedule up to 15th February, 2004 as a special case, in view of business relationship with the appellant/Company. After extending the delivery schedule upto 15th February, 2004, the first respondent has not supplied the material till 11th February, 2004 nor intimated the position of supply. Due to non supply of 1000 MTS of PFAD, the production of Appellant/Company had come to a grinding halt and hence they made arrangement to procure the material from the available sources by floating the tender enquiry, a copy of which was also forwarded to the respondent with a request to quote their best price. Even the appellant/Company extended the delivery schedule upto 10th March, 2004, but, the first respondent has not made any communication to the appellant/Company. In spite of several reminders from the appellant/ Company, the first respondent has failed to supply the materials to appellant/Company. There is an obligation under the Contract Act, on the part of the first respondent to abide by the terms and conditions of the contract.

12. In the present situation, in view of the breach of contract by the first respondent, the appellant/Company sustained considerable financial loss, amounting to a tune of RS. 85,25,000/-, which the first respondent is legally liable to make good such loss sustained by the appellant/Company.

13. In spite of the appellant/Company sending a communication to the first respondent to make good the loss, the first respondent has failed to make good the loss. If the first respondent had not participated in the tender, any other customer would have supplied the raw materials in time and the appellant/Company would not have sustained this loss. The appellant/Company sustained loss only due to breach of contract by first respondent. Therefore, the appellant/Company was left with no other option but to proceed with arbitration proceedings for recovery of its claim from the first respondent.

14. Thus, the arbitration proceedings were initiated as per the terms and conditions of the work order which was numbered as Arbitration Case No. 121/2005. The Sole Arbitrator, in turn, after hearing both the parties, passed an award dated 5th March, 2008, rejecting the claim of the appellant/Company, on the ground that there was no binding agreement between the parties, as the duplicate copy of the purchase order was not signed by the first respondent and directed the first respondent to pay a sum of RS. 6.00 lakhs to the appellant/Company with interest at 12% per annum, from 11th March, 2004, till the date of payment, vide Annexure-W. Aggrieved by the said award passed by the Sole

Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996, the appellant filed an Arbitration Suit before the VI Additional City Civil Judge, Bangalore City (CCH-11), which was numbered as A.S. No. 19/2008. The Trial Court, after hearing the parties, passed the impugned judgment dated 3rd December, 2009 dismissing the suit filed by the appellant/Company and confirming the award passed by the Sole Arbitrator. Aggrieved by the same, the appellant/Company has presented this appeal, seeking to set aside the same and to allow the claim of the appellant/Company for a sum of RS. 85,25,000/- together with interest thereon at the rate of 24% per annum.

15. The submission of learned counsel appearing for appellant/Company, Shri. Ravi, at the outset is that, the impugned judgment passed by the Trial Court dated 3rd December, 2009 in Arbitration Suit No. 19/2008 is liable to be set aside at the threshold, on the ground that the said Court has not assigned proper and valid reasons for confirming the award passed by the Sole Arbitrator, except discussing the case made out by the appellant/Company and the first respondent and referring the judgments relied upon by the parties, at paragraphs 12 and 13 of its judgment. To substantiate the said submission, he relied upon the Division Bench judgment of this Court dated 21st September, 2010 passed in M.F.A. No.30258/2010 and connected matters filed by the Hutti Gold Mines Co.Ltd. v. Mr. Khaleel Ahmed Dakhani, PWD Contractor, and another, wherein the Division Bench of this Court has held at paragraph 13 that the order passed by Principal District Judge, Raichur therein on point Nos.3 and 4, raised by the said Court is not satisfactory and they do not satisfy the requirements of law and do not stand the test of judicial scrutiny and it is a clear case of non application of mind to the material on record and the facts of the case and the same is illegal and calls for interference.

16. Therefore, he submitted that the impugned judgment passed by the Trial Court cannot be sustained and is liable to be set aside and the matter may be remanded back to the Trial Court for consideration afresh and to pass appropriate orders in accordance with law, after affording reasonable opportunity of hearing to the parties.

17. As against this, learned counsel appearing for first respondent, inter alia contended and sought to substantiate the impugned judgment passed by the Trial Court, stating that the reasoning given by the said Court at paragraphs 12 and 13 is just and proper and interference in the same is unwarranted. However, after going through the Division Bench ruling of this Court in the afore cited judgment, he fairly submitted that appropriate orders may be passed in accordance with law, leaving open all the contentions of both the parties.

18. After careful consideration of the submission of the learned counsel appearing for both the parties and after perusal of the impugned judgment and other relevant material available on file, including the judgment of the Division Bench ruling of this Court, it emerges that the appellant/Company has raised the claim before the Sole Arbitrator for a sum of RS. 85,25,000/- towards

expenditure incurred for non supply of the remaining quantity of material as per the terms and conditions of the agreement arrived at between the appellant/ Company and first respondent.

19. It is the specific case of the appellant/ Company that in spite of giving ample opportunity to the first respondent, the first respondent has failed to supply the remaining quantity of material as per the terms and conditions of the agreement arrived at between the parties and thus violated the conditions of the agreement. Therefore, having no other option, the appellant/Company had to proceed to issue fresh Tender Notification, calling for supply of the remaining quantity of 1000 metric ton of the material and in this process, they have incurred loss to a tune of RS. 85,25,000/-. Therefore, as per the arbitration clause, they have raised a dispute before the Sole Arbitrator, claiming the aforesaid sum from the first respondent. The said dispute was numbered as A.C.No. 121/2005. The Sole Arbitrator, after hearing both sides, passed the award, directing the first respondent to pay a sum of RS. 6.00 lakhs to the appellant/Company with interest at 12% per annum, from 11th March 2004, till the date of payment. Not being satisfied with the said award passed by the Sole Arbitrator, the appellant/ Company filed an Arbitration Suit before the learned VI Additional City Civil Judge, Bangalore City (CCCH 11), which was numbered as A.S.No. 19/2008. The Trial Court, in turn, after hearing both sides, passed the impugned judgment, without assigning proper reasons and contrary to the material available on file and also the law laid down by the Division Bench of this Court, as rightly pointed out by the learned counsel appearing for appellant/Company.

20. It is significant to note, as rightly pointed out by the learned counsel appearing for appellant/Company that, the Division Bench of this Court in its judgment dated 21st September, 2010 passed in M.F.A.No.30258/2010 and connected matters filed by The Hutti Gold Mines Co.Ltd. v. Mr. Khaleel Ahmed Dakhani, PWD Contractor, and another, has held at paragraph 13, that the order passed by Principal District Judge, Raichur therein on point Nos.3 and 4, raised by the said Court is not satisfactory and they do not satisfy the requirements of law and do not stand the test of judicial scrutiny and it is a clear case of non application of mind to the material on record and the facts of the case and the same is illegal and calls for interference.

21. When a statutory appeal is provided against the order of the Trial Court, a duty is cast on the Trial Court to assign proper reasons for coming to a particular conclusion. It does not have the right to re-appreciate the evidence and come to its own conclusions, but if it declines to interfere with the award passed by the Sole Arbitrator, on the ground that the reasons assigned by the Sole Arbitrator are valid and legal, then, it has to say so in the context of the pleadings, evidence and the findings on record.

22. Therefore, in view of the well settled law laid down by the Hon''ble Apex Court and this Court in various judgments and also the one cited supra, we are of the considered opinion that the impugned judgment passed by the Trial Court,

cannot at any stretch of imagination be sustained and is liable to be set aside at the threshold, without going into further merits and demerits of the case of the respective parties.

23. Having regard to the facts and circumstances of the case, stated above, the appeal filed by appellant/Company is allowed.

24. The impugned judgment dated 3rd December, 2009, passed in A.S. No. 19/2008, by the VI Additional City Civil Judge, Bangalore City (CCCH-11), is hereby set aside;

25. The matter stands remitted back to the jurisdictional Trial Court to consider and pass appropriate order in accordance with law, in the light of the various judgments of the Hon''ble Apex Court and this Court, including the one stated supra, after affording reasonable opportunity of hearing to both the parties and dispose of the same, as expeditiously as possible;

26. All the contentions of both the parties are left open.