(2008) 06 MAD CK 0046

In the Madras High Court

Case No : O.P. No. 499 of 2000

Kwality Spinning Mills Ltd. and Another — APPELLANT

Vs

India Cements Capital Finance Ltd. and Another — RESPONDENT

Date of Decision : 09-06-2008

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 13(2)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2008) 145 CompCas 288 : (2009) 1 CompLJ 591

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : M.S. Krishnan, for Sarvabhauman Associates, for the Appellant; S. Rajini Ramadoss, for K. Rajasekaran, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—This original petition is filed to set aside the award dated July 11, 2000, passed by the second respondent in the

application u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, in Arbitration Case No. 28 of 1999 filed by the first

respondent herein.

2. The facts as culled out from the petition are as under:

The first respondent herein has filed a claim petition before the second respondent/arbitrator for the recovery of a sum of Rs. 57,01,458 together

with interest at 36 per cent, per annum being the amounts due under a hire purchase contract No. 3773 dated March 31, 1997. The petitioners

denied the allegations levelled in the claim petition.

3. According to the petitioners the hire purchase agreement dated March 31, 1997, does not exist at all and the petitioners signatures were taken

on blank forms which were used by the first respondent to create the hire purchase agreement.

4. According to the petitioners, the hire purchase agreement dated March 31, 1997, is a fabricated document. It is the further case of the

petitioners that the equipment which is the subject-matter of the hire purchase is the asset of the first petitioner and the first respondent has no title

or interest over the same.

5. In April 2000, the petitioners filed an application before the second respondent/arbitrator u/s 13(2) of the Arbitration and Conciliation Act,

1996, challenging the appointment of the second respondent as the arbitrator of the first respondent-company. This application was dismissed by

the second respondent by order dated June 14, 2000.

6. In June 2000, the petitioners filed another application u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter

referred to as ""the SICA 1985""). As the first petitioner has been declared as a sick industry with effect from March 6, 1998, the petitioners sought

for suspending the arbitration proceedings in view of the fact of the embargo placed by Section 22 of the SICA, 1985. The first respondent filed

his counter opposing the application filed by the petitioners u/s 22 of the SICA, 1985.

7. By order dated July 11, 2000, the second respondent/arbitrator dismissed the application filed u/s 22 of the SICA, 1985 and aggrieved by the

same, the above original petition has been filed by the petitioners for the abovesaid reliefs.

8. Heard learned Counsel for the petitioners and learned Counsel for the first respondent. I have also gone through the records and documents

filed in support of their submissions.

9. The first respondent herein, as a claimant, filed a claim petition against the petitioners herein before the second respondent/arbitrator, praying for

a direction, directing the petitioners to pay a sum of Rs. 57,01,458 together with interest at 36 per cent. per annum.

10. It is the case of the first respondent that the first petitioner executed a hire purchase agreement dated March 31, 1997, as a hirer and the

second petitioner as a guarantor. Under the terms of the agreement, the petitioners are liable to pay the hire purchase charges of Rs. 79,000 per month for the first 12 months from March 31, 1997, Rs. 89,000 per month for the next 12 months from March 31, 1998, Rs. 99,000 per month

for the next 12 months from March 31, 1999, Rs. 1.09 lakhs for the next 12 months from March 31, 2000 and Rs. 60,875 per month for the last

12 months from March 31, 2001, aggregating to Rs. 52,42,500. According to the first respondent herein, it was a 60 months contract which could

come to an end on February 28, 2002.

11. Right from the inception of the agreement according to the first respondent, the petitioners defaulted in paying the hire purchase instalments.

Hence, the first respondent filed a civil suit against the petitioners for the re-possession of the machineries given on hire before this Court and this

Court was pleased to relegate the matter to arbitration.

12. Before the second respondent/arbitrator, the petitioners filed a petition u/s 22 of the SICA, 1985, praying to stop all the further proceedings in

the arbitration matter, till the petitioners moved the Board for appropriate orders.

13. In the affidavit filed in support of the petition, it is stated by the petitioners that the machineries were purchased by them from and out of their

own fund and no financial assistance was sought from any of the financial institutions at the time of its purchase. In March 1998, the first

respondent approached them with an offer to extend financial assistance to the extent of Rs. 30,00,000. It was decided that the first respondent

and the petitioners would enter into a hire purchase refinancing scheme with respect to Lakshmi Rieter Carding Machinery which had been

purchased by the petitioner from their own funds. Accordingly, a hire purchase refinance agreement dated March 29, 1995, was entered into

between the petitioners and the first respondent. Therefore, according to the petitioners the agreement was only a loan transaction even though it

was termed as a hire purchase agreement and the machinery was only a security for the loan.

14. While so, the petitioners were shocked to read from the claim petition of the first respondent that they are making their claim under hire

purchase agreement dated March 31, 1997, of which the petitioners are not at all aware.

15. According to the petitioners, their signatures were obtained on blank printed forms and using the same, the first respondent created the hire

purchase agreement.

16. It is the specific case of the petitioners before the second respondent/ arbitrator that the first respondent was not entitled to maintain the claim

petition in view of the fact that the first petitioner has been declared as a sick industry by the Board for Industrial and Financial Reconstruction

(BIFR) vide its order dated March 6, 1998. The effect of the same will be that all legal proceedings against a sick industry is suspended and they

shall not be proceeded with further, except with the consent of the Board. Thus, according to the petitioners Section 22 of the SICA, 1985 places

an embargo on the continuation of the arbitral proceedings against them. Hence, they sought for staying all further proceedings before the second

respondent/arbitrator.

17. The first respondent filed a counter-affidavit opposing the application, wherein they have stated that the said petition filed by the petitioners

herein u/s 22 of the SICA, 1985 is not maintainable as Section 22 will not apply to arbitration proceedings initiated under the provisions of the

Arbitration and Conciliation Act, 1996.

18. The second respondent/arbitrator by order dated July 11, 2000, dismissed the petition by holding that Section 22 of the SICA, 1985 is not

applicable to the proceedings initiated under the Act of 1996. Hence, he directed the petitioners to submit a detailed counter statement to decide

the claim petition.

19. Aggrieved by the order dated July 11, 2000, the above original petition has been filed by the petitioners by contending that the order dated

July 11, 2000, is an interim award.

20. It is seen from the records that at the time of admission itself, this Court admitted the original petition subject to the maintainability as the

registry of this Court raised a doubt as to the maintainability of the original petition. According to the registry, the order passed by the arbitrator on

July 11, 2000, is not an interim award.

21. Without going into the question of maintainability, in view of the categorical finding of this Court and the Supreme Court in a number of

judgments holding that Section 22 of the SICA, 1985 is not applicable to the arbitration proceedings initiated under Arbitration and Conciliation

Act, 1996. I find no merits in the above original petition.

22. The second respondent/arbitrator has correctly arrived at the decision by holding that the petition filed by the petitioners u/s 22 of the SICA,

1985 is not maintainable.

23. In the result, the original petition is dismissed and the petitioners are directed to go before the arbitrator, file their counter statement and contest

the claim petition on merits and in accordance with law. All the factual and legal questions are left open to be decided by the learned arbitrator

without getting influenced by this order.

In the result, the O.P. No. 499 of 2000 is dismissed with no costs.

