

(2015) 04 KAR CK 0291

In the Karnataka High Court

Case No : Writ Petition No. 38529 of 2013 (GM-CPC)

S.K. Lakshminarayana and Others

APPELLANT

Vs

Poonam Harish and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2015) 4 AKR 252 : (2015) 6 ARBLR 133 : (2015) 4 KarLJ 82

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : H.S. Dwaraka Nath, for the Appellant; Vamshi Krishna, Advocate for Aravind Kamath by ALMT Legal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.

1. This writ petition is filed by the Judgment Debtors challenging the order passed by the Executing Court overruling their objections and also rejecting the application filed by them for raising attachment and further directing the Decree Holder to proceed against the Judgment Debtors Nos. 1 to 3 for realization of dues under the award.

2. A Memorandum of Understanding came to be entered into on 27.09.2000 between M/s. Ventronics Information Technology Private Limited, B. Harish and Poonam Harish. In that connection dispute arose between the parties and the matter was referred to Arbitrator Mr. H. Ramachandra, Hariharan and Co, Chartered Accountants. The Arbitrator passed the award on 25.04.2003.

3. One of the Directors of the company Mrs. Neeraja Goel preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") challenging the award. The application was dismissed. The other Directors of the Company have also challenged the award passed by the Arbitrator contending that in terms of the award amount due was not paid.

4. Execution proceedings were initiated in Ex. P. No. 696/2012 on the file of the Principal District and Sessions Judge, Mysore. In the execution case, in addition to the Company, the Directors have also been made parties. Notice was served upon them. The Decree Holder filed an application for attachment of the properties standing in the name of the Directors and the properties have been attached.

5. At that stage, the Directors entered appearance in the execution case and filed their objections for attachment and also the main petition. In the Execution proceedings their case was that the award is only against Company and not against the Directors in their individual capacity and therefore, the personal property of the Directors cannot be attached for recovery of the amount due; and they are not parties to the award. The said objection was overruled and the application filed for raising attachment was dismissed. The Executing Court also made it clear that Decree Holder can proceed against the properties of the directors.

6. The learned counsel Sri Dwarakanath, appearing for the Judgment Debtors/petitioners contend there is no award passed against the directors in their personal capacity; Even if they have given any undertaking before the Registrar of Companies, the same cannot be enforced in the execution case and a separate proceedings has to be initiated. The dismissal of the petition under Section 34 of the Act would not enure to the benefit of the Decree Holder to enforce the award against the Directors. Therefore, he submits the impugned order is illegal, erroneous and requires to be set aside.

7. Per contra, the learned counsel Mr. Vamshi Krishna, appearing for the Decree Holders - respondent No. 1 and 2 contends that the Directors of the Company though not parties to the arbitration proceedings, have participated in the arbitration proceedings and gave undertaking before the Registrar of Company to clear the dues of the creditors of the Company and in particular, dues of the Decree Holder herein. The learned Arbitrator in categorical terms, has fastened the liability on the Directors of the company in the award and therefore, the Decree Holders are entitled to attach the property mentioned therein, which stands in their individual names and also to recover the amount due from the said properties.

8. In the light of the above, the point that arises for consideration in this writ petition is :

"Whether the Decree Holder can proceed against the properties standing in the Directors' individual names to recover the amount due from the Company?"

9. It is to be remembered that the Executing Court is executing an award passed by an arbitrator which has attained finality. Therefore, all that the Executing Court can do is to look into the terms of the award and enforce it; it cannot go behind the award. The award passed by the arbitrator reads as under : -

"6. AWARD:

Now, therefore, I make the following Award.

I have gone through the various documents furnished as well as the books of accounts of the Petitioners (claimant) and noted that these extracts were already given to the Respondents for their reactions. Although the dispute is agreed to be resolved through arbitration, I find that the Respondents are not equipped with any material, either to question the veracity of the accounts furnished by the Petitioners (claimant) or armed with a different set of facts. Considering the extracts furnished by the Petitioners (claimant), I am more than convinced that in essence, the dispute is only of unwillingness arising out of financial inability to settle an amount owing to the Petitioners (claimant) and not anything else. The list of documents furnished by the Petitioners (claimant) including the letters exchanged also clearly proves the legitimacy of the claim made by the Petitioners (claimant). Hence, I direct that Rs. 5,23,094/- should be paid by the Respondents to the Petitioners (claimant), as in my view, this is the total sum which is outstanding in terms of the accounting entries passed based on invoices and Balance Sheet of the Respondent Company as on 31st March 1999. I am further satisfied that this will represent the true picture regarding the amounts due to the Petitioners (claimant).

7. INTEREST:

The rate of interest on the commercial borrowings have fluctuated between 18% p.a. to 12% p.a. over the past few years and I feel that the ends of Justice will be met if the Petitioners (claimant) are compensated by way of simple interest @ 13% per annum.

Hence, I award simple interest @ 13% from 1.4.1994 to 31.3.2003 amounting in all to Rs. 2,72,008/-.

Thus, the total amount which is now quantified by me to be paid to the Petitioners (claimant) by the Respondents is Rs. 7,95,102/-.

8. TIME and MODE OF PAYMENT:

I direct that the amount should be paid within a period of 60 days from the date of receipt of the order failing which interest @ 15% will be reckoned w.e.f. 1.4.2003 till the amounts are fully paid off/settled.

I also understand that the respondent company has already given an undertaking to the Registrar of Companies in their application u/s. 560 that any amount due to any creditor will be paid by the Directors jointly and severally and I hope that the amounts awarded by me as being the amount outstanding to the Petitioners (claimant) by the Respondents should be settled in terms of the undertaking given by the directors jointly.

9. The cost of the arbitration - "arbitrator"s fees and administrative cost" shall be met by both the parties in a proportionate manner.

Each party shall bear and pay his/its own legal cost and expenses in connection with this arbitration and shall not seek any part thereof from the other party."

10. A reading of the award makes it clear that the award is passed against the Company. The total amount due is Rs. 5,23,094/-. Simple interest at 13% is awarded from 1.4.1994 to 31.3.2003 amounting to Rs. 2,72,008/-. Thus, the total amount due is Rs. 7,95,102/-. The award directs that the said amount is to be paid within 60 days from the date of receipt of the order failing which interest at 15% would be reckoned with effect from 1.4.2003 till the amounts are fully paid/settled. The award does not stop there. It is further stated as under :--

"I also understand that the respondent company has already given an undertaking to the Registrar of Companies in their application u/s. 560 that any amount due to any creditor will be paid by the Directors jointly and severally and I hope that the amounts awarded by me as being the amount outstanding to the Petitioners (claimant) by the Respondents should be settled in terms of the undertaking given by the directors jointly."

11. From this it is seen that, the Directors have already given an undertaking to the Registrar of Companies to pay the amount due to creditors jointly and severally. Though these Directors are not party to the arbitration agreement, they are not parties eo-nominee in the arbitration proceedings, yet they have participated in the proceedings, the undertaking given by them to the Registrar of Companies was placed before the arbitrator and the arbitrator after careful examination of the entire material on record has directed the Company to pay the aforesaid amount in the first instance. In the event of default, he has made it clear that, in view of the undertaking, the Directors would be jointly and severally liable. Merely because, the word used "I hope", does not take away the legal effect.

12. The sum and substance of the award is that, the claim is decreed, the Company has to pay the money. Otherwise in view of the undertaking given by the Directors, they are liable to pay the said amount. Any other interpretation to the award would render the entire arbitration proceedings otiose. As statutorily provided in the arbitration proceedings, strict rules of Code of Civil Procedure, the Evidence Act, are not applicable and the parties are given the liberty to choose the procedure which they want to follow and the arbitrator also can pass appropriate orders keeping in mind the fairness and interest of both the parties. That is precisely what an arbitration proceeding is. Therefore, too much importance for the words used in the award "I hope" does not take away the efficacy of the award. In the course of the award, the arbitrator has mentioned what is the amount due, then what is the rate of interest payable. Then what is the time within which it is to be paid. If the amount is not paid by the Company then the Directors are jointly and severally liable to pay the said amount. In that view of the matter, I find no illegality in the order passed by the Executing Court in over-ruling the objections and dismissing the judgment debtor's application for raising of the attachment as well as directing execution of the award against

the properties belonging to the Directors personally. Therefore, there is no merit in this Writ Petition and accordingly it is dismissed.