THE HON'BLE SRI JUSTICE P.NAVEEN RAO

AND

THE HON'BLE Dr. JUSTICE G.RADHA RANI

CIVIL MISCELLANEOUS APPEAL No.909 of 2009

JUDGMENT: ***(Per Hon'ble Dr. Justice G. Radha Rani)***

This civil miscellaneous appeal is filed by the appellant/petitioner questioning the legality and validity of the order passed in Arb.O.P. 1734 of 2007 dated 24-07-2009 on the file of Chief Judge, City Civil Court, Hyderabad.

2. The case of the petitioner in brief was that the petitioner was appointed as a dealer by respondent No.1 company for operating a retail outlet under the name and style of M/s.Super Service Station at premises bearing No.5-3-699/8, Station Road, Hyderabad vide dealership agreement dated 9-1-1976. As per the terms of contract, certain conditions were specifically referred to, wherein the respondent retained their absolute right to terminate the contract on the happening of certain events. Clauses 3, 9, 22, 26, 31 and 64 were the terms which would give rise to a cause of action to

the respondent company to terminate the dealership agreement on happening of the said events mentioned there under and not otherwise. On 5-7-2000, the respondent No.1 company issued a show cause notice to the petitioner proposing to terminate the dealership agreement on the ground that there was a change of the constitution of the firm by the petitioner without their written consent. The petitioner contended that the change of constitution or reconstitution of firm was never a condition precedent, which would give a cause of action for the respondent No.1 company to terminate the dealership agreement. Even before the show cause notice was issued, the petitioner restored the position on 5-1-2000 in compliance of clause 55(a), therefore the show cause notice itself would become infructuous. The respondent No.1 company was aware of the constitution and reconstitution of the petitioner firm which took place on 1-4-1996, the conduct of respondent company would amount to waiver and consequently estoppels. Even though the petitioner gave a reply to the show cause notice on 10-7-2000 indicating restoration of the original position of the firm, the dealership agreement was terminated on 22-9-2000. The petitioner filed OS No.1139 of 2000 on the file of I Senior Civil Judge, CCC,

Hyderabad. By order dated 23-2-2004, the matter was referred to arbitration.

3. Pursuant to referring the matter to the arbitration, the petitioner filed a claim statement on 20-12-2004 before the learned arbitrator. The respondent company filed a reply/counter claim. The learned arbitrator on considering the claim statement, reply/counter claim and, oral and written submissions of the respondent passed an award observing that the termination of the dealership agreement dated 9-1-1976 by the respondent vide letter dated 22-9-2000 was justified in terms of the dealership agreement, and rejected the prayer of the petitioner for restoration of dealership agreement and also rejected the claims No.1 to 8 of the petitioner.

4. Aggrieved by the said Arbitral Award dated 23-7-2007, the petitioner preferred Arb.O.P. No.1734 of 2007 before the Chief Judge, City Civil Court, Hyderabad under Section 34 of the Arbitration and Conciliation Act 1996 (for short ‘the Act’) to set aside the same and to restore the dealership agreement.

5. The learned Chief Judge dismissed the said OP on 24-7-2009 confirming the award passed by the arbitrator dated 23-7-2007.

6. Aggrieved by the same, the petitioner preferred this CMA on the ground that Section 14(1) of Specific Relief Act had no application to the facts of present case in as much as the appellant being a senior citizen and totally dependent upon the income derived from the petroleum outlet, if he were to be deprived of the said business it would be violative of Article 21 of the Constitution of India and any amount of compensation could not justify the injustice caused to him since he was permanently deprived of his livelihood on which he was dependent for past more than 25 years. The arbitrator as well as the lower court failed to deal with the contentions raised by him in his pleadings as well as during the course of arguments. His specific case before the lower court was that the then situation was remedial under clause 55(a) of the dealership agreement, admittedly the said defect was rectified by him even before receiving the show cause notice, hence the ground for termination was wholly illegal. He specifically argued before the

lower court that the award was non-speaking and without reasons and that the arbitrator misconducted himself but his contentions were not even dealt with by the court below. The learned judge failed to appreciate the various terms and conditions of the contract and hence it was liable to be set aside. His specific case was that the terms and conditions of the dealership agreement were two fold, the first set of terms would empower the respondent Corporation to automatically terminate the contract on happening of the said events and the second set of terms and conditions could be rectified within stipulated time as contemplated under clause 55(a) of the contract. Unfortunately the arbitrator as well as the lower court failed to analyze the said aspect and discuss the same in their orders and failed to even consider the judgments cited before them while adjudicating the issue on merits, the lower court failed to even formulate the point raised by him or examined the issue that the arbitrator did not assign any reason while passing the award, hence the award passed by the arbitrator as well as the order of the lower court were liable to be set aside.

7. Heard the learned senior counsel for the appellant and the learned counsel for the respondents.

8. On a perusal of the Dealership Agreement dated 9-1-1976, the various clauses like clause No.9, 22, 26 and 31 would entail the termination of contract on violation of terms therein. The show cause notice issued by the respondent on 5-7-2000 would disclose that it was issued for converting the sole proprietorship into a partnership firm by inducting partners in violation of the dealership agreement by virtue of deed of partnership dated 27-3-1993 and again changing the constitution by dropping one of the partner and inducting another in his place in the year 1996 and once again changing the constitution of the firm by dropping some other partners and by inducting others during 1998 and 1999 and such reconstitution of dealership was done thrice without the written consent of the Corporation and it was in violation of clause 44, 45 and clause 55(a).

9. The petitioner gave a reply to the said show cause notice on 10-7-2000 admitting that the constitution of dealership was changed without the written consent from the Corporation but

submitted that after realizing the mistake, he returned the money to the partner and the dealership was operated solely as a proprietor under his supervision. He corrected himself and as per clause 55 of the agreement.

10. But considering the same as violative of clauses 44, 45 and 55(a) and (k) of the dealership agreement, the respondent terminated the agreement.

11. The contention of the petitioner was that as per clause 55(a) of the dealership agreement, the respondent was bound to give 4 days time to remedy the breach of the covenants of agreement, whereas no such opportunity was given to him, the lapse of 7 years from 1993 to 2000 would tantamount to waiver of breach of violations, the above clauses also would not entail termination of the agreement. He had taken the said contention before the arbitrator as well as the lower court but they failed to address the said contentions raised by him.

12. On perusal of the award, it was devoid of any reasoning. The contentions of the claimant were not at all answered by the Arbitrator. He observed that the claimant failed to appear before him

after filing the claim statement and took adjournments as such he was set ex-parte on 15-5-2006 but subsequently appeared and filed two petitions for setting aside the ex-parte order and other for appointment of another arbitrator of his choice and one more (3rd) arbitrator as umpire and both the said petitions were dismissed on 5-6-2006. He had not considered the objections raised by the claimant in the claim statement before him. The learned Chief Judge City Civil Court, extracted clauses 44, 45(1) and (2) of the dealership agreement and observed that the petitioner could not change the constitution of firm without the written consent of the Corporation, as such it was violative of clause 45(2) of the agreement and upheld the award. He had also not discussed about clause 55(a) of the dealership agreement which states that:

> "55. Notwithstanding anything to the contrary herein contained the corporation shall be at liberty to terminate this agreement forthwith upon or any time after the happening of any of the following, namely:
>
> > a) If the dealer shall commit a breach of any of the covenants and stipulations contained in the agreement and fail to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard.
> >
> > b) xxx
> > c) xxx
> > d) xxx
> > e) xxx

> f) xxx
> g) xxx
> h) xxx
> i) xxx
> j) xxx
>
> k) if any information given by the dealer in his application for appointment as a dealer shall be found to be untrue or incorrect in any material respect."

13. Thus both the arbitrator as well as the chief judge failed to discuss the pleas taken by the petitioner with regard to waiver, estoppel and application of clause 55(a) of the agreement to his case.

14. The learned counsel for the appellant relied upon the judgment of Hon'ble Apex Court in **M/s.Som Dutt Builders Ltd v. State of Kerala**[1] on the aspect that the arbitral award could be set aside if no reasons were assigned. The Hon'ble Apex held as follows:-

> 21. Section 31(3) mandates that the arbitral award shall state the reasons upon which it is based, unless - (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award under Section 30. That the present case is not covered by clauses (a) and (b) is not in dispute. In the circumstances, it was obligatory for the arbitral tribunal to state reasons in support of its award in respect of claim nos. 1 and 4B. By legislative mandate, it is now essential for the arbitral tribunal to give reasons in support of the award. It is pertinent to notice here that Act, 1996 is based on

[1] **AIR 2009 SC (Supp) 2388**

UNCITRAL Model Law which has a provision of stating the reasons upon which the award is based. In Union of India v. Mohan Lal Capoor [(1970) 2 SCC 836], this Court said, `reasons are the links between materials on which certain conclusions are based and the actual conclusions'.

22. In Woolcombers of India Ltd. v. Woolcombers Workers Union and Another [AIR 1973 SC 2758], this Court stated:

"...The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations...."

23. In S.N. Mukherjee v. Union of India [(1990) SCC 594], the Constitution Bench held that recording of reasons :

(i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision making.

25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the arbitral tribunal. It is true that arbitral tribunal is not expected to write judgment like a court nor it is expected to give elaborate and detailed reasons in support of its finding/s but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the arbitral tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect thought process leading to a particular conclusion. To satisfy the requirement of 64 (1966) DLT 553 Section 31(3), the reasons must be stated by the arbitral tribunal upon which the award is based; want of reasons would make such award legally flawed. In what we have discussed above, it cannot be said that High Court was wrong in observing that no reasons have been assigned by the arbitral tribunal as to whether the

period of completion extended by the employer for 18 = months was due to reasons not attributable to the claimant."

15. The Hon'ble Apex Court in **ONGC Ltd v. Saw Pipes Ltd.**[2] held that the arbitral award is to be in accordance with the terms of contract. For the construction of contract, the intention of the parties is to be gathered from the words used in the agreement.

16. In the present case, the terms of the contract are not considered by both the arbitrator as well the Chief Judge and they have also not considered the contentions raised by the petitioner in the said regard.

17. The learned counsel for the appellant also relied upon the judgment of Hon'ble Apex Court in **State Bank of India and another v. Mula Sahakari Sakar Karkana Ltd**.[3] on the aspect that a document must be primarily construed on the basis of the terms and conditions contained therein and it was trite that while construing a document the court shall not supply any words which the author thereof did not use.

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[2] **(2003) SCC 705**
[3] **AIR 2007 SC 2361 (1)**

18. The learned counsel relied upon the above judgment on the aspect that the contract couldn't be terminated except upon the happening of the events as mentioned in clauses 9, 22, 26 and 31 as agreed by them.

19. He also relied upon the judgment of Hon'ble Apex Court in **Harbansal Sahnia and another v. Indian Oil Corporation Ltd. and others**[4] on the aspect that if dealership was terminated on irrelevant and non existing grounds, the order of termination was liable to be set aside.

20. Learned counsel for the 1st respondent, on the other hand, contended that deed of dissolution was not executed on a stamp paper and it was an invalid document which could not be looked into and it was created only for the purpose of the case.

21. But, the said contention cannot be accepted as it was not raised by the respondent either before the Arbitrator or before the learned Chief Judge. The learned counsel for the 1st respondent relied upon the judgment of the Hon'ble Apex Court in **Indian Oil**

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[4] **(2003) 2 SCC 107**

Corporation v. Amritsar Gas Services & others[5] on the aspect that relief of restoration of dealership agreement cannot be granted even if the breach was committed by the respondent Corporation contrary to the mandate under Section 14 (1) of the Specific Relief Act. The Hon'ble Apex Court held that:

> "12…. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of Sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with the reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained."

22. Learned counsel for the 1st respondent contended that the only relief which could be granted was the award of compensation for the period of notice but, in the present case, as notice was also given to the petitioner, he was not entitled to the said relief also.

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[5] **1991 (1) SCC 533**

23. He relied upon the judgment of the Hon'ble Apex Court in **E. Venkatakrishna v. Indian Oil Corporation Limited**[6] on a similar aspect wherein it was held that:

> "The question of restoration of distributorship would not arise under the agreement. Therefore, we have no hesitation in holding that the Arbitrator was in error and in fact had no jurisdiction to direct restoration of distributorship to the 1st respondent."

24. He also relied upon the judgment of the Hon'ble Apex Court in **Rajasthan Breweries Limited v. Stroh Brewery Company**[7] wherein it was held that:

> "Agreements in the instant case were terminable by the respondent on happening of certain events Even in the absence of specific clause authorizing and enabling either party to terminate the agreement in the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreement and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii)(e) of the Arbitration and Conciliation Act, relief was not granted in view

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[6] **2000 (7) CC 764**
[7] **AIR 2000 Delhi 450**

> of Section 14(i)(c) read with Section 41 of the Specific Relief Act. Other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable in respect of which the prayer is made specifically to enforce the same."

25. Thus, the learned counsel for the 1st respondent also agreed that the clauses of the contract were not properly construed by the learned Arbitrator as well as the learned Chief Judge, but contended that the remedy of the appellant would lie only to seek compensation for wrongful termination and no claim for specific performance of the agreement could be granted.

26. Hence, considering that the learned Arbitrator as well as the learned Chief Judge failed to appreciate clause-55(a) of the Agreement that the appellant remedied the breach committed by him within four days of the receipt of written notice from the 1st respondent Corporation in the said regard and by terminating the agreement abruptly he was deprived of his livelihood and the award passed by the Arbitrator was a non-speaking order without discussing the contentions raised by the claimant and the learned Chief Judge also failed to address the contentions raised by the appellant, it is considered fit to set aside the order passed by the

learned Chief Judge, City Civil Court in Arb.O.P. No.1734 of 2007 dated 24-07-2009 confirming the award dated 23.07.2007 passed by the Arbitrator.

26. In the result, the Civil Miscellaneous Appeal is allowed setting aside the order dated 24.07.2009 passed in Arb.O.P. No.1734 of 2007 by the Chief Judge, City Civil Court, Hyderabad confirming the award dated 23.07.2007 passed by the Arbitrator.

Miscellaneous petitions pending, if any, shall stand closed.

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P. NAVEEN RAO, J

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Dr. G. RADHA RANI, J

February 22, 2022
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