M/s. Surya Pharmaceuticals Ltd. Vs M/s. First Leasing Company of India Ltd.

Original Side Appeal No''s. 188, 189 of 2013 and M.P. No''s. 1 and 1 of 2013

Court: Madras High Court

Date of Decision: Nov. 12, 2013

Citation: (2014) 2 CTC 545

Hon'ble Judges: Satish K. Agnihotri, J; M.M. Sundresh, J

Bench: Division Bench

Advocate: Y.T. Aravind Ghosh, for the Appellant; P. Wilson, for M/s. P. Wilson, Associates, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, JJ.
The appellant in both these appeals was the respondent before the learned single Judge. The respondent herein filed

two applications before the learned single Judge u/s 9 of the Arbitration and Conciliation Act, 1996. Application in O.A. No. 639 of 2012 was

filed seeking an order of ad-interim injunction and the other application in A. No. 3315 of 2012 was filed seeking appointment of an Advocate

Commissioner to take inventory, followed by possession.

2. The learned single Judge, by a detailed order, allowed both the applications on 28.02.2013. The appellant filed applications for review before

the learned single Judge. The review applications filed in Rev. A. No. 1461 in A. No. 3315 of 2012 and Rev. A. No. 1463 of 2013 in O.A. No.

639 of 2012 were also dismissed by the learned single Judge on 01.04.2013. Thereafter, the present Original Side Appeals have been filed

challenging the common order dated 28.02.2013 passed by the learned single Judge in O.A. No. 639 of 2012 and A. No. 3315 of 2012.

3. Facts in Brief:

3.1. The respondent sanctioned Hire Purchase Assistance to the tune of Rs. 7,00,00,000/-(rupees seven crores only) in favour of the appellant as

per the letter dated 24.11.2010 for the purchase of assets in the nature of plant and machinery. A Hire Purchase Agreement was entered into

between the parties on 28.12.2010. Clause 28 of the said agreement stipulates that in the event of any dispute between the Owner and the Hirer in

connection with the Hire transaction, the Courts in Chennai alone will have jurisdiction. Clause 42, which deals with the Arbitration Clause,

mandates that the Arbitrator shall hold the arbitration proceedings at Chennai only. The cheques issued by the appellant got bounced. After issuing

a legal notice, the respondent has filed two applications u/s 9 of the Arbitration and Conciliation Act, 1996. Application in A. No. 3315 of 2012

was filed seeking to appoint an Advocate Commissioner to seize the plant and machineries with the help of the police aid and hand over the same

to the respondent. O.A. No. 639 of 2012 was filed seeking an order of injunction restraining the appellant in dealing with the equipment and

machineries by way of alienation/parting possession or dealing with the same till the disposal of the arbitration proceedings.

3.2. The respondent has also invoked the arbitration clause by appointing an Arbitrator. In the meanwhile, the appellant has approached the

District Court, Chandigarh, and filed an application therein. The learned single Judge ordered both the applications filed by the respondent. The

appellant filed Review Applications in Rev. A. No. 1461 in A. No. 3315 of 2012 and Rev. A. No. 1463 of 2013 in O.A. No. 639 of 2012

contending that in view of the express bar contained u/s 42 of the Arbitration and Conciliation Act, 1996, the applications filed by the respondent

are not maintainable. The learned single judge dismissed the review applications. The appellant has not filed any appeal challenging the order

passed in the said review applications and has chosen to challenge the common order dated 28.02.2013 passed by the learned single Judge in

O.A. No. 639 of 2012 and A. No. 3315 of 2012.

3.3. It is seen that a conditional order was passed by this Court on 19.04.2013 while entertaining the appeal. However, the said conditional order

was not complied with by the appellant and accordingly, the interim stay granted earlier was automatically vacated.

4. Submission of the Appellant:

The only submission by the learned counsel appearing for the appellant is that there was no jurisdiction or power vested with the learned single

Judge in entertaining the applications filed by the respondent and passing orders on merit. Section 42 of the Arbitration and Conciliation Act, 1996

prohibits filing of such applications, as the appellant had filed an application before the District Court, Chandigarh, earlier in point of time.

5. Submissions of the Respondent:-

The learned counsel appearing for the respondent would submit that Section 42 of the Act cannot be pressed into service to the case on hand as

the respondent did not submit to the jurisdiction of the District Court at Chandigarh. A mere filing of an application will not oust the jurisdiction of

the Court. Considering the specific terms contained in the Arbitration Agreement, the learned single Judge has rightly ordered the application filed

by the respondent on merit and therefore, no interference is required.

6. DISCUSSION:-

6.1. The jurisdiction as referred to u/s 42 of the Arbitration and Conciliation Act, 1996, would only mean that the Court which entertain the first

application must have jurisdiction. In other words, Section 42 of the Act cannot be invoked unless the party, who raises the plea of jurisdiction

demonstrate that the Court which entertained the first application has got the jurisdiction. Clause 28 of the Agreement entered into between the

parties clearly stipulates that in the event of any dispute in connection with the Hire transaction between the Owner and the Hirer, the Courts in

Chennai alone will have jurisdiction. Similarly, Clause 42, in specific terms states that the Arbitrator shall hold the arbitration proceedings at

Chennai only. Therefore, there is no difficulty in appreciating the fact that this Court has got jurisdiction to entertain the applications.

6.2. The further fact that the arbitration agreement has been entered into between the parties, is not in dispute. Mere filing of an application before

a Court by itself will not oust the jurisdiction. In other words, by merely filing an application before any Court, the bar u/s 42 cannot be extended,

when another application is filed by a party before another Court, which has got jurisdiction. Therefore, a party, who raises the plea of lack of

jurisdiction, will have to establish the fact that the Court, which entertains the first application at the earliest point of time, has got jurisdiction.

Moreover, the respondent has not accepted the jurisdiction of the District Court, Chandigarh. The object and intend enshrined in the Arbitration

and Conciliation Act, 1996, is to avoid multiplicity of proceedings and the Forum shopping at the instance of one of the parties to an arbitral

agreement. It can only be applied when the first application filed is before a Court of competent jurisdiction and thereafter, the second application

is filed by either of parties to avoid the jurisdiction of the Court, which entertain the said earlier application. Therefore, who do not find any error in

the order passed by the learned single Judge.

6.3. We are also not convinced about the case of the appellant, on merits. The records would clearly demonstrate that the appellant is a chronic

defaulter and the cheques issued by itself got bounced. The conduct of the appellant was also noted by the learned single Judge. The report of the

Commissioner, as recorded by the learned single Judge, clearly demonstrates a hostile attitude of the appellant and its lack of faith in the Rule of

Law. We also noted the fact that the appellant has not complied with the orders passed by this Court. Therefore, even on merits, we do not find

any scope for interference.

In fine, these Original Side Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.