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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) 125/2024 & CM APPLs.52729-52732/2024**

SHUTHAM ELECTRIC LTD. .....Appellant

Through: Mr.Ramesh Singh, Sr.Advocate with Mr.Ashutosh Kumar, Mr.Arunava Mukherjee, Mr.Nisarg P.Khatri, Mr.Kushagra Sharma and Ms.Hage Nanya, Advocates.

versus

VAIBHAV RAHEJA & ANR. .....Respondents

Through: None.

% Date of Decision: 10th September, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996, challenging the judgment dated 31st May, 2024 passed by the learned Single Judge in O.M.P. 1/2023 wherein the arbitral award dated 2nd May, 2023 rendered by the learned Sole Arbitrator, directing the Appellant to pay an amount of Rs.2.5 crores along with interest

@ 5% p.a., was upheld.

2. The Appellant had entered into a loan agreement with the Respondent No.1 (Claimant in the arbitration proceedings) for an amount of Rs.2.5 crores. Learned Sole Arbitrator had allowed the claim and passed the arbitral award by allowing the Respondent No. 1's application under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC') after finding that there were admissions made by the Appellant about its liability.

3. Learned senior counsel for the Appellant states that the learned Single Judge failed to appreciate that the claim of the Respondent No.1 in the arbitration proceedings was barred by limitation as the loan agreement was dated 14th June, 2013 and the alleged last admission was dated 2nd February, 2017, whereas the notice invoking arbitration was issued by the Respondent No.1 on 18th November, 2019 and that too admittedly at the wrong address. He submits that as there was no compliance with Section 21 of the Arbitration & Conciliation Act, 1996 ('Act 1996'), the learned Arbitrator should have dismissed the claim petition on the ground that it was barred by limitation.

4. He further states that the learned Single Judge failed to consider that the appointment of the learned Sole Arbitrator was not in accordance with the agreement between the parties. He states that Clause 13.3 of the loan agreement, i.e., the arbitration clause, contemplated an arbitral tribunal comprising three arbitrators and, therefore, the appointment of a sole arbitrator was contrary to law.

5. He also states that cause of action for demand of interest was 18th May, 2016 and as the alleged notice invoking arbitration was issued on 18th November, 2019, the Arbitrator was not competent to award any interest on

the outstanding amount.

6. The Apex Court in the case of ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India, (2000) 7 SCC 120*** has succinctly outlined the intent and object of Order XII Rule 6 CPC. The relevant portion of the said judgment is reproduced herein below:-

> "*12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.*"
>
> (emphasis supplied)

7. This Court is of the view that the learned Single Judge has rightly held that as per the correspondence between the parties, particularly the letter dated 2nd February, 2017, the Appellant has acknowledged its liability of repayment of the loan in question. The letter dated 02nd February, 2017 is reproduced hereinbelow:-

> "*February 2, 2017*
> *Mr. Vaibhav Raheja,*
> *C-5/6 Vasant Vihar,*
> *New Delhi – 110057*
>
> *Sub: Request for extension for repayment of outstanding loan of Rs.2.5 crores.*
> *Ref: Loan Agreement dated June 14, 2013*
>
> *Dear Mr. Raheja,*
>
> *With reference to the above we were suppose to repay you the principal amount of the loan outstanding by May 31, 2016.*

You are aware that we are in the process of arranging the funds for repayment. This process will require some more time.

With this letter, we request you to grant us an extension for repayment till March 31, 2017.

Thanking you

Yours faithfully,

For Stutham Electric Limited
(Signed)
Samarjit Bose
Managing Director"

8. This Court, with the assistance of learned senior counsel for the Appellant, has perused the notice invoking arbitration dated 18th November, 2019 and finds that the same had been issued to the Appellant at two addresses, namely, 6, Galaxy Society, Boat Club Road, Pune-411001 and S.No. 28, Chakan Road, Hanuman Wadi, Korwa Samor, Kelgaon, Taluka Khed, Distt Pune-412105. While the second address, admittedly, is vitiated by a typographical error, this Court finds that the first notice had been issued by registered post and the postal receipt has been placed on record at pages 618 and 619 of the paper book. Section 27 of the General Clauses Act stipulates that a presumption of service would have to be drawn. Accordingly, keeping in view the aforesaid notice as well as proof of service that has been annexed, it cannot be stated that the notice invoking arbitration dated 18th November, 2019, was either not served or beyond the period of limitation.

9. Further, after considering all the documents on record, the learned Single Judge has rightly held that the Appellant did not refute the factum of loan, both in its pleadings before the learned Sole Arbitrator and the reply to the Respondent No. 1's application under Order XII Rule 6. In fact, the

Appellant has clearly admitted in the contemporaneous correspondence that it owes the loan amount in question to the Respondent No.1. The logical sequitur of this admission would be that the Appellant would also have to pay the interest on the outstanding amount. In such a scenario, the learned Arbitrator correctly exercised his power under Order XII Rule 6 and passed the arbitral award both for the outstanding amount as well as the interest.

10. Lastly, the argument that the arbitral tribunal was not constituted in accordance with the agreement between the parties is not tenable. The learned Single Judge has rightly held that the Appellant itself did not adhere to the provisions of the arbitration clause forcing the Respondent No.1 to file an application under Section 11 of the Act, 1996. Moreover, there was no such objection raised by the Appellant at the time when the learned Sole Arbitrator was appointed by a learned Single Judge of this Court.

11. This Court is further of the opinion that the Appellant believes that the arbitral award is not the end of the dispute, but a prelude to stage two of their disputes - this time before the Courts. The Appellant's belief is contrary to the intent and object of the Act, 1996.

12. It is trite law that this Court will not re-assess and re-examine the evidence placed before the learned Sole Arbitrator. The proceedings under Section 37 of the Act, 1996 are even more limited in scope than those under Section 34 and cannot be equated with the normal appellate jurisdiction of this Court. (See: ***Reliance Infrastructure Ltd. v. State of Goa 2023 SCC OnLine SC 604***).

13. The grounds urged by learned senior counsel for the appellant certainly do not fall within the parameters of Section 37 of the Act, 1996.

14. Accordingly, the present appeal, being bereft of merits, is dismissed along with applications but with no orders as to cost.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 10, 2024
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