

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

COMMERCIAL APPEAL NO.105 OF 2022

BETWEEN:

M.VENKATESH,
S/O MUNISWAMY REDDY,
AGED ABOUT 61 YEARS,
RESIDING AT No.1809,
21ST MAIN ROAD,
13TH CROSS, HSR LAYOUT,
BENGALURU - 560 102.

... APPELLANT

(BY SRI. D.R.RAVISHANKAR, SENIOR ADVOCATE FOR
SRI. SANJAY.G., ADVOCATE)

AND:

THE COMMISSIONER,
BRUHUT BENGALURU
MAHANAGARA PALIKE,
N.R.SQUARE,
BENGALURU - 560 002.

... RESPONDENT

(BY SRI. RAMU S., ADVOCATE FOR C/RESPONDENT)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT READ WITH SECTION 13(1)(A) OF THE COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE ORDERS DATED 13.12.2021 PASSED IN COM.A.P.No.20/2020 ON THE FILE OF THE LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-83) AND CONSEQUENTLY SET ASIDE THE ARBITRAL AWARD DATED 07.03.2017 PASSED IN A.C.No.12/2016 BY THE LEARNED SOLE

ARBITRATOR TO THE EXTENT OF THE CLAIM DENIED TO THE APPELLANT AND ETC.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

The personal affidavit of Sri G.Sanjay, advocate filed along with the memo is taken on record.

2. We have gone through the affidavit. The advocate appearing for the appellant Sri G.Sanjay has submitted that he has admitted his mistake and it is for the first time that he has committed such a mistake and learnt a lesson and solemnly assures the Court that such instances will not occur in future and he tenders his unconditional and profuse apologies in this regard.

3. Considering the young age of the advocate and the assurance given by Sri D.R.Ravishankar, learned Senior Advocate appearing for the appellant that in future, Sri G.Sanjay would be more careful and will not commit any such mistake, we do not propose to proceed any further against Sri G.Sanjay, advocate and drop the proceedings at this stage.

4. Heard Sri D.R.Ravishankar, learned Senior Advocate for Sri G.Sanjay, learned advocate for the appellant and Sri Ramu S, learned advocate for the respondent.

5. The above appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the order passed by the LXXXII Additional City Civil & Sessions Judge, Bengaluru dated 13.12.2021 in Com.A.P.No.20/2020. The said Com.A.P.No.20/2020 had been filed challenging the arbitral award passed by learned Sole Arbitrator in A.C.No.12/2016.

6. The appellant herein was the claimant before the learned Sole Arbitrator. The learned Sole Arbitrator has partially allowed the claim petition filed by the appellant. It is aggrieved by certain claims not being allowed that Com.A.P.No.20/2020 had been filed by the appellant before the Commercial Court under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'A & C Act').

7. The grievance of the appellant as could be seen from the appeal memo is that the learned Sole Arbitrator had committed an error in not considering certain invoices and bills while calculating the total mileage covered by each one of the vehicles on a daily basis. If the said mileage had been properly calculated, the appellant would have been entitled to a higher amount.

8. The second ground raised is that the learned Sole Arbitrator has committed an error in drawing adverse inference that the claimant not having disputed the log books maintained by the respondent, the said log books would have to be taken as correct and proper.

9. Thirdly, it is contended that escalation has not been granted in favour of the petitioner. It is submitted that the contract being a commercial contract, escalation ought to have been granted.

10. The fourth ground is that the variations as regards ESI and PF have not been taken into account by the learned Sole Arbitrator.

11. The fifth ground is that the Bata charges have not been taken into consideration.

12. The sixth ground is that interest has not been awarded in respect of the claim prior to the same being made.

13. These being the grounds to challenge the Arbitral Award dated 07.03.2017, it is contended that the Commercial Court, exercising jurisdiction under Section 34 of the said Act, ought to have appreciated the above contentions and set aside the award and should have allowed the portion of the claim petition which had not been allowed by the learned Sole Arbitrator.

14. There is a very limited jurisdiction under the A & C Act both under Section 34 and under Section 37 in respect of a challenge to an Arbitral award for interference either by the Section 34 Court or the Section 37 Court.

15. The ground being circumscribed and contained under Section 34 of the A & C Act, neither the Section 34 Court can act as the First Appellate Court nor the Section

37 Court can act as the Second Appellate Court and interfere in respect of an arbitral award passed.

16. The grounds which have been raised by the appellant before the Section 34 Court which are reproduced hereinabove are mainly relating to the appreciation of evidence which is not a ground which is available under Section 34 of the Act nor can the Section 34 Court, as observed above, appreciate or re-appreciate the evidence which is on record. The only grounds which are available are those which are circumscribed under Section 34 of the said Act as held by the Apex Court in the case of ***ASSOCIATE BUILDERS VS. DELHI DEVELOPMENT AUTHORITY***¹

17. The grounds which are relevant to challenge the arbitral award is that the award should be patently illegal and contrary to the public policy as per Section 34(2) of the said Act. Neither before the Commercial Court nor before this Court, the appellant has been able to establish any patent illegality except to contend that factual aspects have not been taken into consideration by the learned Sole

¹ (2015) 3 SCC 49

Arbitrator. The manner in which the allegations have been made against the Arbitrator also needs to be deprecated.

18. The appellant not being able to make out any ground either before the Section 34 Court or before this Court, we find that there is no error or infirmity in the award passed by the learned Sole Arbitrator or the Section 34 Court. The order passed in Com.A.P.No.20/2020 is proper and correct and does not require any interference.

19. The appeal stands dismissed.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**