A M/S. NAVODAYA MASS ENTERTAINMENT LTD.

v.

M/S. J.M. COMBINES

(Civil Appeal Nos. 7128-7129 of 2011)

AUGUST 26, 2014

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[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Arbitration – Award by arbitrator – Scope of interference – Held: Is limited – Once arbitrator has applied his mind to C *the matter before him, the Court is not justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view – Even if two views are possible, the view taken by the Arbitrator would prevail – It is only where there is an error apparent on the face of the record or Arbitrator* D *has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator – On facts, on perusal of the clauses of the Agreement, the reasoning given by the Division Bench of the High Court while affirming the award cannot be said to be* E *perverse – Award passed by the arbitrator upheld.*

Dispute arose between the parties. In terms of the agreement, an arbitrator adjudicated upon the dispute and published an award. The respondent challenged the award before the High Court with regard to the F **disallowed claim and the appellant challenged the entire award before the High Court u/s. 34 of the Arbitration and Conciliation Act, 1996. The Single Judge of the High Court dismissed both the applications. In appeal, the Division Bench of the High Court dismissed the appeal** G **filed by the appellant but allowed the appeal filed by the first respondent. The Division Bench of the High Court affirmed the award of the Arbitrator, holding that the appellant having failed to make the payment of the dues,**

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as agreed to between the parties, cannot deny the lawful claim of the respondent. Hence the instant appeals

Dismissing the appeals, the Court

HELD: 1.1. The scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. [Para 6] [1103-C-E]

Bharat Coking Coal Ltd. vs. L.K. Ahuja **(2004) 5 SCC 109;** *Ravindra & Associates vs. Union of India* **(2010) 1 SCC 80;** *Madnani Construction Corporation Private Limited vs. Union of India & Ors.* **(2010) 1 SCC 549;** *Associated Construction vs. Pawanhans Helicopters Limited* **(2008) 16 SCC 128;** *Satna Stone & Lime Company Ltd. vs. Union of India & Anr.* **(2008) 14 SCC 785 – relied on.**

1.2. On perusal of the clauses of the said Agreement, in particular clauses 3 & 5 of the Agreement, it is found that the reasoning given by the Division Bench of the High Court cannot be said to be perverse. Furthermore, the appellant never terminated the Agreement or requested the first respondent to take back the machinery. At this stage it would not be proper to express further opinion in the matter when the matter/dispute has already been concluded by the Arbitrator and the award has been affirmed by the High Court. Under these circumstances, there is no merit in these appeals. [Para 7,8] [1103-G-H; 1104-A-B]

A **Case Law Reference:**

(2004) 5 SCC 109	**Relied on**	**Para 6**
(2010) 1 SCC 80	**Relied on**	**Para 6**
B **(2010) 1 SCC 549**	**Relied on**	**Para 6**
(2008) 16 SCC 128	**Relied on**	**Para 6**
(2008) 14 SCC 785	**Relied on**	**Para 6**

C CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7128-7129 of 2011.

From the Judgment and Order dated 01.09.2009 of Madras High Court in OSA No. 34 of 2009 and OSA No. 140 of 2009.

D Jos Chiramel, Anish Kumar Gupta, Pankaj Kumar Dua for the Appellant.

G. Umapathy, Rakesh K. Sharma, S. Ramsubramanian for the Respondent.

E The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. These appeals have been filed assailing the common judgment and order dated 1.9.2009 passed by the Madras High Court in O.S.A. Nos.34 F of 2009 and 140 of 2009 by which the High Court while allowing O.S.A. No.34 of 2009 filed by Respondent No.1, dismissed O.S.A. No.140 of 2009 filed by the appellant herein. The facts of the case briefly stated are as follows:

G 2. The appellant offered a business proposal to the first respondent herein and they entered into an agreement on July 30, 1998, whereby it was agreed that the first respondent shall procure, install and operate an amusement ride for both adults and children called "SLAMBOB" in the amusement park H "Kishkinta" which was maintained by the appellant. The

Agreement also provided that the first respondent shall maintain the equipment by effecting necessary repairs etc. The Agreement further provided that the collection from the ride would be shared in the ratio of 60:40 by the first Respondent and the appellant in the first year of its operation, and thereafter in the ratio of 50:50 in the subsequent years. It also provided for a guaranteed minimum gross collection of Rs.10 lakhs for the first year and Rs.8.33 lakhs for the subsequent 9 years. The Agreement was in force for a period of 10 years and could be renewed/terminated as per the terms thereof. Pursuant to the Agreement, the first respondent installed the equipment on 16.04.1999 and it started functioning from the said date. The appellant defaulted in making the payments from the year 2000-2001 onwards. Despite repeated demands, the appellant failed to make the payments, hence notice was served to the appellant calling upon the appellant to pay the outstanding amount, along with interest at the rate of 24% per annum.

3. In these circumstances, dispute arose between the parties which was covered under the said Agreement by arbitration clause and accordingly an Arbitrator was appointed. The first respondent filed a claim for a sum of Rs.13,94,240/- together with interest on 16.10.2006. The Arbitrator published his award allowing the claim to the tune of Rs.13,94,240/- with interest at the rate of 12% per annum, but disallowed the Minimum Guaranteed amount of Rs.69,416/- per month for the remaining 69 months, commencing from July, 2003. Aggrieved by the award in respect of the disallowed claim, the first respondent challenged the award before the Madras High Court under by filing O.P. No.37 of 2007 and aggrieved over the entire award, the appellant challenged the same before the Madras High Court by filing O.P. No.362 of 2007 under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Single Judge of the Madras High Court dismissed both these applications. Aggrieved by the order passed by the learned Single Judge of the High Court, appeals were filed by both the parties before the Division Bench of the High Court. The High

A Court by a common judgment and order dated 1.9.2009 dismissed the appeal filed by the appellant but allowed the appeal filed by the first respondent herein. The High Court after scrutinizing all the materials placed before it came to the conclusion that it is not in controversy that the Agreement was
B entered into between the parties on July 30, 1998. The parties also agreed to the ratio in which the collection of the amusement ride was to be shared and the said Agreement was in force for a period of 10 years and was also renewable. The Agreement also stipulated for a guaranteed minimum gross
C collection of Rs.10 lakhs for the first year and Rs.8.33 lakhs for the subsequent 9 years.

4. The Division Bench of the High Court affirmed the award of the Arbitrator. The High Court particularly held that the appellant having failed to make the payment of the dues, as
D agreed to between the parties, cannot deny the lawful claim of the respondent and accordingly the High Court upheld the reasoning of the Arbitrator and dismissed the appeal filed by the appellant. The Division Bench of the High Court also held that the award of interest at the rate of 12% per annum was
E also just and reasonable and accordingly affirmed the same. In these circumstances, the appeal filed by the first respondent, being OSA No.34 of 2009, was allowed and the appeal filed by the appellant, being OSA No.140 of 2009, was dismissed by the Division Bench of the High Court.

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5. We have perused the order passed by the Division Bench of the High Court. We have also heard the learned counsel for the parties. Learned counsel appearing on behalf of the appellant submitted that the Arbitrator and the Courts
G have failed to appreciate the fact that the claim was not on revenue sharing basis i.e. the gross income but it was on the basis of minimum guaranteed amount stated in the petitions. Learned counsel appearing on behalf of the appellant tried to argue before us that the alleged Agreement was not legal, valid and enforceable. He further submitted that the same was one-
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sided Agreement. He also submitted that the Division Bench of the High Court ignored and overlooked clause 14 of the Agreement which deals with the termination of the Agreement by the conduct of the parties. We are afraid that such points, as has been tried to be contended before us, it appears, were never urged before the learned Single Judge or before the Division Bench of the High Court. The dispute between the parties has been adjudicated upon by the Arbitrator and the award has been published. The Division Bench of the High Court has found that the award cannot be said to be perverse or that there is any cogent reason to set aside the same.

6. In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. (See: *Bharat Coking Coal Ltd. Vs. L.K. Ahuja,* (2004) 5 SCC 109; *Ravindra & Associates Vs. Union of India,* (2010) 1 SCC 80; *Madnani Construction Corporation Private Limited Vs. Union of India & Ors.,* (2010) 1 SCC 549; *Associated Construction Vs. Pawanhans Helicopters Limited,* (2008) 16 SCC 128; and *Satna Stone & Lime Company Ltd. Vs. Union of India & Anr.,* (2008) 14 SCC 785.)

7. We have also perused the clauses of the said Agreement, in particular clauses 3 & 5 of the Agreement. We find that the reasoning given by the Division Bench of the High Court cannot be said to be perverse. Furthermore, the appellant never terminated the Agreement or requested the first respondent to take back the machinery. Now, at this stage it would not be proper for us to express further opinion in the

A matter when the matter/dispute has already been concluded by the Arbitrator and the award has been affirmed by the High Court.

8. Under these circumstances, we do not find that there is B any merit in these appeals. The same stand dismissed. However, the parties shall bear their own costs.

Nidhi Jain Appeals dismiseed.