
(2016) 03 KAR CK 0158
In the Karnataka High Court
Case No : MFA No. 103528 of 2015 (A & C)

Bhaskar Industrial Development Limited, Kolkata	APPELLANT
Vs	
South Western Railway, Hubballi	RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2016) 4 AirKarR 197 : (2016) ILRKarnataka 4136 : (2016) 3 KCCR 2285

Hon'ble Judges : H.G. Ramesh and G. Narendar, JJ.

Bench : Division Bench

Advocate : K.G Raghavan, Senior Advocate, Smt. Gayatri Balu, and Samudra Sarangi for Khaitan and Co, Advocates, for the Appellants; Smt. Anuradha Deshpande, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

H.G. Ramesh, J. :- Whether Court has power under Section 34 of the Arbitration and Conciliation Act, 1996 to remit the matter to the arbitral tribunal after setting aside an arbitral award, is the question that requires determination in this appeal. The question is answered in the negative.

2. This appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996("the Act" for short) is directed against an order dated 29.08.2015 passed by the Court of the Principal District Judge, Dharwad, in Arbitration Suit No. 1/2015. The appellant herein was the plaintiff before the trial Court in the aforesaid suit. The aforesaid suit (Application) was filed under Section 34 of the Act against an arbitral award dated 06.01.2014. By the impugned order, the arbitral award dated 06.01.2014 has been set aside and the matter is remitted to the arbitral tribunal for reconsideration with a direction to the appellant herein to restore the Bank guarantee. The impugned order was passed by the Court on the application (I.A. No. 2) filed by the respondent-South Western Railway to remit the matter to the arbitral tribunal.

3. By consent of learned counsel on both sides, the appeal is finally heard on merits and is being disposed of by this order.

4. Sri. K.G. Raghavan, learned Senior Counsel appearing for the appellant, submitted that the Court below has erred in law in setting aside the arbitral award and remitting the matter to the arbitral tribunal for reconsideration without examining the matter as provided under Section 34 of the Act. He submitted that no power of remand is conferred on the Court under Section 34 of the Act. But the Court may, as provided under sub-section (4) of Section 34 of the Act, where it is appropriate and if it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award. In support of his submission, he relied on a decision of the Supreme Court in *McDermott International Inc. v. Bum Standard Co. Ltd* [(2006) 11 SCC 181]: (2006 AIR SCW 3276) and specifically invited our attention to para 52 therein. He also submitted that the appellant did not seek for remand of the matter to the arbitral tribunal and the observation by the Court below to the contrary is factually not correct.

5. Smt. Anuradha Deshpande, learned counsel appearing for the respondent-Railway submitted that the impugned order does not warrant interference.

6. To examine the contention urged by the learned Senior Counsel for the appellant, it is relevant to extract Section 34 of the Act:

"34. Application for setting aside arbitral award.-(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application furnishes proof that-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which

contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation.- Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section 1). the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(Underlining supplied)

7. It is also relevant to refer to para 52 of the decision of the Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd.* [(2006) 11 SCC 181] : (2006 AIR SCW 3276, para 53 of SCW) relied on by the learned Senior Counsel:

"52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The Court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

(Underlining supplied)

8. A plain reading of Section 34 of the Act extracted above will show that Parliament has not conferred any power of remand to the Court to remit the matter to the arbitral tribunal except to adjourn the proceedings as provided under sub-section (4) of Section 34 of the Act. The object of sub-section (4) of Section 34 is to give an opportunity to the arbitral tribunal to resume the arbitral proceedings or to enable it to take such other action which will eliminate the grounds for setting aside the arbitral award. This provision (sub-section (4)) cannot be invoked, once the arbitral award is set aside.

9. In our opinion, the Court below has erred in law in setting aside the arbitral award without examining the matter as laid down in Section 34 of the Act. In view of what is stated in para 8 above, it also erred in law in remitting the matter to the arbitral tribunal. We, therefore, make the following order:

The order dated 29.08.2015 in Arbitration Suit No. 1 of 2015 impugned in this appeal is set aside. The matter is remitted to the Court of the Principal District Judge, Dharwad, for reconsideration in accordance with law. All contentions of both the parties are kept open. As the learned counsel on both sides submitted that the parties will fully co-operate with the trial Court for expeditious disposal of the suit, the trial Court is directed to dispose of the suit in A.S. No. 1 of 2015 as expeditiously as possible.

10. Appeal disposed of.