

(2011) 04 CHH CK 0025

In the Chhattisgarh High Court

Case No : Misc. Appeal No's. 838 and 633 of 2000

Channulal Chandrakar

APPELLANT

Vs

Chhangalal Chandrakar and Others
 Ajuram
Chandrakar Vs Chelaram and Others

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 17, 30, 33, 37
Limitation Act, 1963 — Article 119
Registration Act, 1908 — Section 17

Citation : (2011) 3 CGLJ 170

Hon'ble Judges : Prashant Kumar Mishra, J;I.M. Quddusi, J

Bench : Full Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—Since the facts and the question of law involved in both the appeals (M.A. Nos 838/2000 and 633/2000) are common, both the appeals are being decided by this common judgment and order.

2. This appeal has been filed against the impugned order dated 24.12.1999 passed by the learned Second Additional District Judge, Durg in M.J.C. No. 16/88 (Changalal Chandrakar v. Chelaram Chandrakar and Ors.), setting aside the arbitral award dated 20.4.1987 and 21.4.1987.

3. Brief facts of the case, in nutshell, are that applicant - Changalal Chandrakar filed an application u/s 33 read with Section 30 of the Arbitration Act, 1940 for setting aside of the arbitral award, which was registered as M.J.C. No. 16/88. The parties therein were real brothers. For distribution/ partition of the moveable and immoveable properties they entered into an arbitral agreement on 30.6.1985 and appointed Shri Bhagwat Prasad Chandrakar, Shri Sadaram Chandrakar and Shri Chudamani Chandrakar as Arbitrator (Panch). The Arbitrators passed the award on 21.4.1987 which was produced in the Court on 12.12.1987. The grounds for challenge to the award were that the award passed

by the Arbitrators was illegal, it was not properly stamped and it was not registered u/s 17 of the Registration Act, 1908.

4. We have heard learned Counsel appearing for the parties and perused the lower Court record.

5. The parties agreed to appoint arbitrators on the basis of the agreement executed on 30th June, 1985. The arbitrators held the proceedings from time to time even after expiry of four months from the date of appointment. The parties participated in the proceedings and lastly with due cooperation of the parties the distribution was made on the basis of the Lakha (lotteries).

6. Thereafter, the application was filed by the applicant Changalal Chandrakar u/s 14(2) of the Arbitration Act, 1940 on 1.5.1987 with the prayer that the Arbitrators may be directed to file the award dated 21st April, 1987. In the said application it was mentioned that the award was made on 21st April, 1987 and the copy of the award was received on 25th April, 1987. The relevant paragraph of 3 is quoted as under:

3. That the said arbitrators held certain meetings at different places and they finally held a meeting at village Arjunda, Tahsil and District Durg, on 21st April, 1987 (Nineteen Eighty Seven) and they have made and signed an award dated 21st April, 1987 (Nineteen Eighty Seven). A copy of the said award was sent by one of the said arbitrators to the applicant by post which has been received by the applicant on 25th April, 1987 (Nineteen Eighty Seven). The arbitrators have not asked for payment of any fee, charge or costs.

7. Further, the applicant Chhanulal filed an application u/s 33 read with Section 30 of the Arbitration Act 1940 on 6.1.1988 for setting aside the award dated 21st April, 1987.

8. u/s 37 of the Arbitration Act, 1940 it has been provided that all the provisions of the Indian Limitation Act 1908 shall apply to the Arbitrations as they apply to the proceedings in Court. Article 119 of the Limitation Act, 1963, Third Division - Applications Part I - Applications in Specified Cases, description of suit (a) for the filing in Court of an award and (b) for setting aside an award or getting an award remitted for reconsideration, the period of limitation is prescribed as 30 days from the date of service of notice of the making of the award or the filing of the award, respectively.

9. There is no dispute that the application u/s 14(2) of the Arbitration Act, 1940 seeking a direction to file copy of the award was filed on 1.5.1987 and the award was filed by the Respondent Channulal on 10.5.1987 but the application u/s 33 read with Section 30 of the Arbitration Act, 1940 was filed on 6.1.1988 for setting aside the award dated 21st April, 1987. However, the arbitrators had not filed any award and the copy of the same but the application for setting aside of the award was made on 6.1.1988. Thus, the application u/s 33 of the Act, 1940 was filed after expiry of the period of limitation and therefore the same was not

maintainable and should not have been entertained. Learned Court below has committed an error in entertaining the time barred application and giving its judgment, setting aside the award. Besides this, the grounds taken for setting aside of the award are also not sustainable in the eyes of law as when the parties themselves participated in the arbitral proceedings before the arbitrator even beyond four months and cooperated with the arbitrator and on the last date i.e. the date when the award was made, the distribution of the property was made on the basis of Lakha (Lottery) thus there was impliedly consent of the parties for extension of time.

10. In the case of State of Punjab v. Hardyal (1985) 2 SSC 629 Hon''ble Apex Court in para 14 has held as under:

14. The policy of law seems to be that the arbitration proceedings should not be unduly prolonged. The arbitrator therefore has to give the award within the time prescribed or such extended time as the court concerned may in its discretion extend and the court alone has been given the power to extend time for giving the award. As observed earlier, the court has got the power to extend time even after the award has been given or after the expiry of the period prescribed for the award. But the court has to exercise its discretion in a judicial manner. The High Court in our opinion was justified in taking the view that it did This power, however, can be exercised even by the appellate court. The present appeal has remained pending in this Court since 1970. No useful purpose will be served in remanding the case to the trial court for deciding whether the time should be enlarged in the circumstances of this case. In view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, in our opinion, for the extension of time. We accordingly extend the time for giving the award and the award will be deemed to have been given in time.

11. A perusal of the above quoted paragraph shows that Hon''ble Apex Court has laid down that in view of the policy of law that the arbitration proceedings should not be unduly prolonged and in view of the fact that the parties have been taking willing part in the proceedings before the arbitrator without a demur, this will be a fit case, for the extension of time and the time was extended for giving the award and the award was held to be deemed to have been given in time. However, in the instant case the parties themselves agreed to participate in the arbitral proceedings and on the last date on the basis of Lakha (lottery) the draw was opened and as such it cannot be said that the parties were not consented to continue the arbitral proceedings after expiry of four months. The award was made on the date when the draw by Lakha was made i.e. 21st April, 1987.

12. In regard to the other ground that the stamp duty was not paid, to our opinion the stamp duty was not required to be paid. The applicant had himself mentioned in the application filed u/s 14(2) of the Act, 1940 that the arbitrators had not directed to deposit any Court fees or file stamp duty. In this regard

Hon"ble Supreme Court has laid down principles in the case of N. Khadervali Saheb (Dead) by LRs. and Another Vs. N. Gudu Sahib (Dead) and Others, , wherein it was held that the document which records the settlement, an award does not require registration u/s 17 of the Registration Act since the document does not transfer or assign interest in any asset and hence there is no question of payment of any stamp duty. In the instant case, since it was the settlement of the properties between the parties who were real brothers, no stamp duty or registration was required.

13. We also refer at this stage the judgment of Bombay High Court in the case of Keval Krishna Balakram Hitkari and another Vs. Anil Keval Hitkari and others, , paragraph 6 of which reads as under:

6. In so far as the present award is concerned, perusal of the award shows that there are three immoveable properties with which the award deals and in the award there are directions issued for execution of documents for making the award effective. It is further to be seen that by Clause 3, 4 of the award all the parties to the award have been directed to sign and execute documents and writings for making the award effective. It is thus clear that there is no right created by the award itself in the immoveable properties. Rights in the immoveable properties are to be created by documents to be executed by the parties and therefore in terms of the law laid down by the Supreme Court in Mrs. Tehmi P. Sidhwa and Others Vs. Shib Banerjee and Sons Pvt. Ltd. and Another, the award cannot be said to be compulsorily registerable. So far as the objection raised by Mr. Sanjay Sawhney is concerned, in my opinion Mr. Sanjay Sawhney is not at all entitled to raise any objection to the award. A person can raise the objection to the award only if it is his case that by the award some rights of his, have been curtailed or denied to him. Mr. Sanjay Sawhney is claiming through his mother Anju Sawhney. As rightly submitted by the learned Counsel for the Petitioners, Anju Sawhney has no interest whatsoever in the property that was subject matter of arbitration proceedings. Whatever directions in her favour are found in the award have been made by the arbitrator for her benefit though she does not have any interest in the property and therefore, in my opinion, Mr. Sanjay Sawhney is not entitled to raise any objection of the award. So far as the objection of Mr. Sanjay Sawhney that Anju Sawhney have not signed the arbitration agreement and therefore, the arbitrator has no jurisdiction to proceed with the arbitration is concerned, in my opinion, even if it is assumed that Anju Sawhney has not signed the arbitration agreement therefore anything said in the award would not be binding on her. In any case as I find that Anju Sawhney has no interest in the property, it cannot be said by the award any of her right has been adversely affected. Therefore, the objection raised by Mr. Sanjay Sawhney is devoid of any substance. So far as the objections raised in the affidavits filed by Respondent No. 1 are concerned, in my opinion, the conduct of Respondent No. 1 of accepting the arbitration agreement and signing the same or signing the partition deed and accepting the benefit under the award, estop him from raising any objection to the award. In this regard the observations made by the

Supreme Court in its judgment in Kale's case referred to above are relevant. Perusal of the observations shows that the Supreme Court has applied estoppel even in a case where the Supreme Court assumed the document to be compulsorily registerable. Paragraph 38 of the judgment reads as follows:

38. Rebutting the arguments of the learned Counsel for the Appellant, Mr. Sharma for the Respondents contended that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registerable there can be no estoppel against the statute. In the first place in view of the fact that the family arrangement was oral and the mutation petition was merely filed before the Court of the Assistant Commissioner for information and for mutation in pursuance of the compromise, the document was not required to be registered, therefore, the principle that there is no estoppel against the statute does not apply to the present case. Assuming, however, that the said documents were compulsorily registerable the Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same and try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In *Kanhai Lal v. Brij Lal*, 45Ind App 118 at p. 124: AIR 1918 PC 70 at p.74), the Privy Council applied the principle of estoppel to the facts of the case and observed as follows":

Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, induced Ram Dei, against her own interests and those of her daughter, Kripa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships opinion he is bound by it and cannot now claim as a reversioner.

14. The parties are real brothers and it is informed by learned Counsel appearing for the parties that they are in possession of their respective shares since long time i.e. since 1956 and there is no dispute regarding the distribution of properties between the brothers and the arbitral award is according to the same.

15. Therefore, we allow this appeal, set-aside the impugned order dated 24.12.1999 passed by the Court below and give this judgment in terms of the award dated 21st April, 1987 as provided u/s 17 of the Arbitration Act, 1940.

16. Since we have set aside the impugned order dated 24.12.1999 in M.A. No. 838 of 2000, the connected M.A. No. 633/2000 (*Ajuram Chandrakar v. Chelaram and Ors.*), has become infructuous, as there is no question of appointment of arbitrator in accordance with the arbitration agreement dated 30.6.1985. Therefore, M.A. No. 633/2000 is dismissed as having become infructuous.