
(2007) 01 DEL CK 0155
In the Delhi High Court
Case No : FAO No. 219 of 2004

C.P. Madan

APPELLANT

Vs

National Small Scale Industrial Corporation Ltd. and Another

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 24(3)
Civil Procedure Code, 1908 (CPC) — Section 24(3)

Citation : (2007) 3 ARBLR 370 : (2007) 138 DLT 277

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : B.L. Anand, for the Appellant; Ajay Gupta, for the Respondent

Final Decision : Disposed Off

Judgement

J.M. Malik, J.—In this case, the appellant has picked up a conflict with the proceedings conducted by the arbitrator. The facts germane to the present controversy are these. The appellant, who is the sole proprietor of M/s. Printrade, entered into an agreement dated 26.03.1991 with National Small Scale Industrial Corporation Limited (to be referred as "NSIC henceforth), wherein respondent No. 1 leased out a sheet-fed single colour offset printing machine valued @ Rs. 6,33,898. The appellant defaulted to make the payment as per the agreement. The matter was referred to Shri Y.K. Sharma, respondent No. 2, the sole arbitrator in-between. The appellant filed two suits bearing Nos. 681/2001 and 682/2001, wherein he prayed that since the time mentioned in the agreement had expired, Therefore, the appointment of arbitrator is illegal and the second suit was filed with the prayer that award dated 09.11.2001 be declared as non est because it was made in breach of the undertaking given by the arbitrator and the oral directions of the court in Suit No. 682/2001. In Suit No. 682/2001, the arbitrator had given an undertaking that he would not proceed with the arbitration proceedings till the next date of hearing. However, he proceeded with the arbitration proceedings and passed the award. The trial court vide its order

dated 20.02.2004 in Suit No. 160/2000 to set aside the award, dismissed all the three suits filed by the appellant. Aggrieved by that, this first appeal was preferred before this court.

2. I have heard the learned Counsel for the parties and perused the arbitration proceedings as well as the record of the trial court. This is an indisputable fact that the appellant appeared before the arbitrator on several occasions as noted in the impugned judgment. On 31.08.2000, the appellant was directed to file written statement on 15.09.2000. Thereafter, the case was taken up on 18.09.2000. The arbitrator was busy in some other affairs and Therefore, the case was adjourned to 27.09.2000. On 27.09.2000, the appellant did not appear. However, on 10.10.2000 the appellant was ordered to be proceeded against ex parte.

3. I am of the considered view that the said order passed by the learned arbitrator is not tenable in law. Under the old Act, this Court in the case of *Lovely Benefit Chit v. Purandutt* 1983 RLR 420 held:

From these authorities, it is apparent that an arbitrator ought not to proceed ex parte against a party if he has failed to appear at one of the sittings. The arbitrator should fix another date for hearing and give notice to the defaulting party, of his intention to proceed ex parte on a specified date, time and place. Even after notice if the defaulting party does not take part in the proceedings the arbitrator may proceed in his absence.

Under the new Act, Section 24(3) envisages:

24(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

4. This is clear as a day that the proceedings before the arbitrator are not to be equated with the Civil Procedure Code. The above said authority under the old Act and Section 24(3) of new Act clearly make a departure from the Code of Civil Procedure. There is no such provision like Section 24(3) in the Code of Civil Procedure. The arbitrator should have given another notice to the appellant specifying his intention that he wanted to proceed against him ex parte or regarding the evidence which was produced against him.

5. Under these circumstances, I hereby set aside the orders passed by the learned Additional District Judge and remand the case before the arbitrator. The arbitrator is directed to decide the case within 45 days from the date fixed below, i.e. 15.02.2007. It is made clear that no further notice will be given to the appellant. If he absents and makes any other default, the arbitrator can proceed against him ex parte. The appellant should not expect any other hearing or further notice.

6. In view of the circumstances and as agreed by both the parties to this extent

only, the appellant is directed to furnish bank guarantee to the extent of 30% of the total decretal amount and he is further directed to furnish 70% adequate security for the remaining decretal amount to the satisfaction of the arbitrator till 15.02.2007. The parties are directed to appear before the arbitrator directly on 15.02.2007. Registry is directed to send the lower court record with a copy of this order before the trial court. Registry is further directed to send the arbitration proceedings before the arbitrator through a special messenger which must reach the arbitrator directly before 15.02.2007 along with a copy of this judgment.

7. The appeal is disposed of accordingly.

CM No. 8635/2004 in FAO No. 219/2004

8. In view of the disposal of the appeal, no further orders are required to be passed in the application. The same is disposed of.

9. Copy of this judgment be given to both the parties forthwith.