
(1998) 03 AP CK 0072

In the Andhra Pradesh High Court

Case No : AAO No. 1202 of 1993, CRP No. 3258 of 1993

Cummins Diesel Sales and Service (India) Ltd., Pune

APPELLANT

Vs

Hindustan Shipyard Ltd., Visakhapatnam

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 17, 30, 33

Citation : (1998) 3 ALD 300 : (1998) 3 ALT 37 : (1998) 2 APLJ 139

Hon'ble Judges : Y.V. Narayana, J;P. Ramakrishnam Raju, J

Bench : Division Bench

Advocate : Mr. E. Manohar, for the Appellant; Mr. E. Kalyanram, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—C.M.A.No. 1202 of 1993 is directed against the order in O.P.NO. 62 of 1984; while C.R.P.NO. 3258 of 1993 is directed against the judgment and decree in O.S.No. 23 of 1984.

2. As parties are the same in both the C.M.A. and C.R.P. we propose to dispose of them by way of this common order.

3. The appellant is a registered Company engaged in the business of sales and service of Cummins Diesel Engines manufactured by Kirloskar Cummins Limited, Pune. It entered into a contract with the respondent-Company on 8-3-1977 for supply of diesel generating sets. The said contract was later superseded by another contract dated 14-4-1989 between the appellant, respondent and Scindia Steam Navigation Company Limited. Although there was an arbitration clause in the original contract, there is no such clause in the substituted contract, After certain supplies were made by the appellant, disputes arose between the parties and the respondent made claims against the appellant for a sum of Rs. 74,02,118-13 Ps. which was repudiated by the appellant. The respondent appointed one Paramanandan as its arbitrator, and the appellant also appointed Sri G.S.K. Mohana Rao as their arbitrator without prejudice to their contentions. Both the arbitrators entered reference and both parties made claims, objections

and counter-claims. The Arbitrators ultimately made an award dated 27-11-1983 for a sum of Rs. 19,44,321/- payable to the respondent. Thereupon, the appellant filed O.P.No. 62 of 1984 u/s 30 & 33 of the Arbitration Act 1940 hereinafter called "the Act", to set aside the award; while the respondent filed O.S.No. 23 of 1984 u/s 14(2) of the Act, directing the Arbitrators to file the award and make it a Rule of the Court.

4. In a nutshell, the appellant in its objections raised particularly three grounds viz. (i) reference to arbitration itself is invalid as there was no innovation of contract and the subsequent contract does not provide for reference to arbitration; (ii) the Arbitrators failed to take into consideration the counterclaims of the appellant which amounts to misconduct on the part of the arbitrators and (iii) since the award is for a lumpsum amount, if any part of the claim is not sustainable, the entire award is liable to be set aside. The appellant had resisted the suit also more or less on the same grounds. However, as the award in dispute is an unreasoned award, the lower Court remitted the award to the arbitrators for recording reasons. To the same effect the suit was also disposed of.

5. In this appeal and revision, Sri E. Manohar, learned senior Advocate appearing for the appellant submits that the lower Court ought not have remitted the award back to the arbitrators without considering the objections and counter-claims of the appellant as well as arbitrability of the dispute by the arbitrators. He relies on Section 17 of the Arbitration Act, 1940 which reads thus:

"Judgment in terms of Award :--Where the Court sees no cause to remit the award or any "of the matters referred to arbitration for consideration or set aside the award, the Court shall after the time for making application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground as it is in excess of, or not otherwise in accordance with, the award.

Provided that where an award pending in the Court at the commencement of the Arbitration (Andhra Pradesh Amendment) Act 1990 or an award filed in the Court, thereafter does not contain reasons therefore as required by the proviso to sub-section (1) of Section 14 the Court shall not proceed to pronounce the judgment according to the award, but shall remit the award to the arbitrators or the umpire for giving reasons therefore as required by the said proviso and thereupon the arbitrators or umpire shall, within thirty days from the date of remittance of the award to them by the Court give reasons for the award and file the same in the Court.

Provided further that on the application of the Arbitrators or the umpire and for reasons to be recorded in writing, it shall be competent for the Court, to extend the period of thirty days aforesaid for a further period not exceeding fifteen days;

Provided also that where an award pending in the Court as aforesaid does not

contain any reasons and there is no possibility to remit the award to the arbitrator or panel of arbitrators or umpire due to their incapacity, negligence, refusal to act or death, the Court shall set aside the award and direct the parties to initiate fresh arbitration in accordance with the terms of the agreement."

6. A plain reading of the section makes it clear that when the Court sees no reason to remit the award or set aside, it shall pronounce the judgment according to the award if the period of limitation for making the application to set aside the award has expired or having refused such an application. First proviso added to Arbitration Act (A.P. Act 1 of 1990). which came into force with effect from 19-2-1990 enjoins a duty on the Court that it shall not proceed to pronounce the judgment according to the award, but shall remit it to the arbitrators for giving reasons, if the award is pending in the Court at the time of commencement of the (A.P. Amendment) (A.P. Act 1 of 1990) or filed thereafter into Court. Therefore, in our view the lower Court was rightly following the proviso referred to above, remitted the award back to the arbitrators since it does not contain reasons.

7. However, the learned Counsel for the appellant submits that the stage of remitting the award back to the arbitrators would come only after the objections filed by the parties are considered and rejected. In other words, he contends that whenever some objections are made to the award, it is the duty of the Court to first consider the objections and in case the objections are sustainable, there is no need to remit the award, otherwise, the award could be remitted, hi our view, this interpretation would not accord to the scheme of the Section. If this interpretation is to be accepted it would result in a paradox where the Court does not accept the objections, it has to send back the award, but where it accepts the objections, it need not send back the award. So the enforceability of the proviso will depend upon the acceptability or otherwise of the objections by the Court. This interpretation, in our view, cannot be sound or proper.

8. The matter can be viewed from another angle viz. when the objections are overruled the matter is remitted back, it will come back once again with reasons and the Court has to examine the reasons once again and dispose of the matter. This kind of piece meal disposal is neither convenient for the parties nor in consonance with the scheme of the Act.

9. The matter can be looked at from yet another angle. This proviso to section 17 enables the Court to set aside the award where there is no possibility of remitting the award back to the arbitrators due to their incapacity, negligence, refusal to act, or on account of death. So, by a conjoint reading of both the provisos together with Section 17, it is clear that when the award does not contain reasons it shall be remitted, except where the Court sees no ground to remit the award or set aside the award, but proceed to pronounce the judgment according to the award, if the time for making an application to set aside the award, has expired or such an application has been filed and refused, and where there is no possibility to remit the award due to certain factors as disclosed in the

third proviso, and in all other cases, the Court shall remit the award to the Arbitrators if there are no reasons in the award. Lastly to consider the objections effectively reasons may help when mis exercise does not take more than one month.

10. Sri E. Manohar, learned senior Advocate relying on Waverly Jute Mills Co. Ltd. Vs. Raymon and Co. (India) Private Ltd., submits that disputes relating to validity of the contract has to be decided by the Court and not by the arbitrators. In this case, the Supreme Court observed thus:

"that if a contract is illegal and void, an arbitration clause which is one of the terms thereof, must also perish along with it and that a dispute relating to the validity of a contract is - in such cases for the Court and not for the arbitrators to decide""

This decision has no analogy to the facts of the case.

11. For all the above reasons, both the appeal as well as revision are devoid of merits, and they are accordingly dismissed. No costs.