
(2014) 08 DEL CK 0056
In the Delhi High Court
Case No : Lpa No.484/2014

Dhanraj Bajaj and Company

APPELLANT

Vs

Navodaya Vidayala Samiti

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226

Citation : (2014) 3 ARBLR 411

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Richa Kapoor, Advocate for the Appellant; S.T. Venkatachala, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 6th May, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No.6022/2012 preferred by the appellant with costs of Rs.1 lacs payable to the respondents no.1 and 2.

2. The facts, succinctly stated are as under:-

(i) the appellant has an Arbitral Award dated 11th July, 2002 in its favour for recovery of Rs.5,20,240/- as principal and Rs.8,23,074/- as interest till the date of the award i.e. total Rs.13,43,314/- from (a) the respondent no.3 herein National Industrial Development Corporation Ltd. (NIDC); (b) the General Manager, NIDC; and (c) the Project Manager (NVS), NIDC;

(ii) NIDC, in or about August, 2002, filed a Company Petition for voluntary winding up; (iii) the appellant filed objections to the winding up of NIDC but the same were dismissed and NIDC was on 13th January, 2005 ordered to be wound up;

(iv) the appellant appealed against the said order of winding up and though

notice thereof is stated to have been issued but the fate thereof has not been disclosed; presumably it was dismissed;

(v) the proceedings initiated by the appellant for execution of the Arbitral Award are pending in the Court of the Addl. District Judge, Delhi; obviously, owing to NIDC having been ordered to be wound up, there will be impediments to recovery of the arbitral award/decretal dues;

(vi) it is the case of the appellant that the respondents no.1 and 2 Navodaya Vidyalaya Samiti (NVS), being a Society registered under the Societies Registration Act and an Autonomous Body owned and run by Union of India, had in fact engaged the services of the NIDC for construction of a school building; NIDC had invited tenders therefor and placed the contract on the appellant; that dispute and differences having arisen in relation to the said contract, the appellant had invoked the arbitration clause and which resulted in the Arbitral Award aforesaid; and, (vii) it is further the case of the appellant that NIDC was thus only the agent of the respondents no.1 and 2 NVS and the liability under the Arbitral Award is in fact of NVS. The writ petition from which this appeal arises, was thus filed (i) to issue show-cause notice to the respondents no.1 and 2 NVS as to why they were not owning the responsibility and liability under the Arbitral Award aforesaid; (ii) for declaration that the respondents no.1 and 2 NVS as Principal owner are responsible for all liabilities under the Arbitral Award aforesaid; and, (iii) for declaration that NIDC was only the agency of the respondents no.1 and 2 NVS and thus the liability under the Arbitral Award is that of the respondents no.1 and 2 NVS.

3. It was inter alia the contention of the counsel for the appellant before the learned Single Judge that NIDC itself, before the Arbitral Tribunal, had filed an application for substituting NVS in its place but the Arbitral Tribunal dismissed the said application for the reason of the same having been filed at a belated stage to prolong the matter and for the reason that NVS was not a party or signatory to the agreement providing for arbitration.

4. The learned Single Judge dismissed the writ petition inter alia observing that the appellant, if aggrieved from the dismissal by the Arbitral Tribunal of the application aforesaid of the NIDC, ought to have challenged the award under the mechanism provided for in the Arbitration and Conciliation Act, 1996 and that correction of the Arbitral Award as was sought, in exercise of jurisdiction under Article 226 of the Constitution of India is not possible. Reliance was placed on S.B.P. and Co. Vs. Patel Engineering Ltd. and Another, .

5. The counsel for the appellant before us also, through lengthy arguments has attempted to show as to how the contract / order for construction, though placed by NIDC upon the appellant, was for and on behalf of the NVS and thus NVS is now liable. It is further contended that the appellant, on account of NIDC having ordered to be wound up, is in a lurch and has been left merely with a paper decree.

6. The appellant itself is to blame for the predicament in which it claims to be today. If it is the case of the appellant that notwithstanding the contract / order having been placed by NIDC, the liability was of NVS, the appellant at the time of making the claim ought to have impleaded NVS also as a party thereto and in which event the adjudication on this aspect also would have taken place, whether before the Arbitral Tribunal and if not possible before the Arbitral Tribunal owing to NVS being not a party to the Agreement and NIDC having not acted on behalf of NVS, in a Civil Court. The appellant having not done so, cannot, today in writ jurisdiction call upon this Court, to investigate as to who in fact is liable for the dues of the appellant or to rule upon the nature of the relationship between NVS and NIDC. Not only so, inspite of the appellant having not done so NIDC nevertheless is informed to have applied before the Arbitral Tribunal for substitution of NVS in its place. The appellant then also did not grab the opportunity and concede to the application. If the appellant had done so, the Arbitral Tribunal possibly would have allowed the application of NIDC. Further, the appellant had yet another opportunity to challenge the Arbitral Award to the said extent u/s 34 of the Arbitration Act. The appellant failed to do so also. On the contrary, the appellant indulged in misconceived proceedings of objecting to the winding up of NIDC. The appellant, after such repeated negligence cannot approach the Court and call upon the Court to make up for its own negligence, lapses and misconceived actions.

7. The learned Single Judge is right in holding that the relief as claimed in the writ petition was in the nature of correcting the Arbitral Award and which is not permissible in law.

8. This appeal is as misconceived as the writ petition and is dismissed.

9. The counsel for the appellant at this stage states that the impugned order, in so far as imposing costs of Rs.1 lac on the appellant, be set aside.

10. We notice that the learned Single Judge was constrained to impose the said costs finding the appellant to have indulged in frivolous and misconceived litigation at the cost of precious judicial time. The appellant has taken further time in this appeal. Had the grievance of the appellant been limited to costs only, the appellant ought to have made a clean breast of affairs. The appellant has not done so. We therefore though refuse to interfere with the order of imposition of costs but clarify that it will be open to the appellant to approach the learned Single Judge if so desires in this regard.

11. Though the counsel for the appellant has not contended but we find that the Arbitral Award as aforesaid is also against the "the Project Manager (NVS), the National Industrial Development Corporation Ltd.". We make it clear that nothing contained in the order of the learned Single Judge or in this order shall come in the way of the appellant, if able to, contending before the Executing Court on the basis thereof that the award is also against NVS and which contention if taken by the appellant shall be dealt by the Executing Court on its own merits, again

without being influenced by any observation herein.

We refrain from imposing further costs on the appellant.