
(1995) 11 BOM CK 0010
In the Bombay High Court
Case No : Arbitration Petition No. 119 of 1995

D.N. Deshpandey	Vs	APPELLANT
Tata Finance Ltd.		RESPONDENT

Date of Decision : 09-11-1995

Acts Referred:

Arbitration Act, 1940 — Section 30, 35

Citation : (1996) 2 BomCR 571

Hon'ble Judges : S.M. Jhunjhunwala, J

Bench : Single Bench

Advocate : Mr. J. Reis and Mr. R.S. Deshpandey, for the Appellant; Smt. Shakuntala Joshi, for the Respondent

Judgement

S.M. Jhunjhunwala, J.—By this petition, the Petitioner seeks to challenge the Award dated 20th April, 1994 filed in this court on the ground that the Sole Arbitrator did not properly consider the merits of the claim of the Respondents and that the Arbitrator proceeded with the proceedings of the reference even after filing of the suit by the Petitioner in the Civil Court at Ambajogai challenging the agreement under which the claim in arbitration proceedings was made by the Respondents against the Petitioner.

2. An award is not vulnerable to any challenge thereto. The ambit and scope of challenge to an award u/s 30 of the Arbitration Act, 1940 (for short, "the Act") has now been laid down by the catena of decisions of the Supreme Court as also of this court and other High Courts. Needless to say that when an arbitrator is made the final arbiter of the dispute between the parties, an award is not open to the challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate the facts. The appreciation of evidence by the arbitrator is never a matter which the court questions or consider in the proceedings u/s 30 of the Act. An arbitrator is the sole judge of the quality and the quantity of the evidence and it will not be for the court to take upon itself the tank of being a judge on the evidence before the arbitrator. The merits of the

claim of the Respondents against the Petitioner in the arbitration proceedings have been considered and adjudicated by the Arbitrator. In the present proceedings, this court is not sitting in appeal over the adjudication of the Arbitrator and it is not permissible for this court to go into the merits of the claim of the Respondents against the Petitioner which have been considered and adjudicated upon by the Arbitrator. The said Award cannot be set aside on the ground that the Arbitrator has wrongly awarded the amount which has been awarded to the Respondents.

3. u/s 35 of the Act, no reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject matter of the reference. If the legal proceedings between the parties to the reference have been commenced with respect of the whole of the subject matter of the reference and notice of the commencement of the legal proceedings is given to the arbitrators or the umpire, all further proceedings before the arbitrators or umpire, as the case may be, would be invalid. Therefore, mere filing of the suit by the petitioner in the Civil court at Ambajogai did not invalidate the arbitration proceedings or ipso facto rendered the Arbitrator functus officio. Admittedly, no notice of the suit filed by the petitioner was given to the Arbitrator. Hence, there is no merits in the submission of Mr. Reis that merely after filing of the suit by the petitioner against the respondents in the Civil Court at Ambajogai further proceedings before the Arbitration became invalid.

4. Since the petition is devoid of any merit, it deserves to be dismissed at the stage of admission itself. Hence, the petition is dismissed. There shall, however, be no order as to costs of the petition.

5. Mrs. Joshi, learned Advocate for the respondents, applies for judgment and decree in terms of the said Award dated 20th April 1994, a copy whereof is annexed as Exhibit I to the Petition, and submits that in view of dismissal of the petition, the respondents have under Rule 787(5) of the Rules of this court as applicable on this Original Side become entitled to judgment and decree in terms thereof. Since Mrs. Joshi is right in her submission, Judgment is pronounced and decree is passed in terms of the said Award dated 20th April, 1994, a copy whereof is annexed as exhibit I to the petition. It is further ordered that the petitioner do pay to the respondents interest on the principal sum of Rs. 14,23,009/- at the rate of 18% per annum from the date hereof till payment of realisation, whichever is earlier.

Issuance of certified copy of the minutes of the order is expedited.

7. Petition dismissed.