

(2003) 02 CAL CK 0019
In the Calcutta High Court
Case No : C.O. No. 105 of 2003

Exporters of W.A. and Another	Vs	APPELLANT
M.S.T.C. and Others		RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Arbitration Act, 1940 — Section 17, 30, 33

Citation : (2003) 2 CALLT 271

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Mukherjee, J.—Let the affidavit-of-service filed in Court today be kept with the record.

2. In view of the appearance of Mr. Mukherjee, learned advocate, for the opposite party No. 1, the revisional application is now ready for hearing. The service of notice of this revisional application on the opposite party Nos. 2 and 3 is dispensed with. The revisional application is taken up for hearing by consent of the parties.

3. This is an application under Article 227 of the Constitution of India against order dated September 27, 2002 passed by Shri T.K. Das, learned Civil Judge (Senior Division), Eighth Court at Alipore, District: South 24 Parganas in Title Suit No. 79 of 2001.

4. The facts leading to the filing of this revisional application are summarised as under:

A contract was entered into between the petitioners and the opposite party No. 1, inter alia, for supply of different quantities of stainless steel scrap. It was stipulated that in case of disputes and differences between the said parties, such disputes and differences were to be settled through arbitration. As some disputes

and differences arose between the parties, the said disputes and differences were referred to the Joint Arbitrators, namely, opposite party Nos. 3 and 4. The said joint Arbitrators passed their award on March 23, 1999. The joint Arbitrators submitted their award in Court. The petitioner applied for judgment according to the award. The proceeding was eventually registered as Title Suit No. 79 of 2001 in the Court of the learned Civil Judge (Senior Division), Eighth Court at Alipore. The Court gave notice to the parties and the opposite party No. 1 filed an application under Sections 30 and 33 of the Arbitration Act, 1940, inter alia, praying for setting aside of the award. The said application was registered as Miscellaneous Case No. 40 of 2001 in the said Court. The petitioners contested the said application filed by the opposite party No. 1. By judgment and order dated September 3, 2002 the learned Civil Judge (Senior Division), Eighth Court at Alipore dismissed the said application under Sections 30 and 33 of the said Act in favour of the petitioners. The learned trial Judge, after rejecting the said application under Sections 30 and 33 of the said Act, did not pronounce judgment in terms of the award, but fixed January 7, 2003 for peremptory hearing of the said Title Suit No. 79 of 2001. Being aggrieved the petitioners have come up with the said application.

5. Mr. Roychowdhury, learned senior advocate, appearing for the petitioners, contended that in view of rejection of the application under Sections 30 and 33 of the said Act, the learned trial Judge ought to have pronounced judgment according to the award and there was no scope for further deliberations. Mr. Roychowdhury In this connection has drawn my attention to Section 17 of the Arbitration Act, 1940.

"17. Judgment in terms of award:-- Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award the Court shall, after the time for making an 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 He from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."

6. Mr. Mukherjee, learned advocate, appearing for the opposite party No. 1, argued that the opposite party No. 1 has already filed an appeal against the judgment and order dated September 3, 2002 passed in Miscellaneous Case No. 40 of 2001 rejecting the said application under Sections 30 and 33 of the said Act and the said appeal has been tendered under FMAT No. 302 of 2003 and it is submitted that the judgment and order dated September 3, 2002 has not yet reached finally.

7. The Apex Court in the case of Madan Lal Vs. Sunderlal and Another, , while interpreting various sections of the Arbitration Act, 1940, including interpreting various sections of the Arbitration Act, 1940, including Section 17 of the said Act, observed "the Court has to pronounce judgment in accordance with the award if

it sees no cause to remit the award or any of the matters referred to arbitration for reconsideration, or if it sees no cause to set aside the award. The Court has to wait for the time given to a party to make an application for setting aside the award and where such an application has been made the Court has to decide it first and if it rejects it the Court proceeds to pronounce judgment according to the award. It is clear therefore from Section 17 that an application to set aside the award is contemplated therein and it is only when no such application has been made within the time allowed or if such an application has been filed and has been rejected that the Court proceeds to pronounce judgment in terms of the award."

8. A learned Judge of this Court in *Re: Scottish Union and National Insurance Co. Vs. Sm. Saraswati Sajnani*, observed as under:

"The scheme of the Act is that after the award is made it has to be filed in Court. When it is filed in Court, the Court dealing with the award is given power to remit or to set it aside and when it sees no reason to remit or to set it aside, it is directed to proceed to pass judgment on award. All these things under the Act is to be done by the Court dealing with the award. The Court is either to remit or set aside the award and in case when the Court finds no reason to do either, to pass a judgment in terms of the award. The Court is not called upon, in my judgment, under the Act, to wait and find out whether it's order refusing to remit or to set aside the award has become final and unassailable in the sense that the time for appeal is gone or that the appeal if taken is dismissed in order to assume jurisdiction to proceed to pronounce judgment in accordance with the award. The Court dealing with the award is not required to look beyond itself and proceed to deal with the matter on the footing that so far as it is concerned there is an order of refusal irrespective of the fact that an appeal might be taken or has been taken against the order or that the order passed by the Court might be set aside."

9. In view of such clear provisions of the statute and in view of such clear pronouncements by the authorities, in my view, the learned trial Judge acted illegally and with material irregularity in the exercise of his jurisdiction in fixing a date for peremptory hearing of the said suit after rejection of the application under Sections 30 and 33 of the said Act inasmuch as, in my view, the learned Judge had no other option, but to pronounce judgment according to the award when he has rejected the application under Sections 30 and 33 of the said Act filed by the opposite party No. 1. When the Court finds no cause to remit the award or to set aside the award and as the application for setting aside of the award has been rejected, the Court ought to have proceeded to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow. In other words, if an application has been made for setting aside of the award and when the said application has been rejected judgment has to be pronounced in accordance with the award. The Court, in this case, gave a chance to the opposite party No. 1 to prove its objection and when the

objection was considered and rejected, the Court ought to have accepted the award without taking further evidence in the matter. The provisions in Section 17 of the said Act are mandatory and the Court has no jurisdiction to decline to pass a judgment according to the award when the requirements of the said section are satisfied. The Court has given notice to the parties of the filing of the award by the joint Arbitrators; the opposite party No. 1 filed an application for setting aside of the award; the opposite party No. 1 was given opportunity to prove his objection, but the application filed by the opposite party No. 1 was rejected. After refusing to set aside an award, the Court must pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow. There was no necessity for the Court to wait to see whether the appeal preferred by an aggrieved party against its order refusing to set aside the award has been dismissed in order to proceed to pronounce judgment according to the award.

10. Accordingly, the order impugned is set aside. The learned trial Judge is directed to pronounce judgment according to the award within two weeks from the date of communication of this order to him.

By way of abundant caution, however, I make it clear that I have not gone into the merits of the claim and the counter claim of the parties involved in FMAT No. 302 of 2003.

Mr. Gopal Chandra Ghosh, learned advocate for the petitioners, submits that the learned Presiding Officer of the Court concerned is under order of transfer. Accordingly, I direct that in the event the regular Presiding Officer is not available, the learned Presiding Officer in charge of the Court shall pass appropriate order in terms of the aforesaid directions within the aforesaid time limit.

The said application under Article 227 of the Constitution of India is, thus, allowed without, however, any order as to costs.

Urgent xerox certified copy of this order, if applied for, is to be supplied to the applicant within seven days from the date of making an application for the same.