
(2003) 09 DEL CK 0005
In the Delhi High Court
Case No : FAO No. 23 of 1997

Filtrex Consultatnts and Engineers Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-09-2003

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 17
Evidence Act, 1872 — Section 40, 41, 42

Citation : (2004) 2 AD 102 : (2003) 3 ARBLR 474 : (2004) 112 DLT 896 :
(2004) 1 RAJ 204

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : J.P. Sengh, for the Appellant; D.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mahajan, J.—ADMIT.

2. The appellant has filed this appeal challenging the judgment dated 28.9.1996, passed by the learned Additional District Judge whereby his application for making the award a rule of the Court and passing decree in terms thereof was dismissed and the award and proceedings were directed to be returned to the Arbitrator for being presented in a Court of competent jurisdiction. A few facts relevant for deciding the appeal are :-

3. In the matter of dispute between the parties an Arbitrator was appointed who made and published his award on 8.4.1994. That award was filed in a Court in Delhi and after notice of filing of the award was served on the parties, objections thereto were filed by the respondents. Besides other objections taken by the respondents, the respondents also objected to the jurisdiction of the Courts in Delhi to entertain the petition on the ground that as no cause of action had accrued within the territorial jurisdiction of the Delhi Courts, it had no jurisdiction to entertain the award and that as the respondents had already moved an application challenging the award in a Court at Poonamallee in the State of Tamil

Nadu and as those objections were still pending, the proceedings in the Delhi Court were liable to be stayed u/s 10 of the CPC. Certain other objections were also taken to the award and it was submitted that the award was liable to be set aside as the Arbitrator had misconducted himself and the proceedings. On the pleadings of the parties, the learned Trial Court framed the following issues:-

1. "Whether award dated 8.4.1994 deserves to be made a rule of Court?

2. Whether impugned award is liable to be set aside on the grounds stated in objections filed?

3. Relief."

4. Though, no objection was taken by the respondents in their objection petition that in terms of Clause 71 of the agreement, the jurisdiction of the Courts in Delhi was barred, however, during the hearing of the case, the Court permitted this point also to be argued. Reliance upon Clause 71 of the agreement was placed to contend that the Courts of the place from where the acceptance of tender was issued or where the work was executed would alone have jurisdiction to decide any dispute arising out or in respect of the contract. The Trial Court by the impugned order held that as the appellant had failed to show that the place where the acceptance was issued or the place where the contract was executed was within the territorial jurisdiction of the Delhi Courts, that Court would have no jurisdiction to entertain the award. During the pendency of proceedings before the trial Court, the Poonamallee Court had set aside the award on the application of the respondents. The Trial Court, Therefore, held that the award having already been set aside by a Court of competent jurisdiction at Poonamallee, the objection petition cannot be entertained and the award, as already mentioned above, was directed to be returned to the Arbitrator for being presented in Court of competent jurisdiction.

5. To appreciate the judgment of the Trial Court as to whether Court in Delhi had no territorial jurisdiction in view of Clause 71 of the agreement, the said clause has to be examined. Clause 71 of the agreement reads as under :-

CLAUSE 71

"Jurisdiction of Courts - Irrespective of the place of issue of tenders, the place of acceptance of tenders, the place of execution of contract or the place of payment under the contract, the contract shall be deemed to have been made at the place from where the acceptance of tenders have been issued and the work is executed/executable. The Courts of the place from where the acceptance of the tender has been issued or the place where the work is executed/ under execution shall alone have jurisdiction to decide any dispute arising out or in respect of the contract."

6. A perusal of Clause 71 shows that if the parties had agreed that irrespective of the place of issue of tenders, the place of execution of contract or the place of acceptance of tender or the place of payment under the contract, the contract

shall be deemed to have been made at the place from where the acceptance of tender was issued or the work was executed and Court at those places alone shall have the jurisdiction to decide the dispute arising out or in respect of the contract. Clause 71 of the agreement was not in existence when the parties had entered into the contract in question in the year 1989. This Clause was added only w.e.f 30.3.1992. Though, the Arbitrator was appointed in the year 1993, however, to oust the jurisdiction of the Courts at Delhi under Clause 71, the parties must have agreed to this Clause at the time of entering into the contract. As at the time of entering into the agreement, the Clause was not a part of the contract, in my opinion, the Trial Court could not rely upon this Clause to hold that the Delhi Courts have no territorial jurisdiction to entertain the award. It is submitted by learned counsel for the respondent that the Trial Court has also held that de hors Clause 71, Delhi Courts will have no jurisdiction to entertain the award. I do not find any such observation in the impugned order. The Court has examined the question as to whether the Delhi Courts have jurisdiction to try the suit keeping in view the provisions of Clause 71 of the agreement alone. The Court has not gone into the question as to whether de hors Clause 71 it will have jurisdiction to entertain the award. As Clause 71 was not a part of the contract between the parties, in my opinion, the Trial Court has erroneously relied upon the aforesaid Clause.

7. Coming now to the second question as to what is the effect of the award having been set aside by the Court at Poonamallee. Admittedly, on the date when the award was alleged to have been set aside by the Court in Poonamallee by its order dated 3.8.1995, the award was on the file of the Additional District Judge, Delhi. The original award and proceedings were admittedly not filed in the Court at Poonamallee. u/s 14 of the Arbitration Act, 1940, the Arbitrator or the umpire at the request of any party to the arbitration agreement shall cause the award or signed copy of it filed in Court together with deposition or documents which may have been taken and proved before him and on such filing of the award and the proceedings, the Court shall give notice to the parties of the filing of the award. The section, Therefore, presupposes the filing of the award to enable the Court to issue notice u/s 14 of the Arbitration Act. Unless the award and proceedings are filed in Court, the Court cannot direct notice u/s 14 to be issued to the parties. In the present case, admittedly the award and the proceedings were filed in the Delhi Courts and they, Therefore, could not have been filed in the Court at Poonamallee. In the absence of the award and the proceedings u/s 14, the Court could not issue notice u/s 14(2) of the award. u/s 17 of the Arbitration Act, the Court has to pass a decree in terms of the award only after either the objections have not filed or the time for filing the objections has expired. Under the Limitation Act, 30 days time has been provided to the parties to file objections to the award on notice being received from the Court of the filing of the award. Since the award had not been filed firstly no notice could be issued and secondly the Court could not pass a decree in terms of the award without having any reference either to the award or the proceedings. The order

of the Poonamallee Court, Therefore, would be of no relevance to the suit in Delhi and the same can simply be ignored.

8. In a judgment reported as Indian Rayon Corporation Ltd. Vs. Raunaq and Company Pvt. Ltd., the Supreme Court has held that in order to be effective both for the purpose of obtaining the judgment in terms of the award and for setting aside the award there must be (a) filing of the award in the proper Court; and (b) service of the notice or intimation or communication of the filing of the said award by the Court to the parties and if all those factors are established or are present the mode of the service would be irrelevant. If the substance is clear, the form of the notice is irrelevant but the notice of the award having been filed in the Court is necessary. The filing of the award in the Court is necessary and the intimation thereof by the Registry of the Court to the parties concerned, is essential. Beyond this there is no statutory requirement of any technicality u/s 14(2) of the Act.

9. It is thus clear that in order to be effective, the award must be filed in Court and notice of the filing of the award is necessary. This being admitted case of the parties that the award and the proceedings having been filed in the Delhi Court, they could not have been filed in the Court at Poonamallee, in my view, the order passed by the Poonamallee Court setting aside the award will be without jurisdiction and nullity. It is not necessary for a party to set aside the order which is a nullity. That order can be ignored for all purposes and in any proceedings where the same is sought to be established. In a judgment reported as Gram Panchayat of Village Naulakha Versus Ujagar Singh and others 2000 7 AD (SC) 492 it was held that any party to a suit or proceedings may show that any judgment, order or decree which is relevant u/s 40,41, 42 of the Evidence Act and which has been delivered by a Court not competent to deliver it or was obtained by fraud or collusion, it is not necessary to bring independent suit for setting aside the same. That being the legal position, the award could not have been returned by the impugned order also on the ground that a Court at Poonamallee has already set aside the same on objections having been filed by the respondents. That order, as already discussed above, is without jurisdiction and a nullity and can simply be ignored. Respondent cannot get any assistance from the said order.

10. Learned counsel for the respondent has also relied upon the judgment of the Supreme Court in M/s Bakhtawar Singh Bal Kishan Versus Union of India and others 1988 SCC 293 to contend that Delhi Courts cannot be said to have jurisdiction in regard to all disputes relating to contracts executed by Union of India simply because the Union has its `office" at Delhi and only the Courts where either the work was to be executed or where the contract was signed will have jurisdiction and consequently this Court will otherwise have no jurisdiction to entertain the award. This contention cannot be accepted as the Trial Court has not dealt with the same and the respondent is at liberty to raise this objection before the Trial Court after the matter is remanded.

11. For the foregoing reasons, this appeal is allowed. The judgment of the learned Trial Court being wholly erroneous cannot be sustained and is, accordingly, set aside. The matter is remanded to the Trial Court for deciding objections of the respondent on merits including the question as to whether de hors Clause 71, the Court has jurisdiction to decide the matter.

12. The parties are directed to appear before the Trial Court on 17th November, 2003.

13. The Trial Court file be sent back immediately.