

(2000) 08 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 475 of 2000

Food Corporation of India

APPELLANT

Vs

Geeta Devi

RESPONDENT

Date of Decision : 29-08-2000

Acts Referred:

Citation : (2000) 4 RCR(Civil) 497

Hon'ble Judges : R.L.Anand, J

Advocate : Mr. Hemant Kumar, Advocate., Advocates for appearing Parties

Judgement

R.L. Anand, J. (Oral)

1. By this order I dispose of 4 Civil Revisions No. 475, 476, 477 and 478 of 2000, all titled as Food Corporation of India v. Gita Devi and others, as in the opinion of this Court all these revisions can be disposed of by one order because common question of law and fact is involved in the same. But for the sake of facts, I am taking up the same from Civil Revision No. 475 of 2000.

2. Civil Revision No. 475 of 2000 has been directed against the judgment dated 8.9.1999 passed by Addl. District Judge, Amritsar, who dismissed the appeal of Food Corporation of India (hereinafter called the Corporation) and affirmed the order dated 13.9.1995 passed by Sub Judge Ist Class, Amritsar, who dismissed the objections of the Corporation under Section 30/33 of the Indian Arbitration Act (hereinafter referred to as 'the Act') and the award dated 25.3.1991 given by the arbitrator was made rule of the court subject to the modification that the respondentlandlords shall get interest @ 6% per annum instead of 18% on the awarded amount.

3. The Corporation took on rent the godown from M/s Om Parkash Kiran Bala. A dispute arose between the parties which was referred to the sole arbitrator Shri R.K. Gupta and on his transfer the matter was referred to Shri Shiv Parkash, sole arbitrator, who gave the award dated 25.3.1991 and allowed a sum of Rs. 3,97,104.20. The landlords filed application under Section 14 read with Section

17 of the Act. The Corporation filed objections under Section 30 read with Section 33 of the Act and the award was sought to be set aside on the grounds that the same has not been made and signed by the arbitrator within the stipulated period of four months as the dispute was referred to the arbitrator on 23.10.1990 and he issued notices for appearance and preferring claims on 8.11.1990 but the award was signed and made on 25.3.1991 i.e. after a lapse of about five months from the date the dispute was referred; that the acts of the arbitrator constitute misconduct on his part as he has not supplied the copies of the proceedings and statements recorded before him to the parties and has not given adequate opportunity to the Corporation to prove its counter claim. It was also pleaded by the Corporation that the award has been given against the spirit of the arbitration agreement and as such cannot be made rule of the Court. The arbitrator has transgressed his jurisdiction by awarding past interest in the case and he cannot be so. It was also pleaded that the landlords failed to discharge their obligations under the agreement of lease as they did not keep the godowns neat and clean and did not get it whitewashed.

4. Notice of the objection petition was given to the landlords, who filed the reply and denied the allegations.

5. From the pleadings of the parties, the learned trial Court framed the following issues :

1. Whether the award has not been made and signed by the arbitrator within the stipulated period of four months ? If so its effect ? OPD

2. Whether the arbitrator committed the misconduct of the arbitration proceedings ? If so its effect ? OPD

3. Whether the arbitrator had not given adequate opportunity to the objector to prove his counter claim. If so its effect ? OPD

4. Whether the award is liable to be set aside on the grounds mentioned in the objection petition ? OPD

5. Relief.

6. The parties led evidence in support of their respective cases and vide order dated 13.9.1995 the Court of Sub Judge Ist Class, Amritsar dismissed the objections of the Corporation and made the award rule of the Court. Aggrieved by the said order, the Corporation filed the appeal before the Court of Addl. District Judge, Amritsar, which for the reasons given in paras 9 to 16 of the impugned order dated 8.9.1999 dismissed the appeal with the modification that the landlords shall charge interest @ 6% per annum for the prerule period.

7. Aggrieved by the decision of the Courts below, the present revision, which I am disposing of with the assistance rendered by Mr. Hemant Kumar, Advocate, for the petitioner, Mr. A.K. Chopra, Advocate for the respondents and with their assistance have gone through the record of this case.

8. Before I deal with the submissions raised by the learned counsel for the petitioner, it will be useful for me to incorporate and reproduce paras No. 9 to 17 of the impugned order dated 8.9.1999 as under :

"9. I have heard Shri P.M. Sharma, Advocate, learned counsel for the appellant and Shri Ramesh Chaudhary, Advocate, learned counsel for the respondent and have also carefully gone through the record. Shri P.M. Sharma, learned counsel for the appellant has assailed the findings of the learned trial court mainly on the ground that the Arbitrator was not competent to grant prererence, pendente lite and future interest. Therefore, the Award so far as it relates to grant of interest at the rate of 18% per annum is bad in law and is liable to be set aside. In support of his contention, he has also relied upon State of Punjab v. Ajit Singh and others, AIR 1979 Punjab and Haryana 179, wherein Full Bench of our own High Court held that Arbitrator can grant future interest and not prererence and pendente lite.

10. The learned counsel for the appellant has further relied upon C. Srinivasa Rao and etc. v. Ramankutty and others, AIR 1999 Madras 317, wherein it was held that grant of interest for period anterior to reference is not sustainable.

11. On the other hand, learned counsel for the respondent has submitted that the arbitrator was competent to grant prererence, pendente lite and future interest. He has also relied upon State of Orissa v. B.N. Aggarwal, 1997 Supreme Court 925, Secretary, Irrigation Department, Govt. of Orissa and others v. G.C. Roy and others, AIR 1997 Supreme Court 732, State of U.P. v. Harish Chandra, 1999(2) PLR 174 : 1999(1) RCR(Civil) 330 (SC).

12. All the authorities relied upon by the learned counsel for the respondents are from the Apex Court and one of the authorities relied upon by the learned counsel for the appellant is from our own High Court and another is from the Hon"ble High Court of Madras. The law laid down by the Hon"ble Supreme Court is to weigh. Accordingly there is no merit in the submission of the learned counsel for the appellant that the arbitrator had no jurisdiction to grant prererence, pendente lite and future interest.

12. The arbitrator has granted interest at the rate of 18% per annum.

13. The dispute was regarding payment of rent of godown. There are, the rate of interest granted is exorbitant, because if the respondents had filed a suit for recovery of rent against the appellants provisions of either section 34 C.P.C. or the provisions of Section 13(2)(1) of the East Punjab Rent Restriction Act, 1949 as the case might have been, would have been attracted. In both these eventualities, the respondents would have been entitled to claim interest at the rate of 6% per annum on the arrears of the rent due.

14. In view of what has been discussed above, it is held that the Arbitrator had exceeded his jurisdiction in awarding interest at the rate of 18% per annum to the respondents for the prererence, pendente lite and future period. Therefore,

in my opinion, the respondents are entitled to interest at the rate of Rs. 6% per annum only.

15. Learned counsel for the appellant has also submitted that award was not made within the stipulated period and as such the same could not be made a rule of the Court as after expiry of the stipulated period the arbitrator had become functus officio and the proceedings taken thereafter were infructuous. Similar argument was also raised before the learned trial court which did not rightly find favour with him in view of the law laid down in *Krishan Kumar v. Municipal Committee, Patiala and another*, 1993(1) PLR 588 : 1993(1) RRR 531 (P&H) and *State of Punjab v. Hardyal*, AIR 1985 Supreme Court 920, because in such a case court has power to extend the time, even after submission of the award. In the instant case, as noticed by the learned trial court, parties had been appearing before the arbitrator for participation in the proceedings thereby waiving their right to object that the arbitrator could not function beyond period of four months. The learned trial Court, therefore, arrived at the decision that this period of limitation was automatically extended. But in my opinion, period for giving the award can be extended only by the court in view of the law laid down in *State of Punjab v. Hardyal* (Supra). In this case, the learned trial court did not extend the period of limitation for submitting the award. He was required to do so in view of his findings on the issues recorded favourably to the respondents.

16. In view of the law laid in *State of Punjab versus Hardyal* even the Appellate Court can extend this time. Accordingly, this period of limitation is extended as no useful purpose would be served if the case is remanded back to the learned trial court for exercising his discretion of extending the time for submitting the award. Accordingly the period of limitation for submitting the award is extended upto the date on which it was signed and given."

9. The learned counsel appearing on behalf of the petitioner vehemently submitted that the arbitrator has exceeded his jurisdiction. He has committed a patent mistake of law while giving the award in favour of the respondents and this conduct on the part of the arbitrator amounts to legal misconduct within the meaning of Section 30 read with Section 33 of the Act. The learned counsel further vehemently submitted that when there is a mistake apparent on the face of the award, it is the duty of the Court to remit the award to the arbitrator for further consideration. Elaborating his argument Mr. Hemant Kumar drew my attention to the award made by the arbitrator itself and he pertinently drew my attention to subpara (i) of the award under Claim No. 1 and said that the arbitrator has misinterpreted the provisions of Section 106 of the Transfer of Property Act by holding that the notice for vacation of godown is not in accordance with law. He submitted that when the arbitrator has committed a mistake and has fell in error with regard to the application of law, in such a situation the revisional Court has the power not to act upon such an award and the award should be set aside. The learned counsel for the petitioner further

submitted that the arbitrator could decide the question of law provided the same is referred to him. But in the present case the question of law was not referred to the arbitrator, therefore, if he has wrongly misinterpreted the provisions of Section 106 of the Transfer of Property Act. Such an award is not executable and it should be inferred as the arbitrator has misconducted himself and the proceedings.

10. On the contrary, the learned counsel for the respondents has supported the reasons given by the trial Court as well as by the first Appellate Court and in addition to that a preliminary objection was taken by him that all the submissions raised by the learned counsel for the petitioner have been advanced for the first time in the High Court and the High Court should not take notice of these submissions when the same have not been pleaded either before the trial Court or first Appellate Court. After hearing the learned counsel for the parties, I am of the considered opinion that these revisions must fail. Section 30 of the Act lays down that an award shall not be set aside except on one or more of the following grounds, namely : (a) that an arbitrator or umpire has misconducted himself or the proceedings; (b) that an award has been made after the issue of an order by the court superseding the arbitration or after arbitration proceedings have become invalid under section 35; (c) that an award has been improperly procured or is otherwise invalid. Section 33 of the Act lays down as follows :

"Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the court and the court shall decide the question on affidavits :

Provided that where the court deems it just and expedient, it may set down, the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit."

11. This Court will not be wrong if I say that the objections of the Corporation are primarily to be dealt under Section 30 of the Act because the case as argued by the learned counsel for the petitioner is not borne out under the provisions of Section 33 of the Act. What is a misconduct, will depend upon case to case. This Court has to take the legal misconduct of the arbitrator. Now it is to be seen whether the arbitrator has misconducted himself or the proceedings or whether he was given the award in an improper manner or otherwise. We all know that in the arbitration proceedings the parties elect a particular forum and that forum must be respected. The Court while disposing of the objections under Section 30 or 33 is not to sit as a Court of appeal. It has only a limited jurisdiction to see whether the arbitrator has exceeded his jurisdiction or has not exercised that type of jurisdiction which was vested in him. He may adjudicate a thing erroneously but that will not be considered as without jurisdiction.

12. Reverting to the facts of the case, now it is to be seen how the arbitrator had disposed of claim No. 1 of the respondents. Under this claim the respondents

have claimed the rental of the godowns w.e.f. 1.3.1981 to 1.4.1984. As per the agreement of lease, it was obligatory on the part of the Corporation that in the event of its vacating the godowns, it was supposed to give a notice of clear 15 days to the landlords. Whether a valid notice was given by the Corporation or not to justify its stand for the suspension of tenancy, was a mixed question of law and fact and it was not a pure question of law. The arbitrator has given a speaking and wellreasoned award and has allowed the claim of the landowners by observing as under :

"i) The notice of termination of Lease Agreement dated 8.9.83 is invalid as it does not terminate the tenancy w.e.f. the expiration of the month of tenancy which is the mandatory requirement of Section 106 of the Transfer of Property Act, 1882, the tenancy in the instant case having been terminated by the respondents/F.C.I. w.e.f. 23.9.83.

ii) It is an undisputed fact that the Respondents/Lessee have not paid the rent of godown in their possession for the period from 1.3.81 to 1.4.84 and hence they cannot take the benefit of the principles of suspension of rent.

iii) It is in evidence that the possession of the godown under the subject. Lease Agreement was taken over by the respondents F.C.I. after a Certificate dated 2.4.79 issued by the Asstt. Manager (Civil) of the respondents/F.C.I. wherein it was certified that the construction of the godown by the claimants was in accordance with the designs, specifications and the guidelines issued from time to time by the respondents and the godown could be taken over for storage purpose after execution of necessary Lease Deed. If it be so, the plea of the respondents that the godown was not storage worthy and it was providing the space for the utility upto 55 percent only from the inception of its hiring under the Lease Agreement cannot be believed.

iv) Under the Clause IV of the Lease Agreement, the respondents/F.C.I. has a right to reconstruct/repair the godown after giving a notice of defects to the claimants and if the claimants fail to remove the notified defects within a period of 15 days from the date of issue of the notice, the respondents could recover entire expenses of the repairs carried out by them or the damages suffered due to such defects. But, the respondents/F.C.I. did not exercise their right under the said Clause IV of the Lease Agreement. They, however, exercised their right of termination of Lease Agreement under Clause X thereof after a long period of more than 4 years which time cannot be regarded reasonable time and that too by issuing an invalid notice of termination as stated above. Hence, the action of the respondents F.C.I. terminating the Lease Agreement in that manner cannot be held legally justified."

13. In these circumstances, it cannot be said that the arbitrator has exercised a jurisdiction which was never vested in him or that the alleged interpretation as given by the learned counsel for the petitioner was apparent on the face of the award.

14. To proceed further, there is a valid objection raised by the learned counsel for the respondents that the premises prepared by the learned counsel for the petitioner were never made before the trial Court or the first Appellate Court. All the submissions raised by the learned counsel for the petitioner are out of the pleadings. It is true that a legal aspect of the case can always be examined by the High Court or by the Hon"ble Supreme Court even if it is not pleaded before the trial Court and first Appellate Court. All these submissions cannot be disposed of on the face of it but requires scrutiny. As I have stated above that the submissions raised by the learned counsel for the petitioners are mixed question of law and facts, such submissions cannot be allowed to be raised in the High Court when these were not taken before the trial Court or first Appellate Court. During the course of submissions, the learned counsel for the petitioner fairly conceded to the Court query that these submissions were never raised either before the trial Court of first Appellate Court. In this view of the matter, I am not inclined to give much weightage to the submissions raised by the learned counsel for the petitioner.

15. The learned counsel for the respondents invited my attention to Himachal Pradesh State Electricity Board v. R.J. Shah and Company, 1999(3) RCR(Civil) 81, a judgment of the Hon"ble Supreme Court wherein their Lordships were pleased to hold that the Civil Court can interfere with an award only if the arbitrator had acted without jurisdiction and has delved into an arena not subject matter of the reference of dispute. If the matter could be dealt with by the arbitrator, mere erroneous decision will not vitiate the award. The Hon"ble Supreme Court was further pleased to held that distinction has to be made between exercise of jurisdiction not vested and erroneous exercise of jurisdiction. If all the allowance is given to the submissions raised by the learned counsel for the petitioner, it can be said at the most that it is a case of erroneous interpretation and that itself is no ground to set aside the award because the arbitrator is the master of his own proceedings. The language of Section 30 indicates the Civil Courts are to give respect to the award of the arbitrator and not to set aside it lightly unless the case of the objector falls within the four corners of the grounds as referred in Section 30 of the Act itself.

16. Faced with this difficulty, the learned counsel for the petitioner referred to Trustees of the Port of Madras v. Engineering Construction Corporation Limited, 1995(5) Supreme Court Cases 531 : 1995(3) RRR 201 (SC), where it was observed by the Hon"ble Supreme Court that if there is an error apparent on the face of the award, such an award should be remitted to the arbitrator or if such award is interferable, it should be set aside. With all respect to the dictum laid down by the Hon"ble Supreme Court, I am of the opinion that the ratio of the Hon"ble Supreme Court cannot be applied to the facts of this case. In this case the controversy between the parties was whether the Corporation is liable to pay rent to the landlords or not. It was also controversial whether the Corporation has given a valid notice before handing over the possession of the godown to the landlords or not. All these points have been adjudicated and finally the arbitrator

came to the conclusion that the Corporation is liable to pay the rent for the various reasons which I have already reproduced above. This Court is not to go through the merits of the reasons, but on the face of it, cannot be said that the reasons are without jurisdiction. Therefore, the first judgment relied upon by the learned counsel for the Corporation is not applicable to the facts in hand.

17. The next judgment relied upon by the learned counsel for the petitioner is Rajasthan State Mines and Minerals Ltd. v. Eastern Engineering Enterprises and another, 1999(9) Supreme Court Cases 283 and my pertinent attention was drawn to para 28 of the same. This judgment is also not helpful to the learned counsel for the petitioner. In the cited case the agreement specifically barred certain claims to be raised before the arbitrator, yet the arbitrator went against the contractual stipulation and passed the award in favour of the contractor. In these circumstances, their Lordships were pleased to hold that the arbitrator had acted beyond the scope of the reference and, therefore, such an award could not stand in the eyes of law. In the present case, the award of the arbitrator is within jurisdiction. He was called upon to adjudicate as to whether any rent is due to the landlords or not. It was also his duty to adjudicate whether any valid notice was given by the Corporation or not. He examined this aspect and ultimately came to the conclusion that the landlords are entitled to the relief claimed.

In this view of the matter, I am of the considered opinion that all the four revisions are totally devoid of any merit and these are hereby dismissed with no order as to costs. Let copies of this order be placed on the files of all the three connected revisions.

Revision dismissed.