
(1972) 03 DEL CK 0030

In the Delhi High Court

Case No : Civil Revn. No. 431 of 1970, against order of D.R. Khanna, A.D.J.,
Delhi, D/- 26-8-1968

G.R. Bhargava and Sons and Others

APPELLANT

Vs

Brij Mohan Sharma

RESPONDENT

Date of Decision : 03-03-1972

Acts Referred:

Arbitration Act, 1940 — Section 14(1)

Citation : AIR 1972 Delhi 242

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : Avadh Behari, for the Appellant; V.K. Srivastava, for the Respondent

Judgement

1. This Civil Revision has been filed by M/s. G.R.Bhargava & Sons and four others against the judgment of Shri D.R.Khanna, Additional District Judge, Delhi, dated 26th August, 1968, affirming an order of Miss. S.Mehta, Sub-ordinate Judge, 1st Class, Delhi, dated 6th September, 1967, rejecting the objections and making an award, dated 24th November, 1965, a rule of the Court. The sole respondent in the Civil Revision is Brij Mohan Sharma.

2. The parties mentioned above entered into a partnership to carry on paper merchant business, and a deed of partnership, dated 9th February, 1958, was executed. It was provided in paragraph 9 (iii) of the deed that if any differences arose between the parties in connection with the business, the same should be referred to arbitration by arbitrators to be appointed with the consent of both the parties, and that the decision of the arbitrators should be final. Subsequently, disputes arose between the parties, and a suit for dissolution of the firm and for accounts was filed by Brij Mohan Sharma on 20th April, 1958, in the Court of the Commercial Subordinate Judge, Delhi and the suit was numbered as 117 of 1958.

3. The defendants in the suit was Messrs. G.R.Bhargava & Sons and others. The said defendants filed an application on 10th June, 1958, u/s 34 of the Arbitration Act, 1940, and the Court stayed the suit by an order, dated 29th May, 1959.

4. On 30th October, 1950 Brij Mohan Sharma served a notice upon the defendants requiring them to refer the matter to arbitration. Both the parties appointed their respective arbitrators, namely, Shri D.K.Bhargava and Sant Ram Tandon, Advocates. It appears that on a difference between the arbitrators one Iqbal Krishan was appointed on 2nd March, 1960, as umpire. It is not disputed that the said umpire entered upon the reference on the 11th May 1963, and subsequently made an award on 24th November, 1965.

5. Therefore, an application was filed by Brij Mohan Sharma u/s 14 of the Arbitration Act for directing the umpire to file the award into the Court, and for making the award a rule of the Court. The application was registered as suit No.619 of 1965. The award was accordingly filed in Court by Shri Iqbal Krishan, and out of six respondents to the application, four respondents filed objections to the award in two sets. On set of objections were filed by respondents 2 & 3 and one set of objections was filed by respondents 4 and 5, both assailing the award on common grounds. The applicant brij Mohan Sharma, controverted the objections and raised various pleas in opposition to the objections.

6. On the respective pleadings of the parties, the Court framed the following issues:-

"1. Whether the objections are time barred?

2. Whether the umpire had misconducted himself or the proceedings?

3. Is the award perverse? If so how and what is its effect?

4. Whether the umpire over-stepped the jurisdiction vested in him and failed to exercise powers given to him?

5. Whether the award is liable to be set aside on the grounds taken in the two objection petitions?

6. Relief."

By her judgment, dated 6th September, 1967, Miss S.Mehta, Commercial Subordinate Judge, held on issue No.1 that the objections by all the respondents were filed within time. On issue No.2, she held that the arbitrator did not misconduct himself or the proceedings. On issue No.3, she held that the award could not be dubbed as perverse. On issue No.4, she held that the umpire did not over-step his jurisdiction and did not in any other manner fail to exercise the powers conferred on him. On issue No.5, she held that the award was not liable to be set aside on any of the grounds taken in the objections. In the result, she dismissed the objections, and made the award, dated 24th November, 1965 a rule of the Court. In accordance with the award, she passed a decree for Rs.5000/- in favor of the applicant Brij Mohan Sharma, and against the respondents.

7. M/s. G.R.Bhargava & Sons and the other respondents preferred an appeal, M.C.A.No.188 of 1967, to the Court of Shri D.R.Khanna, Additional District Judge,

Delhi. By his judgment, dated 26th August, 1968, the Additional District Judge dismissed the appeal.

8. The only contention which appears to have been urged by the appellants before the learned Additional District Judge was that the award could not be sustained in law as the umpire did not mention the basis on which he awarded the amount of Rs.5000/-, nor did he give any findings separately on the various issues which the two arbitrators had framed. It was argued that the amount was given by the umpire more or less as a matter of ex gratia payment to Brij Mohan Sharma, and reliance was placed on the deposition of the umpire as P.W.1 in which he stated that he had told the parties that they should try to effect a compromise, and that on the material before him he had felt that mathematical calculations were very difficult and, Therefore, informed the parties that he would decide the matter as he would feel best in case no such compromise was arrived at between them. The learned Additional District Judge observed that simply because the umpire had not mentioned the reasons or the basis of the award, it could not be said that the amount of Rs.5000/- was awarded as a matter of ex gratia payment. As regards the statement of the umpire in his evidence, the learned Additional District Judge, observed that the umpire had clearly stated that he took into consideration all the materials before him that was laid by the counsel for the parties, and that if could not Therefore, be said that the umpire did not take into account the evidence produced before him and simply gave a wholly arbitrary or capricious award. The Additional District Judge noted in his judgment that the objections taken in the trial Court about the personal misconduct of the arbitrator were not pressed before him, and observed that in fact there was no evidence about the same on the record. He also noted that the objections were conceded to have been filed within time. In the result, the learned Additional District Judge took the view that the trial Court was justified in dismissing the objections and in making the award a rule of the Court, and dismissed the appeal. It is against the said appellate judgment that the present Civil Revision has been filed by M/s. G.R.Bhargava and Sons and four others.

9. Shri Avadh Behari, learned counsel for the petitioners, put forward only one contention, namely, that umpire should not have awarded a lump sum, but should have prepared a balance sheet, gone into the accounts as far as possible, and given an intelligible basis for his decision. The learned counsel referred to the decisions in *Dewan Singh Vs. Champat Singh and Others*, . *Union of India v. Bakshi Ram* 1957 59 Pun 572 and *Sherbanubai Jafferbhoy Vs. Hooseinbhoy Abdoolabhoy*, In *Dewan Singh's* case (supra) the contention was that the arbitrators decided the disputes referred to them on the basis of their personal knowledge, and the same amounted to misconduct on the part of the arbitrators. The Supreme Court pointed out that it is normally an implied term of an arbitration agreement that the arbitrators must decide the dispute in accordance with the ordinary law, and that the rule can be departed from only if specifically provided for in the admission to the arbitrators. On the facts of the case, the

Supreme Court held that under the arbitration agreement the arbitrators were not empowered to decide the disputes referred to them on the basis of their personal knowledge, and since the arbitrators utilised their personal knowledge in deciding the disputes they were guilty of legal misconduct and consequently the award made by them was vitiated. In the case of Bakshi Ram, Bishan Narain, J. held that if a lump sum be awarded by an arbitrators and it appears on the face of the award or be proved by intrinsic evidence that in arriving at the lump sum matters were taken into account which the arbitrator had no jurisdiction to consider, the award is bad. In Sherbanubai Jafferbhoy's case Chagla, A.C.J. and Bhagwati, J. observed as follows:-

"When a Court a law refers a matter to an arbitrator it substitutes a domestic forum in place of itself. But that domestic forum has got to act judicially. There can be no doubt that arbitrators perform judicial functions and they must observe the fundamental rules which govern judicial proceedings. What a Court of law cannot do judicially, an arbitrator also cannot do. It is common knowledge that a party very often agrees to make a payment to the other party ex-gratia. But it is the party which makes the ex-gratia payment, never the Court, and the Court can have no jurisdiction to order a party to make a payment when the other party has no legal right to receive the payment."

The propositions laid down in the above decisions cannot be disputed, but the learned counsel for the petitioners can not derive any assistance from them. In the present case, the relevant portion of the award reads as under:-

"After having fully considered the matter and the claims of the one party against the other, I hereby give an award for a sum of Rs.5,000/- (Rupees five thousands) in favor of Shir Brij Mohan Sharma against M/s. G.R.Bhargava & Sons. The claims of the latter are rejected. There is no order as to costs. All books of account in my possession relating to the partnership shall be handed over to M/s. G.R.Bhargava & Sons. Parties had informed me that time for making the award as fixed by the Court expires on 30-11-65. The award is accordingly made within this period."

It is clear from the above that the umpire merely gave an award for a lump sum of Rs.5,000/- in favor of Brij Mohan Sharma. Shri V.K.Srivastava, learned counsel for the respondent stated that the umpire allowed all the material and evidence to be placed on the record by the parties, and Shri Avadh Behari did not dispute the same. Apparently, the umpire considered the same and gave his award. In a suit for dissolution and accounts, what amount is due from one party to the other is the basic question. As stated in the award by the umpire, the dispute between the parties in the present case was as regards their claim against each other arising out of their partnership. After a full consideration of the matter and the claims of one party against the other, the umpire made the aforesaid lump sum award in favor of Brij Mohan Sharma. As held by the Supreme Court in Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, , it is open to an arbitrator or umpire to make a lump sum award. The argument that the umpire

should have gone into the accounts and prepared a balance-sheet cannot be accepted. As pointed out by a Division Bench of the High Court of Orissa (R.L.Narasinh, C.J. and J.K.Misra, J.) in *State of Orissa Vs. P.C. Chanda*, , there is no special form in which the award of an arbitrator or umpire should be made, and the omission to mentioned details of calculations in the award or to give separate and distinct findings as regards rival contentions of parties or to give reasons for his decision does not a validate the award. As observed by the Supreme court in *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, , "it is not open to the Court to speculate, where no reasons are given by the arbitrators, as to what impelled the arbitrator to arrive at his conclusion . . . On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe into the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award."

10. In the present case, the umpire stated that he fully considered the matter and the claims of one party against the other. It cannot, Therefore, be said that he did not look into the accounts and apply his mind to the same. Nor can it be said that he should have prepared a balance-sheet. In *Raminder Singh v. Mohinder Singh* Air 1940 Lah 186 Young, C.J. and Tek Chand, J. pointed out that "an arbitrator is not bound by the technical rules of procedure which the Court must follows, nor need he record separate findings on the various points on which the parties area at issue, or write a reasoned judicial decision," and that "all that he is required to do is to give an intelligible decision which determines the rights of parties in relation to the subject-matter of the reference." As stated earlier, the basic question in the dispute between the parties which was referred to the umpire was as to what amount was due to the claimant, and the umpire awarded a lump sum in his favor. The award was obviously an intelligible decision which decided the rights and liabilities of the parties. There is thus no force in the argument that the umpire should have given an intelligible basis for his decision.

11. The argument that the award by the umpire was in the nature of an exgratia payment has also no force. The argument was based on the statement made by the Umpire as R.W.1 The relevant portion of the statement was translated into English by Shri Avadh Behari as under:-

"In the suit I have been telling the parties many a time that they should compromise the matter among themselves. I do not remember it for this purpose I granted any adjournment. I did say that on the material before me it is difficult to make a mathematical calculation. I will decide the matter according to my understanding whether right or wrong. It is better that the parties compromise the matter among themselves. At the time of the making the award I did not prepare any balance-sheet on my own. After hearing arguments of the counsel and on the material before me I decide."

There is nothing in the above statement to suggest that the amount of Rs.5,000/- awarded by the umpire was in the nature of an ex-gratia payment. On the other hand, it shows that the amount was arrived at by him on a consideration of the material before him and the arguments of the counsel for the parties. Shri Srivastava pointed out that no question was put to the umpire as to whether he arrived at the amount on an ex-gratia basis or any other extraneous basis. Even otherwise, it is clear from the statement of the umpire in the award that he arrived at the figure on a full consideration of the material placed before him by the parties.

12. For the foregoing reasons, the Civil Revision fails and is dismissed with costs.

13. Revision dismissed.