
(1977) 11 GUJ CK 0004
In the Gujarat High Court

Gujarat Safe Deposit Co. Ltd.

APPELLANT

Vs

Mustafa Mohmed Dabhi and Others

RESPONDENT

Date of Decision : 21-11-1977

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 17, 17
Bombay Court Fees Act, 1959 — Section 12

Citation : (1978) 19 GLR 769

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—A question of considerable importance in regard to the liability or otherwise to pay ad valorem court-fees (i) on an application under the Indian Arbitration Act of 1940 (Arbitration Act) for the filing of an award and (2) on an application for judgment in terms of award on the basis of amount expressed on the face of the record or the valuation of the property which is the subject matter of the award, which appears to be res Integra, has cropped up in a group of four applications invoking the revisional jurisdiction of this Court. At the instance of the Inspecting Officer (Court-fees) exercising jurisdiction u/s 12 of the Bombay Court-fees Act, 1959 (Court-fees Act) the learned trial Judge has examined the question as to whether ad valorem court-fees are payable in respect of the applications of the aforesaid description. The learned trial Judge upheld the view point canvassed by the Inspecting Officer and negated the contention of the petitioner to the effect that only fixed Court-fees were payable on applications of the aforesaid nature. Thereupon the petitioner has approached this Court by way of the present group of applications.

2. For the purposes of discussion reference may be made to the contents of one of the four applications only inasmuch the applications made in all the matters are similar in nature and it is unnecessary to examine each of the applications for the purposes of resolving the problem posed in this group of matters. It appears that there was an arbitration agreement between the petitioner on one hand and the opponents on the other. In pursuance to the agreement recourse was made

to arbitration without intervention of Court by resort to machinery envisaged in Chapter II of the Arbitration Act. The arbitrator made his award. After the making of the award an application was made by the petitioner praying that the arbitrator may be directed to file the award. The relief clause also contained a prayer for a judgment in terms of award. The Revenue contended that in respect of such an application the party moving the Court is liable to pay ad valorem court-fees on the basis of the amount expressed to be payable in the award or on the basis of the valuation of the property which is the subject matter of the dispute.

3. A review of the scheme of the Arbitration Act from the stand point of filing of awards and pronouncement of judgment in terms of award rendered by an arbitrator will be useful in solving the problem. When the arbitrators have made their award under the Arbitration Act upon a submission being made by parties to an arbitration agreement, the arbitrators are required to sign the award and give notice of the making of the award to the parties to the dispute (see Sub-section (1) of Section 14). Any of the parties to the dispute upon being served with a notice of the making of the award can request the arbitrators or the umpire to file the award in a Court. Sub-section (2) of Section 14 obliges the arbitrators or the umpire (expression used is "shall") to file in the co-obligant court the award alongwith the depositions and documents which have been received on record and proved before them. If the arbitrators or the umpire comply with the requisition and file the award alongwith necessary accompaniments, no application is required to be made to the Court for the purposes of Section 14 of the Arbitration Act. However, the arbitrators or the umpire may in a given case notwithstanding the obligation imposed by Sub-section (1) of Section 14 "refuse to comply with the request made in this behalf. In such cases Sub-section (2) of Section 14 confers a right on a party to the arbitration agreement to seek a direction from the Court calling upon the arbitrators and umpire to file the award with the necessary accompaniments. Even in regard to such an application, such is the contention of the Revenue, & ad valorem court-fees are payable. This is one dimension of the matter. The second stage of the proceedings will commence after the filing of the award. As per the scheme of the Arbitration Act u/s 15 the Court has power to modify or correct an award in certain cases, for instance where arbitrators have rendered an award upon a matter which was not referred to arbitration in accomplished award and that part of the award is separable or there is any patent error in the award which can be amended without affecting the decision or where there are some clerical mistakes of an accidental nature. If the Court is approached for an order for modification of the award, the Court has the authority to pass an appropriate order u/s 15. But such an application may or may not be made and in the present case we are not concerned with such an application for none has been made. u/s 16 of the Act the award or a part of it may be remitted to the arbitrators for reconsideration in certain cases. Such an application also may or may not be made and in the present case there was no occasion to make such

an application. By and-large in most of the matters the Court is not approached either for modification or for remission of the award. The next stage in the proceedings would be the stage contemplated by Section 17, namely, that of judgment in terms of award. Where the Court has not been approached for modification of award or remission of the award or where the award has been modified or an award has been made upon its being remitted, the question of pronouncing judgment in terms of award would arise. This stage will, however, be reached only provided there has been no application for setting aside the award on grounds specified in Section 30 of the Arbitration Act. If such an application has been made and the award has been set aside, the question of pronouncing judgment in terms of award cannot arise. The question with arise in two types of cases, namely, (1) where no application for setting aside the award has been made by reason of the fact that the parties have accepted the award or (2) where such an application has "been made and has been finally rejected. In such an event it is the duty of the Court to pronounce judgment according to the award as enjoined by Section 17 of the Arbitration Act. But before judgment can be pronounced, the Court must be satisfied that no application for setting aside the award was made or that an application having been made has been finally rejected. The machinery of the Court being an impersonal machinery it may be necessary to bring to the notice of the Court that such a situation has arisen where a judgment in terms of award can be pronounced either because the time for making of the application has expired and no application has been made or because an application having been made, it has been finally rejected. Section 17 of the Arbitration Act itself does not contemplate the making of an application. Even so as observed earlier, the machinery of the Court being impersonal, someone will have to bring to the notice, of the Court that the time has now ripened for pronouncing judgment in terms of award. And any party to the arbitration agreement may move the Court or activate the Court by bringing to the notice of the Court that the occasion for pronouncing judgment in terms of award has arisen. Rules have been framed by the High Court of Gujarat u/s 44 of the Act in relation to subordinate Courts barring Ahmedabad City Civil Court (for which there are separate rules). These rules have been published in Gujarat Government Gazette dated March 15, 1966 in Part IV-C at page 4545. Rule 9 provides that an application for judgment in terms of an award shall contain a statement that 99 application has been made to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award or if made, that has been disallowed. The rule also provides for the statement contained in the application being supported by an affidavit unless otherwise directed by the Court. Does an application of this nature require payment of advalorem Court-fees? This is the second dimension of the matter. In the present case a composite application (1) seeking the relief of directing the arbitrator to file the award with the papers and (2) seeking pronouncement of judgment in terms of award has been made. A composite application in this form is not in conformity with the requirement of the Arbitration Act.. Having regard to the scheme of the Arbitration Act an application can be made only for directing the

arbitrator or the umpire to file the award with the papers in case he refuses to comply with the request directly made by the party in this behalf. When the award has been filed without the direction of the Court or in cases where it has been filed in compliance with the direction issued by the Court, the first part of the proceedings comes to an end. As enjoined by Rule 8 framed by the High Court, a party is obliged to wait till the expiration of thirty days from the service of the notice of the filing of the award before any further step is taken. When the notices are served and thirty days have expired after such service, the Court can be approached for judgment in terms of award provided no application for setting aside the award has been made as contemplated by Section 30 or such an application has been finally rejected. If no application has been made, the Court can be approached for an appropriate order u/s 17 on the expiry of thirty days. If an application is made, the parties have to await the final result of the application and approach can be made for an order u/s 17 only after the said application is finally disposed of. Thus, the Court cannot be moved for an order u/s 17 at least for thirty days after the expiry of the service of notice of filing of award. Any application made thereto before would be premature. We are, however, not concerned with this aspect inasmuch as the parties to the arbitration agreement have not raised any objection in regard to the manageability of the composite application. The central issue as regards liability to pay court-fees must, however, be examined from the stand point of both the applications, namely, an application for seeking a direction u/s 14 requiring the arbitrators to file the award as also in respect of an application moving the Court for passing appropriate orders u/s 17 of the Act.

4. So far as the application seeking a direction from the Court requiring the arbitrators or the umpire to file the award alongwith papers under Sub-section (2) of Section 14 is concerned it cannot be contended that ad valorem court-fees are payable. The only relief claimed is for a direction calling upon the arbitrator to perform his obligatory duty to file the award. The subject matter in such an application is not capable of valuation. Under the circumstances, no court-fees would be payable on such an application. Learned Counsel for the Revenue is not able to show that in respect of such an application any provision of the Court-fees Act requiring payment of ad valorem court-fees would be attracted. It would not fall under Article 7 of the Schedule of the Court-fees Act because it cannot be said to be an application to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. It must be realised that the arbitrator or the umpire may file the award on his own upon a request being made in this behalf by a party to the arbitration agreement. No approach to the court would then be necessary. Sub-section (2) Section 14 obliges the arbitrator or the umpire to comply with the request made in this behalf. He has no option. Even so a provision has been made in order to ensure that if the arbitrator or the umpire fails to perform his obligation, the Court can direct him to do so. Seeking as direction requiring the arbitrator or the umpire to discharge his statutory duty cannot be said to be an application for obtaining substantive relief capable of

being evaluated in terms of monetary gain or prevention of monetary loss. Even the applicant against whom an award is made and who is held liable may make an application for filing of an award. How can it then be said that it is an application for a relief capable of being evaluated in terms of monetary gain or prevention of monetary loss? There is, therefore, no substance in the contention that an application seeking a direction u/s 14(2) would render the applicant liable to payment of ad valorem court-fees under Article 7 of Schedule I.

5. It is, however, argued that an application made by a party to the arbitration agreement for a judgment in terms of award u/s 17 of the Arbitration Act would require payment of ad valorem court-fees. The scheme of the Act has already been discussed a moment ago. u/s 17 it is incumbent on the Court to pronounce judgment in terms of award which has been filed by the arbitrator or the umpire as soon as (1) it is shown that no question of modification or remission has arisen, and (2) it is shown that the time for making an application for setting aside the award has expired or such an application having been made, has been disallowed. When this aspect is realised, the Court has merely to pronounce judgment in terms of award almost mechanically without anything more. When a party moves the Court to discharge its function u/s 17 which is imposed by the statute, the party is not claiming any relief capable of being valued in terms of monetary gain or prevention of monetary loss. All that the party is doing is moving the Court or activating the Court in as much as the machinery of the Court is an impersonal machinery and it would not be possible to act u/s 17 unless the relevant facts and circumstances which call for action u/s 17 are brought to its notice. This can be done even orally if the rules, do not provide for it. But as the rules provide for a written application as contemplated by Rule 9, the party who moves the Court will have to incorporate the necessary Statement to the effect that the question of remission or modification does not survive and the time for making an application to set aside the award has expired or such an application having been made has been disallowed. Even a party against whom the award may have been made may move the Court u/s 17 and in making such an application it cannot be said that the party moving the Court is seeking any substantive relief capable of being evaluated in terms of monetary gain or prevention of monetary loss. All that the party concerned is doing is that it is activating the Court to discharge its function u/s 17. There is no question of granting or refusing any relief. When the aforesaid basic facts are established the Court is under an obligation to pronounce judgment in terms of award. As discussed earlier this has to be done almost mechanically as soon as the aforesaid circumstances are established.

6. It is, therefore, futile to contend that ad valorem court-fees on the basis of the amount involved in the award or the evaluation of the subject matter of the award are payable under Article 7 of Schedule I. It must also be realised that when an application is made by a party to set aside the award, ad valorem court-fees would be payable for it would fall under Article 7 of Schedule I inasmuch as the party concerned seeks the substantive relief either for preventing a monetary

loss or for securing a monetary advantage in respect of a relief which would than be capable of monetary evaluation. This must be to because when the performance of an award is sought or when a party wants to avoid the performance of an award, the party concerned would have to pay ad valorem court-fees if the award directs him to pay a specified sum. Of course there may be cases where the award may direct the party objecting to the award to do something which will not be capable of being evaluated in terms of money. In such cases ad valorem court-fees would not be payable for the matter would fall under Article 23(f), of Schedule II of the Court-fees Act. When it does not fall under this provision and the relief is capable of being valued In terms of monetary gain or prevention of monetary loss, court-fees would be payable under Article 7 of Schedule 1. But when no one wants the award to be set aside and the Court has only to pass an award without anything more as enjoined by Section 17, no question of payment of court-fees on the part of the party moving the Court to act in accordance with the mandatory statutory requirement of Section 17 can arise.

7. This would also be in consonance with the philosophy underlying the enactment of the Arbitration Act which has evidently been enacted, in order to encourage the citizens to resolve their disputes out of Court by recourse to a reference to an arbitrator appointed as per, stipulation contained in an agreement between the parties inasmuch as such a machinery would result in a speedy resolution of the dispute without incurring costs of a long drawn legal proceeding in a Court of law. There are three objects viz", (i) to provide a speedy machinery, (ii) to provide a cheaper machinery and (iii) to ensure that the machinery of the Court is not burdened by causes which the parties can solve by recourse to machinery of their choice other than the machinery of Court. It, therefore, stands to reason that no provision has been made for payment of ad valorem court-fees in respect of pronouncement of awards where nothing more is required to be done u/s 17 than pronouncing a judgment in terms of award. As discussed earlier, if the Court was burdened or taxed with the question of setting aside the award by making an application u/s 30 of the Arbitration Act, the matter would stand on a different footing and if the subject matter is capable of evaluation, the ad valorem court-fees would have to be paid. But when no such question has arisen and the proceeding for setting aside the award has terminated and the Court has merely mechanically to pass an order "and pronounce judgment in terms of the award, no court-fees would be payable.

8. The view taken by the learned trial Judge, under the circumstances, cannot be sustained. The order passed by the learned trial Judge directing the petitioners to pay ad valorem courts-fees is, therefore, set aside. The parties have already paid fixed court-fees of Rs. 301-under Article 23(f) of Schedule II and there is no deficit. There is therefore, no question of payment of further court-fees.

The petitions are allowed. The impugned order directing be petitioner to pay additional court-fees is set aside in each matter. Rule is made absolute in each

matter with no order regarding costs.