
(2020) 07 J&K CK 0062
In the Jammu And Kashmir High Court
Case No : CFA No. 03 Of 2008

Gurdas Ram And Others

APPELLANT

Vs

Surjeet Singh Khurana And Others

RESPONDENT

Date of Decision : 16-07-2020

Acts Referred:

Jammu And Kashmir Arbitration Act, 2002 — Section 20, 20(2), 30, 33, 39

Citation : (2020) 07 J&K CK 0062

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : S. S. Nanda, A. V. Gupta, S. K. Anand

Final Decision : Dismissed

Judgement

Sindhu Sharma, J

1. This is an appeal under Section 39 of the Jammu and Kashmir Arbitration Act Svt. 2002 (1945 A. D) (hereinafter to be referred to as

2. Appellants are aggrieved by the judgment and decree passed by the Additional District Judge, Jammu who has rejected the objections filed by the appellants under Sections 30 and 33 of the Arbitration Act and made the award dated 31.05.2001 by Mr. Justice K. K. Gupta, former Judge of this Court as rule of the court vide judgment dated 30.10.2007. The facts which are not disputed by the parties are that an application under section 20 of the Arbitration Act was filed by the respondents including late Smt. Santosh Khurana in this court which was transferred to District Judge, Jammu who assigned it to the Additional District Judge, Jammu. The District Judge vide his order dated 08.12.1997 decided the application and with the consent of the parties appointed Mr. Justice K. K. Gupta a former Judge of this Court as sole Arbitrator.

3. Mr. Gupta, made the award on 31.05.2001 and filed the same in the court of Additional District Judge, Jammu, para 6 of the impugned judgment dated 30.10.2007 reads as under:

"6. The award was filed in the Court and notices were issued to the parties to file their objections thereto within the statutory period. The respondents being satisfied with the award did not challenge it, which was however challenged by the petitioners. Thereafter, the following issues were struck:

- a) Whether the Arbitrator has mis-conducted himself and, as such, award is vitiated and is required to be set aside? OPR-2
- b) Whether the Arbitrator has mis-conducted the proceedings, as such, the award is required to be set aside? OPR
- c) Whether the award has been improperly procured or is otherwise invalid? OPR
- d) Whether the award of the Arbitrator suffers from some mechanical error, as such, the same is required to be rectified. If so to what extent? OPR

4. After hearing the arguments, the Court rejected the objections and found no evidence in support of the issues and made the award rule of the Court. The appellants not satisfied with the judgment and decree dated 30.10.2007, have challenged the same on various grounds one of them being that the Arbitrator having framed the issues, ought to have decided the issues and thereafter should have made the award. However, the trial Court rejected these grounds relying on AIR 1967 SC 1030, wherein their lordships rejected a similar argument holding that:

"..... The Arbitrator could give a lump sum award, he was not bound to give separate award on each claim. His award on both fact and law is final. There is no appeal from his verdict. The Court cannot review his award and correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on the face of it....."

Their lordships further held that:

"In the present case, the arbitrator gave no reason for the award. We do not find in the award any legal proposition which is the basis of the award, far less a legal proposition which is erroneous. It is not possible to say from the award that the arbitrator was under a misconception of law. The contention that there are errors of law on the face of the award is rejected."

5. Not only in the aforementioned judgment but also in *M/s Sudarsan Trading Co. v. The Government of Kerala & Anr.*, AIR 1989 SC 890, it has been held in para 29 that:

"29. The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in *Hindustan Steel Works Construction Ltd. v. C. Rajasekhar Rao* (1987) 4 SCC 93. In the instant case the arbitrator has merely set out the claims and given the history of the

claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done, he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator.

6. The award in this case is non-speaking. The learned Arbitrator has narrated the facts of the case before making the following Award:

".....the respondents are jointly liable to pay the petitioner Rs. 49,09,500/- as the amount for their share to liquidate the loan on Punjab and Sind Bank for which the suit is pending in the Court of District Judge, Jammu. The lone amount of the said bank is payable by the petitioner put to ending August, 2001 in terms of the settlement with the bank.

In case the respondents will decide to pay the above said amount of their share to the petitioner they shall be liable to pay interest @ 10% Per Annum w.e.f 01.09.2001."

7. Since the award in this case is a non-speaking award, therefore, the argument that there is no decision on the issues framed has been rightly rejected by the trial Court. The trial Court next considered the issue of Arbitrator having misconducted in the proceedings. The only grievance of the appellants was that they were not allowed to produce the oral evidence. This argument was rejected for the reasons recorded in Para 11 of the impugned judgment which is unexceptional in view of the fact that the Arbitrator's order has the consent of the counsel for the appellants who signed on the margin of the order which amounts to his approval.

8. Yet another argument as per the para 12 of the impugned judgment is that "There were illegalities and infirmities in the agreement dated 18.08.2009. As per the liability, the house of Surjeet Singh was to be redeemed within three years from 11.08.1992 but the application was filed before three years". This ground is preposterous because the application was filed under section 20 of the Arbitration Act little before the expiry of three years but the Arbitrator came to be appointed only on 08.12.1997, as such, it was not premature. Moreover, the application under section 2 has all the trappings of a civil suit because sub-section 2 of Section 20 requires it to be registered as suit and has to be decided accordingly. Moreover, the appellants having consented to the appointment of Mr. Justice, Gupta as the sole Arbitrator, so the contention that the application was premature has no substance and has rightly been rejected.

9. Another argument is that Arbitrator had travelled beyond the reference, while placing reliance on the judgment in bank's case is fallacious in view of the para 2 of the agreement dated 11.08.1992, which is reproduced below:-

"2. That aforesaid Company has obtained different loans from the Punjab and Sind bank, Shalamar road, Jammu for carrying of its business such as term loan, bridge subsidy loan, deferred payment guarantee loan, working capital loans etc against mortgaged security of residential house belonging to S. Surjit Singh Khorana party of the Ist part besides their personal/guarantees for the payment of bank dues."

10. Moreover, appellants were party to the suit filed by the Bank and suffered the decree. They have undertaken to redeem the house and therefore, they are bound by the decree in view of Paras 5 & 6 of the agreement. It was in this background that appellants agreed to redeem the house and free the personal/guarantees as per paras 5 and 6 of the agreement which are reproduced below:-

"5. That the parties of 2nd part have agreed that they shall be liable to get free the house belonging to S. Surjit Singh Khorana and other personal guarantees of parties of the Ist part from the aforesaid mortgaged encumbrance with the period of 3 (three) years from the date dated 11th August 1992.

6. That the parties of 2nd part have agreed that if they failed to get free the aforesaid residential house belonging to S. Surjit Singh Khorana within 3 (three) years from 11th of August, 1992 from aforesaid bank then the parties of Ist part will be entitle to recover the aforesaid loan of Punjab and Sind Bank with interest in full from the assets/properties/shares etc of parties of 2nd part available in Jammu & Kashmir and anywhere in India for clearing aforesaid loan and the parties of 2nd part will not have any objection."

11. The argument that the agreement is one sided is absurd as the appellants have paid Rs. 7.5 lac for the purchase of 7500 shares in the Jammu Food (P) Ltd. as per the para 3 of the agreement. The payment was received by the respondents and para 4 became redundant as the share stood transferred hence the argument to the contrary is preposterous besides being without any merit.

12. Yet another attempt was made to allege that the Arbitrator has mis-conducted himself as is reflected in para 16, but it was a mere allegations without any proof or evidence. The trial Court rejected this by relying on the observations made in Food Corporation of India V. Joginderpal Mohinder Pal, 1989 (2) SCC 347:

".....it is difficult to give an exhaustive definition what may amount to misconduct on the part of the Arbitrator. This is discussed in Halsbury's Laws of England (supra). It is not misconduct on the part of an arbitrator to come to an erroneous decision, whether his error is one of fact or law, and whether or not his findings of fact are supported by evidence."

13. The trial Court has, thus, dealt with every argument put forward on behalf of

the appellants before making the award rule of the Court as there is not even a whisper as to how the trial court acted unreasonably or capriciously or has ignored the relevant facts in the absence of which this Court is unable to interfere in the exercises of its discretion in view of the law laid down in Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Bros. of Delhi, AIR 1967 SC 249, holding that:

"8. It is well-established that where the discretion vested in the Court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the, appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well-established; but, as has been observed by Viscount Simon, L. C., in *Charles Osenton & Co. v. Johnston*(1):

"The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well- established, and any difficulty that arises is due only to the application of well-settled principles in an individual case".

14. The trial court after having considered each and every argument advanced before it and while considering the grounds available to the appellants under section 33 of the Arbitration has recorded finding rightly and also reached the conclusion correctly, hence, this appeal is dismissed being without any merit without any order as to costs.

15. Record be remitted back to the concerned Court.