
(1996) 03 BOM CK 0030

In the Bombay High Court

Case No : Arbitration Petition No. 49 of 1996

Hede Navigation Ltd.

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 16, 30
Limitation Act, 1963 — Article 119(a)

Citation : (1996) 5 BomCR 669 : (1996) 2 MhLj 7

Hon'ble Judges : S.M. Jhunjhunwala, J

Bench : Single Bench

Advocate : P.D. Popat instructed by Hasan and Co, for the Appellant; M. Shiras instructed by , G.A. Rebello, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Jhunjhunwala, J.—By this petition, the petitioner seeks to have the Award dated 26th September 1989 filed in this Court set aside.

The petitioner is a Company incorporated and registered under the provisions of The Companies Act, 1956. At all material times, the petitioner carried on business as ship owners and carriers of goods by Sea. The respondent is the Union of India.

2. By a Charterparty dated 15th April, 1985 the petitioner let its vessel "M.V. SHANTA SHIBANI" to the respondent for carriage of charge of about 26,000 m.t. of Muriate of Potash from Aqaba to Kandla. On or about 8th November, 1985 the said vessel arrived at Kandla and was berthed on 17th December, 1985. The said vessel completed discharge at Kandla on 10th January, 1986. One Indian Potash Ltd. was receiver of the said cargo and as such, the said cargo was discharged by the said Indian Potash Ltd. and paid for the discharge. In respect of the said Charterparty and carriage of the said cargo, the petitioner had claims against the respondent and the respondent also had claims against the petitioner. The said Charterparty contained an agreement between the parties thereto to the effect

that any dispute arising thereunder would be settled in accordance with the provisions of The Arbitration Act, 1940 (for short "The Act"). In view of the said arbitration agreement contained in the said Charterparty, the disputes which had arisen by and between the petitioner and the respondent were referred to arbitration and by its letter dated 6th January, 1987 the respondent appointed one captain R.K. Lal as its arbitrator. The petitioner appointed one K.M. Kamath as its arbitrator. The said Kamath having died during the pendency of arbitration, in his place one S.K. Mankad was appointed by the petitioner as its arbitrator. The Arbitrators so appointed made the Award dated 26th September, 1989 which has been filed in this Court. The present petition has been filed on behalf of the petitioner to have the said Award set aside.

3. The said Award is a non-speaking Award. After considering the claims of the petitioner against the respondent and of the respondent against the petitioner, the Arbitrators disallowed and/or rejected the claims of the petitioner against the respondent and allowed the claims of the respondent against the petitioner. The petitioner has challenged the said Award alleging that there is an error apparent on the face thereof and that it has been improperly procured and is otherwise invalid. The petitioner has also challenged the said Award alleging that the Arbitrators failed to appreciate that the agreement whereby the said Indian Potash Ltd. conducted arbitration in the name of the respondent for its own benefit was illegal and void since, according to the petitioner, it amounted to mere name lending by the respondent in the absence of any assignment of subrogation.

4. In view of the fact that the said Award is a non-speaking Award, it is not permissible to probe into the minds of the Arbitrators to find out as to what impelled upon them to come to the conclusion arrived at by them. An award can be set aside if there is an error apparent on the face thereof. However, for an error to be apparent on the face of the award, there must be a proposition of law apparent on the face thereof which is erroneous and is made as the basis thereof. Perusing the said Award, I do not find any proposition of law apparent on the face thereof which is erroneous and made as the basis thereof. The jurisdiction of the Court u/s 30 of the Act is limited. An award is not vulnerable to any challenge thereto. There is no merit in the submission made across the bar that there did not exist any arbitration agreement between the petitioner and the respondent to refer and the claims to arbitration. The arbitration agreement has been contained in the said Charterparty and in pursuance thereof, in fact both the petitioner and respondent did appoint their respective arbitrator and had filed their claims against each other before the Arbitrators and appeared and participated in the proceedings before the Arbitrators.

5. Since the said Award made on 26th September, 1989 was filed by the Arbitrators in this Court on 23rd December, 1993, Mr. Popat, learned Counsel appearing for the petitioner, submitted that the said Award was filed in this Court beyond the period of limitation and as such, no cognisance thereof can be taken

by this Court. In support of his submission, Mr. Popat has put reliance on the judgment of the Supreme Court in the case of Patel Motibhai Naranbhai and another Vs. Dinubhai Motibhai Patel and others, . I find no merit in the submission made on behalf of the petitioner. Article 119(a) of The Limitation Act, 1963 prescribes period of limitation for the parties to arbitration to file an award in Court. According to Article 119(a) an award can be filed in Court within 30 days of service of the notice of making of the award. In the instant case, it is an admitted position that the Arbitrators had filed the said Award in this Court. u/s 14(2) of the Act the Arbitrators or Umpire at the request of any party to arbitration agreement or if so directed by the Court cause the award or a signed copy of it filed in Court. This section does not prevent the Arbitrators or Umpire to file the award in Court suo motu, though it specifically provides for Arbitrators or Umpire to file the award in Court on an application being made by a party to the arbitration agreement. In the case of Patel Motibhai Nanabhai & another on which reliance was placed by Mr. Popat, the arbitrator had moved an application for filing the award in Court and to make the award the rule of the Court. In para 7 of the judgment, the Supreme Court, has in terms stated as under:-

"In the instant case, the arbitrator has not merely filed the award in Court, he has also made an application (Misc. Civil Application No. 19/92 in the Court of the Civil Judge (SD) Anand u/s 14 of The Arbitration Act and has engaged lawyer G.B. Shah to obtain orders as prayed".

In the facts of that case and in context thereof, the Supreme Court took the view that the application made after lapse of 30 days was barred by limitation. However, the Supreme Court has not laid down the law that an Arbitrator or Umpire, as the case may be, suo motu without making application as contemplated u/s 14(2) of the Act cannot file an award in Court after lapse of 30 days of service of notice of making of the award. In the instant case no such application was made by the Arbitrators as contemplated u/s 14(2) of the Act nor there was an application by the Arbitrators for making the said Award as Rule of the Court. Hence, on the facts of the case, the judgment on which the reliance has been placed by Mr. Popat does not apply.

6. Since there is no merit in the petition, the petition is dismissed with costs at this stage itself.

In view of refusal to set aside the said Award, Mr. M. Shiras, learned Counsel appearing for the respondents, applied for decree in terms of the said Award under Rule 787 (5) of the Rules of this Court as applicable on its Original Side. Accordingly, Judgment is pronounced and decree passed in terms of the Award dated 26th September, 1989, a copy whereof is annexed as Exhibit "C" to the petition.

C.C. expedited.