

(2013) 05 DEL CK 0018
In the Delhi High Court
Case No : FAO (OS) 582 of 2012

Jhang Cooperative Group Housing Society Ltd.

APPELLANT

Vs

PT. Munshi Ram and Associates Pvt. Ltd.

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(1)(c), 34, 34(3), 37

Citation : (2013) 202 DLT 218 : (2013) 2 ILR Delhi 1632 : (2013) 171 PLR 28

Hon'ble Judges : Sanjeev Sachdeva, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : J.P. Sengh, with Mr. Sumeet Batra, for the Appellant; Anusuya Salwan and Ms. Renuka Arora, for the Respondent

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J.—This is an appeal u/s 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Said Act") impugning the judgment dated 24th May, 2012, whereby the objections of the appellant u/s 34 of the Arbitration Act challenging the interim award dated 05th July, 2002 as well as final award dated 27th September, 2002 were dismissed. The objection petition u/s 34 of the Arbitration and Conciliation Act impugning both the interim and the final award was filed on 02.01.2003. The respondent had entered into an agreement with the appellant society on dated 26th February, 1988 for construction of 490 residential units at Plot No. 40, Sector-13, Rohini, New Delhi. The date of start of construction stipulated in the work was 26th February, 1988 and the stipulated date for completion was 25th August, 1990. The work was delayed and ultimately the contract was rescinded by the appellant society on 13th January, 2000.

2. Pursuant of the rescission of contract certain disputes and doubts arose between the parties in the matter of execution of the said work. The respondent invoked the Arbitration clause and the Administrator of the appellant society, the Persona Designata appointed the Sole Arbitrator. On resignation of the Sole

Arbitrator, the Administrator appointed Sh. D.N. Kathuria as the Sole Arbitrator who passed both the interim and the final award.

3. During the pendency of the arbitration proceedings, both the parties consented to passing of an interim award in respect of some of the claims raised by the claimant in the arbitration proceedings.

4. In the interim award, the Arbitrator granted the relief of Declaration holding that the appellant society was responsible for non-performance of their obligation and consequently the work was prolonged. The Arbitrator further held that the rescission/termination of contract was arbitrary and without jurisdiction and he thus declared the rescission as illegal.

5. With regard to the claim in respect of the payment for the work done in the 45th Running Account (RA) Bill and after the 45th R.A. Bill the Arbitrator directed both the parties to submit joint measurements for the remaining items and joint bill for the undisputed items. Consequent to the direction both the parties submitted their joint measurement and joint bill for undisputed items. The joint bill submitted by the parties indicated certain disputed items which were left to be adjudicated by the Arbitrator.

6. The Arbitrator in the interim award directed the appellant to pay the undisputed amount as mentioned in the joint bill and further with respect to the disputed items decided to adjudicate the same in his final award.

7. The appellant did not challenge the interim award made and published on 5th July, 2002 and it is only after the Arbitrator adjudicated upon the remaining disputes and passed the final award dated 27.09.2002 that the appellant filed a petition u/s 34 of the Arbitration and Conciliation Act, 1996 objecting to both the interim award and the final award.

8. The learned Single Judge vide the impugned order dated 24.05.2012 has held that the challenge to the interim award dated 5.7.2002 was time barred and accordingly has rejected the same.

9. Section 2 (1) (c) of the Said Act defines arbitral award to include an interim award. u/s 34 of the said Act recourse to a court against an arbitral award has to be made within three months from the date on which the party making the application receive the arbitral award. As per Section 34 (3) of the Act, the court has been empowered to condone a maximum delay of 30 days, subject to the applicant showing sufficient cause which prevented the applicant from making the application within the said period of three months and not thereafter. In the present case, admittedly the objections to the interim award have neither been made within three months from the date as stipulated in Section 34 (3) or in the further period of 30 days as stipulated in the proviso thereto.

10. The learned Senior Counsel for the appellant has pointed out that the interim award itself stipulates that the interim award is without prejudice to the respective contentions of the parties, as stated in their pleadings and in the final

award the arbitrator has mentioned that the interim award may be read in conjunction with the final award as the said interim award is part and parcel of this award too. The learned Senior Counsel thus submits that since the interim award is part of the final award, the same could be challenged along with the final award within the limitation prescribed for challenging the final award.

11. We find no merit in the submission of the learned Senior Counsel for the appellant and are in agreement with the reasoning and finding of the learned Single Judge in the impugned judgment. The interim award is an award as defined u/s 2 (1) (c) of the Arbitration Act and thus a recourse to a court against the said award had to be made within the period of three months or the condonable period of 30 days as stipulated in Section

12. The relief of declaration granted by the Arbitrator of illegal rescission/ termination of the contract became final since the same was never challenged within the stipulated period. The stipulation in the interim award that it is without prejudice to the respective contentions of the parties in our view was for the purpose of leaving the other claims to be decided in the final award on their own merit. The stipulation in the final award that the interim award is part and parcel of the final award would not in any manner extend the period of limitation for making recourse to a court against the said interim award and as such we are in agreement with the learned Single Judge that the objections to the interim award were clearly barred by limitation and the Submission of the Learned Senior Counsel in this regard is thus rejected.

13. With respect to the objections filed by the appellant against the final award dated 27.09.2002 we may note that the law laid down by the Hon''ble Supreme Court restricts the supervisory role of the courts while testing the validity of an Arbitration Award. In the case of McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, the Hon''ble Supreme Court has held as under:-

The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

It is in the parameters as laid down by the Apex Court vis-?-vis the scope of judicial intervention that the present appeal impugning the order dated 24.05.2012 has to be dealt with in respect to the final award published by the sole arbitrator dated 27.09.2002. It is seen that the Arbitrator has elaborately considered the various documents, submissions and evidence led by the parties in respect of each claim which was left to be adjudicated by the interim award.

The Arbitrator has extensively gone into the evidence and evaluated the entire material before him and has published a detailed speaking award.

14. The law is no longer *res integra* and is settled that where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections u/s 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction u/s 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections u/s 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible.

15. If the Arbitrator has taken a view which the court finds reasonable and plausible, the court would certainly not interfere.

16. The extent of judicial scrutiny u/s 34 of the Arbitration Act 1996 is limited and scope of interference is narrow. u/s 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal u/s 37 is like a second appeal, the first appeal being to the court by way of objections u/s 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections u/s 34, in an appeal u/s 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court u/s 34.

17. As laid down by the Apex Court, the supervisory role of the court in arbitration proceedings has been kept at a minimum level and this is because the parties to the agreement make a conscious decision to exclude the courts jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.

18. The learned Single Judge has examined each claim awarded by the learned Arbitrator in detail and after scrutinizing the same has found the findings and reasoning to be justified and has declined to interfere in the findings arrived at by the learned Arbitrator in respect of each claim. Once the Arbitrator has returned a finding that delay in completion of the work was attributable to the appellant society and that the rescission and termination of the contract was illegal and more so since these findings are not challenged by making a recourse against the interim award, the findings arrived at by the learned Arbitrator in

respect of the claims dealt with by the learned Arbitrator in the final award cannot be said to be erroneous and the learned Single Judge has rightly declined to interfere with the same.

19. The learned Single Judge has given detailed reasons for rejecting the application filed by the appellants with which we are in complete agreement more so in view of the fact that this court does not sit as a court of appeal to reassess and re-examine the evidence led before the Arbitrator. Even on examination of the material before us, we are of the view that the findings of the Arbitrator are reasonable and justified in the facts of the present case.

20. The learned Senior Counsel tried to make out a case of fraud and collusion between the Administrator and the contractor. We are unable to accept this submission of the learned Senior Counsel for the reason that there is neither such a plea raised before the Arbitrator or the learned Single Judge nor any material has been placed on record before us to substantiate this allegation. It is settled proposition of law that a plea or a ground not raised before the Arbitral Tribunal would not be permitted to be raised in objections against the award leave alone before the Appellate Court u/s 37 considering an appeal u/s 37 of the said Act. The submission in this regard is thus rejected. We find no infirmity in the impugned order dated 24th May, 2012. The appeal is accordingly dismissed, leaving the parties to bear their own costs.