
(2006) 03 DEL CK 0123
In the Delhi High Court
Case No : CS (OS) No. 1615A of 1998

J.K. Enterprises

APPELLANT

Vs

Win Medicare Limited

RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2006) 1 ARBLR 583 : (2006) 129 DLT 87

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Non, for the Appellant; I. Ghosh and Ugen Bhutia, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, J.

IA No. 514/2000 (under Section 30 & 33 of the Arbitration Act, 1940)

1. The respondent was appointed as a clearing and forwarding agent by the petitioner in terms of the agreement dated 24.02.1986. The agreement contained an arbitration clause No. 17. Disputes arose between the parties and in fact the agreement was also terminated. There were claims and counter claims of the parties which were referred to the arbitral tribunal of Mr. Ramji Srinivasan and Mr. G. S. Chatterjee, both advocates.

2. The award was made and published on 30.06.1998. The petitioner aggrieved by the same has filed objections u/s 30 & 33 of the Arbitration Act, 1940 (hereinafter referred to as the "said Act").

3. None has appeared for the petitioner even though the matter is effectively item No. 3 on the regular board. In view thereof, I have heard learned counsel for the respondent perused the pleadings and the written synopsis which has already been filed by the parties.

4. A perusal of the grounds set out in the application shows that the petitioner is

really aggrieved by the appreciation of documents and evidence on record before the Arbitral Tribunal. The synopsis of the case filed by the petitioner itself makes this clear since after reciting the factual position leading to the dispute, the grievance in respect of the award has been set out. The grievance is that the arbitral tribunal while dismissing the claim for damages for wrongful termination of the contract made by the petitioner, relied upon conjectures and surmises. In this behalf, it has been stated that the arbitral tribunal has considered a notice of the respondent sent through counsel and its impact on the earlier document of termination dated 07.12.1990. A further grievance is made that the documents have not been properly considered or appreciated in respect of the claim for recovery of undisputed amount of commission and there are many errors appearing on the face of the record.

5. It has to be kept in mind that the scope of the exercise of jurisdiction in respect of the present proceedings is not akin to a court sitting in appeal over a judgment or a decree of a civil court. It is not for this court to interfere with an award merely on the basis that the court would come to a different conclusion on the material available before the arbitrator. The Apex Court in *Food Corporation of India Vs. Joginderpal Mohinderpal*, has observed that in the absence of an award being absurd, reasonableness is not a matter to be considered by the court as appraisal of evidence before an arbitrator is not ordinarily a matter for the court. Interpretation of a contract is again a matter for the arbitrator on which the court cannot substitute its decision as observed by the apex court in *Sudarsan Trading Co. Vs. Government of Kerala and Another*, . In fact it was observed that so long as the view taken by the arbitrator is plausible, though perhaps not the only correct view, the award cannot be examined by the court.

6. The common phraseology "error apparent on the face of the record" was held by the Supreme Court in *Aerosan Enterprises Ltd v. Union of India* and Anr. 1999 (3) Arb LR not to mean and imply closer scrutiny of merits of the documents and material on record.

7. In *State of U.P. Vs. Allied Constructions*, it has been once again reiterated that Section 30 of the said Act providing for setting aside an award is restrictive in its operation and unless one of the conditions specified therein is satisfied, an award cannot be set aside. The arbitrator is a judge chosen by the parties and his decision is final and thus the court is precluded from re-appraising the evidence.

8. The last aspect to be considered is the question of interest which has been awarded from 18.03.1993 till date of realisation at the rate of 18 per cent per annum. Taking into consideration the prevailing rates of interest and the rates of interest which have been consistently awarded by this court for the relevant period of time, I am of the considered view that the respondent be held to simple interest at the rate of 12 per cent per annum and that too till date of decree.

9. The objections stand disposed of accordingly.

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10. In view of the objections having been disposed of, the award of the arbitral tribunal of Mr. Ramji Srinivasan and Mr. G. S. Chatterjee dated 30.06.1998 is made rule of the court with the modification that the respondent shall be held entitled to interest at the rate of 12 per cent instead of 18 per cent per annum from 18.03.1993 till date of decree. The respondent shall also be entitled to interest at the rate of 9 per cent per annum. from the date of decree till date of realisation. Parties are left to bear their own costs. Decree sheet be drawn up accordingly.