
(2012) 07 DEL CK 0329
In the Delhi High Court
Case No : CM (M) 129 of 2008

Kamini Sadh

APPELLANT

Vs

Mohan Lal Chander Prakash and Ors

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 32(3), 33, 34, 34(4)

Citation : (2012) 6 AD 401

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Vijay Babbar, with Mr. D.P. Singh, for the Appellant; Anju Jain and Mr. Hitesh, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This petition assails the order dated 23.10.2007 of learned ADJ whereby the petition u/s 34, Arbitration and Conciliation Act (for short the "Act") filed in his court against the arbitral award of Arbitrator, Delhi Hindustani Mercantile Association, was referred back to the Arbitrator. The dispute had arisen between the parties. The matter was referred to the Arbitrator, Delhi Hindustani Mercantile Association. During arbitral proceedings, the Arbitrator had framed three issues, one of which being as under

Whether the claim of the complainant is within the period of limitation

The Arbitrator gave the award dated 30.12.2003. That award was challenged by way of a petition u/s 34 of the Act before the ADJ.

2. While dealing with the petition u/s 34 of the Act, the learned ADJ noted that no finding was returned by the Arbitrator as regard to the aforesaid issue. In this regard, it was observed as under

9. At this stage, this court wish that award is not set aside on that count and Ld. Arbitrator be given opportunity and time to give the findings on the point of

limitation

3. Having so observed as above, the learned ADJ gave three months time to the Arbitrator to resume the arbitral proceedings to decide the aforesaid issue. The parties were directed to appear before the Arbitrator and the matter was adjourned by the ADJ for further proceedings before him. It is this order of the ADJ, which has been assailed in the present petition.

4. The main thrust of contention of the learned counsel for the petitioner is that after the arbitral proceedings were terminated by the Arbitrator, it became functus officio and could not resume the arbitral proceedings. It is also his submission that the court was either to accept or reject the award, and could not have referred back the matter to Arbitrator to resume proceedings. Reference in this regard is made to Section 32 (3) of the Act, which reads thus

32. Termination of proceedings.-

(3) Subject to section 33 and sub- section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

5. On the other hand, the learned counsel appearing for the respondent submits that the ADJ was, within his powers and competence to refer back the matter to the Arbitrator in respect of Issue No. 3, on which no finding was given by him in the award. To this, there is no dispute raised by the learned counsel for the petitioner

6. Moving further, the learned counsel for the respondents draws my attention to Section 34 (4) of the Act, which reads thus:

34. Application for setting aside arbitral award.-

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(4) On receipt of an application under sub- section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

7. Giving a conjoint reading to both the Sections namely Section 32(3) and 34(4) of the Act, it would be seen that the provisions contained in Section 32(3) were subject to the provisions of Section 34(4). That being so, the contention that the arbitral proceedings could not be resumed, is apparently untenable. If that interpretation is given to the provision as presented by the learned counsel for the petitioner, that would make Section 34(4) completely meaningless and redundant. That could not be the intention of the legislature. The intention is

further gathered as Section 32(3) of the Act is made, subject to the provisions of Section 34 (4) of the Act. A plain and literal interpretation of Section 34 (4) empowers the court, in an appropriate case, to adjourn the proceedings for the period as may be determined, appropriate for giving an opportunity to the Arbitrator to resume proceedings, so as to eliminate the grounds taken for setting aside the arbitral award. It is noted that the ground of limitation had been taken against claim made by the respondent herein and issue was also framed thereon. To eliminate this ground or to record otherwise, a finding was required to be returned by the Arbitrator in this regard. I do not see any infirmity or illegality in the impugned order. Petition is accordingly dismissed.