

(1996) 07 DEL CK 0079
In the Delhi High Court
Case No : Suit No. 3846 of 1990

Krishan Kumar Shyam Lal Bansal Contractors	APPELLANT
Vs	
Union of India and Another	RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2)

Citation : (1996) 63 DLT 216 : (1996) 114 PLR 30

Hon'ble Judges : Lokeshwar Prasad, J

Bench : Single Bench

Advocate : Anurag Kumar and B. Babbar, for the Appellant;

Judgement

Lokeshwar Prasad, J.

(1) The petitioner, named above, which is a partnership firm registered under the Indian Partnership Act, 1932 has filed the present petition under sections 14, 17 & 29 of the Arbitration Act, 1940 (hereinafter referred to as "the Act") averring that the petitioner firm entered into a contract with respondent No. 1 the Union of India for the work "Provision of 584 Balconies to Type "B" Quarters at Aram Bagh, New Delhi" and after completing necessary formalities an agreement bearing No. 1/EE/CD XIII/83-84 was executed between the parties. However, certain disputes arose between the parties which, in terms of Clause 25 of the Arbitration Agreement, were referred to the sole arbitration of Sh. N.H. Chandwani. The Arbitrator entered upon the reference on 1.4.89 and finally made and published the award No. ARB/NSC/421 dated the 30th November, 1990.

(2) It is prayed by the petitioner that respondent No. 2 Sh. N.H. Chandwani, the Arbitrator be directed to file the award Along with the depositions and documents and the same be made rule of the Court and further interest be also granted to the petitioner together with costs.

(3) The Arbitrator Sh. N.H. Chandwani was directed to file the award Along with

the proceedings vide order dated 21.12.90. In pursuance of the above directions, the Arbitrator Sh. N.H. Chandwani filed the award Along with the proceedings vide letter No. ARB/NSC /421 dated the 2nd January, 1991.

(4) Notice of the filing of the award was issued to the parties directing the parties to file objections, if any, within the statutory time limit. The above statutory notice was served on the petitioner on 9.4.91. However, notice issued to respondent (Union of India) was not taken by the person concerned on the pretext that enclosures be sent. In the notice to be served for filing of award no enclosure is required to be served and thus notice of the filing of the award is deemed to have been served on respondent No. 1 (Union of India) on 12.3.91 when the concerned official of respondent No. 1 refused to accept the notice which fact is evident from the report of the Process Server dated the 12th March, 1991 made on oath.

(5) No objections have been filed on behalf of the petitioner. However, the respondent Union of India filed objections (IA 14871/91) in the Registry of this Court on 4.12.91. Since the objections were not filed within time the respondent Union of India Along with the objections also filed an application (IA 14872/91) u/s 5 of the Limitation Act for condensation of delay in filing the objections.

(6) Before any decision could be taken on the application filed by respondent Union of India for condensation of delay in filing the objections (IA 14872/91) and the objections (IA 14871 /91), an application (IA 13112/92) u/s 151 read with Order 39, Rule 1 CPC and Section 41 Schedule Ii of the Act was filed on behalf of one Shri Krishan Kumar Bansal. Said Shri Krishan Kumar Bansal filed another application (IA 1756/93) under order I, Rule 10(2) read with Order Vi, Rule 17 and Section 151 CPC for being imp leaded as a party in the present proceedings. First of all I will deal with the applications (IA 1756/93 fela 13112/92) filed by said Shri Krishan Kumar Bansal for impleadment and also for interim relief in the present proceedings.

(7) is 1756/93 As already stated, the above mentioned application is under Order I, Rule 10(2) read with Order Vi, Rule 17 and Section 151 CPC by Shri Krishan Kumar Bansal claiming himself to be one of the partners of M/s. Krishan Kumar Shyam Lal Bansal Contractors (petitioner in the present proceedings) with the prayer that the name of Shri Sanjeev Bansal be deleted as petitioner and he be added as the lawful partner of the petitioner firm and that said Shri Sanjeev Bansal be added as respondent No. 3. It is further prayed that the decreed amount in the present proceedings be directed to be deposited in the Current Account No. 551 being maintained in the Overseas Bank, Janakpuri Branch, New Delhi. The petitioner has filed a reply to the above mentioned application strongly opposing the prayer made therein with the request that prayer so made by the applicant as per para (a) be dismissed with costs. As regards the deposit of the awarded amount it is stated in the reply that the firm has no objection for the deposit of the said amount in the Bank in Account No. 551 being maintained in the Indian Overseas Bank, Janakpuri Branch, New Delhi but the amount so

deposited in the Bank should not be allowed to be withdrawn by either of the partners of the firm i.e. Shri Krishan Kumar Bansal (the applicant), Shri Ram Kumar Bansal and Shri Sanjeev Bansal till the liabilities of the firm are cleared and the balance amount, if any, be shared by the partners as per the partnership deed dated 1.4.89. From the contents of the application it is apparent that the applicant mainly wants his name to be substituted as the petitioner in the present proceedings. In my opinion there is hardly any force in the above prayer of the applicant and the same cannot be allowed due to the following reasons :

(i) On the basis of material on record it is apparent that the agreement in question (No. 1/EE/CD XIII/83-84) was executed between M/s. Krishan Kumar Shyam Lal Bansal Contractors, a partnership firm and Union of India (respondent No. 1). The disputes between the parties i.e. M/s. Krishan Kumar Shyam Lal and Union of India arising out of the above said agreement, in terms of Clause 25 of the agreement were referred to the sole arbitration of Shri N.H. Chandwani by the Chief Engineer(CZ), Cpwd, Sewa Bhawan, R.K. Puram, New Delhi. The award dated 30.11.90, made by the Arbitrator, does not relate to any individual but relates to the above said partnership firm and the respondent Union of India, parties to the present petition. Undoubtedly a partnership firm is not a legal entity but in terms of the provisions contained in Order Xxx CPC it can sue and be sued in its own name and on behalf of it the pleadings can be signed and verified by one of the partners. (ii) The present petition under Sections 14, 17 & 29 of the Act has been filed by Shri Sanjeev Bansal not in his individual capacity but in his capacity as one of the partners of the firm M/s. Krishan Kumar Shyam Lal Bansal, Contractors. (iii) In the reply filed to the above said application it is clearly stated that the petitioner firm is a partnership firm, registered under the Indian Partnership Act, 1932 and initially started with seven partners but later on, out of the seven partners, four partners left the partnership firm of their own free Will on 31.3.79 and another partnership deed dated 1.4.79 was executed as a result of which only three persons, namely, Shri Krishan Kumar Bansal, Shri Ram Kumar Bansal and Shri Shyam Lal Bansal remained the partners of the above said firm. Later on Shri Shyam Lal Bansal, one of the partners of the petitioner firm, retired voluntarily from the partnership w.e.f. 1.4.89 and a new partner Shri Sanjeev Bansal was inducted in place of the retiring partner w.e.f. the above said date vide partnership deed dated 1.4.89 (Annexure R-1). In the rejoinder filed by the applicant the re-constitution of the firm w.e.f. 1.4.89 in the manner stated above is admitted but the plea taken by the applicant is that the re-constitution of the firm w.e.f. 1.4.89 was only for purposes of income tax. In other words the applicant himself in the rejoinder has admitted the re-constitution of the firm w.e.f. 1.4.89 in the manner stated by the petitioner in the reply. The above admission in the rejoinder virtually takes a bottom out of the case of the applicant. (iv) From a perusal of documents annexed with the reply as Annexures R- 1, R-2, R-3, R-4, R-5 and R-6, the correctness of which is not disputed even by the applicant, it is apparent that as a result of agreement dated 1.4.89 (Annexure R-1) Shri Sanjeev Bansal, the petitioner, is one of the

partners of the petitioner firm and in his capacity as partner of the petitioner firm he is competent to sign and verify the pleadings and to institute the present proceedings on behalf of the petitioner firm in terms of the provisions contained in Order Xxx, Rule 1(2) CPC (Law of Partnership in India by S.D. Singh & J.P. Gupta, Fourth Edition P- 332). (v) Under Order I, Rule 10(2) Cpc, the Court has the power to add a party to a suit in two situations, namely, when a party ought to have been joined when the suit was originally instituted and was not so joined, or secondly, the presence of the person sought to be added is necessary to effectively and completely adjudicate upon and settle all points involved in the suit. Thus it is for effective adjudication of the real controversy between the parties that the Court can exercise its discretion vested in it. As per settled law the discretion by the Court is to be exercised sparingly and in exceptional cases because plaintiff is the "Dominus Litis" and in the normal course one cannot be imp leaded as additional party if a plaintiff does not want. In a case where the Court directs addition of a party against the Will of the plaintiff who is to control the litigation, the Court must be satisfied that there is anything in the suit which cannot be determined on account of absence of party in the party array or whether any prejudice would be caused by that party not being added. To put it differently, where a person is neither necessary nor proper party the Court has no jurisdiction to add him as a party and the question of necessary party is to be determined with reference to the averments in the plaint. If the above criterion is applied, in my opinion, the applicant decidedly is not a necessary party to the present proceedings which have been initiated on behalf of a registered partnership firm by one of the partners, namely, Shri Sanjeev Bansal.

(8) In view of the above discussion ,the prayer of the applicant for impleadment in the present proceedings, which in my opinion is devoid of substance, is disallowed . As regards the prayer for the deposit of the decretal amount in the Current Account of the firm bearing No. 551 maintained by the Overseas Bank, Janakpuri Branch, New Delhi, the position is that no such direction, legally speaking, can be issued by this Court in the present proceedings because as already stated the dispute and the award relate to the petitioner firm and the respondent Union of India and any amount that may be held as payable by the respondent Union of India under the award would be payable to the firm. In other words in such a situation the respondent Union of India would be simply under an obligation to issue a cheque for the above said amount in the name of the petitioner firm and thereafter it would be for the petitioner firm to have the same deposited with its Bankers. However, the applicant, if so advised, may agitate the question, relating to his share in the decretal amount or in the other assets of the petitioner firm before the appropriate Forum and anything stated here-in-above in the present proceedings shall not amount to expression of any views by this Court on the merits of the above aspect-

(9) The application stands disposed of in above terms. No order as to costs.

(10) is 13112/92 In view of the fact that the application filed by the applicant

Shri Krishan Kumar Bansal under Order I, Rule 10(2) read with Order Vi, Rule 17 and Section 151 CPC (IA 1756/93) for impleadment in the present proceedings has been disallowed, this application, filed by the applicant is, Therefore, not maintainable and the same is dismissed as being not maintainable in the present proceedings.

(11) is 14872/91 This is an application, filed by respondent/ applicant Union of India u/s 5 of the Limitation Act, 1963 (hereinafter referred to as the "Limitation Act") for condoning the delay in filing the objections by the respondent Union of India under Sections 16, 30 & 33 of the Act . An application or objection for setting aside an award or having it remitted for re-consideration should be made within 30 days of. the service of notice of the filing of the award. In the present proceedings, as already stated, the notice of the filing of the award is deemed to have been served on the respondent Union of India on 12.3.91. Thus, the objections should have been filed within 30 days of the service of the above said notice. As per the case of the respondent. Union of India in the present case there is a delay of 238 days in filing the objections. From a perusal of the contents of the above mentioned application it appears that one of the reasons given for delay is that the petitioner firm had entered into two different construction works vide Agreement No. 15/EE/CD XIII/ 80-81 and Agreement No. 1/EE/CD XIII/83-84. It is alleged that some disputes arose between the parties regarding both the agreements and the same were referred to the arbitration of said Shri N.H.Chandwani and that the Arbitrator published his award with regard to Agreement No. 15/EE/CD XIII/80-81 on 13.9.90 and with regard to the present agreement on 30.11.90. It is alleged that the respondent Union of India came to know to its utter surprise through a letter dated 4.9.91 purported to be from M/s. Krishan Kumar Shyam Lal Bansal Along with a copy of Court's order that the award has been made a rule of Court by Hon"ble Mr. Justice P.K. Bahri vide order dated 4.4.91 passed in S.3169/90. As per the case of respondent Union of India it was only after the receipt of the above said letter dated 4.9.91 that the respondents swung into action gave necessary instructions to the Government Counsel who inspected the judicial file of S.No. 3169/90, relating to agreement No. 15/EE/CD XIII/80-81 and not to the agreement connected with the present proceedings. It is alleged that with great difficulty after contacting the suit Branch of this Court the Government Counsel could succeed in getting the details of the present suit (Suit No. 3846/90) relating to agreement No. 1 /EE/CD XIII/83- 84. Thus, the first limb of Explanation given by the respondent Union of India appears to be misunderstanding created as a result of above mentioned two agreements executed with the same firm resulting in two awards being given by the same Arbitrator. In my opinion there appears to be hardly any substance in the above submission because in the first place the two agreements, referred to above, related to two separate and distinct works. Agreement No.15/EE/CD XIII/80-81 related to the construction of "304 Type "B" quarters at Aram Bagh, New Delhi" -whereas the present agreement bearing No. 1/EE/CD XIII/83-84 related to "Provision of 584 Balconies to Type "B" quarters

at Aram Bagh, New Delhi". Moreover, in the letter dated 4.9.91 (copy annexed with the application and marked as Annexure D-I) relied upon by the respondent Union of India, addressed to the Executive Engineer Cpwd from the contractor (petitioner firm) there is no ambiguity whatsoever. In the above said letter every detail including the nature of work has been clearly mentioned and there was hardly any occasion for any confusion or misunderstanding on the part of the respondent.

(12) In para 19 of the application it is specifically stated that on 15.11.91 the Government Counsel inspected the judicial file of S.3846/90 and found that a similar situation as in S.3169/90 prevailed in the present case also. Thus, as averred by the respondent Union of India, it was on 15.11.91 that after inspecting the file of the present case the Government Counsel came to know about the state of affairs in the present case for the first time. On 18.4.95 the attention of the learned Counsel for Union of India was invited to the above averments contained in paragraph 19 of the application and the learned Counsel for the Union of India submitted that she would like to get instructions as to whether an affidavit of the Counsel in support of the application should be filed or not. She requested for an adjournment. The case was adjourned with the directions that affidavit, if so advised, be filed within six weeks. Despite the above facts no affidavit of the concerned Advocate of Union of India in support of the averments contained in para 19 of the application has been filed so far and in the absence of the same it is some what difficult to believe that the respondent Union of India for the first time came to know about the facts of the present case on 15.11.91 through its Counsel as alleged. As per settled law, on sufficient cause being shown, an application for setting aside an award may be admitted even after the expiry of the prescribed period of 30 days. Again law is well settled that "sufficient cause" for the purpose must be a cause which is beyond the control of the party invoking the aid of Section 5 of the Limitation Act. The cause for delay in making the application, which by due care and caution should have been avoided will not be a sufficient cause. Where, however, no negligence nor inaction nor want of bona fides can be imputed to the applicant, a liberal construction of the section has to be made in order to advance substantial justice.

(13) If the above criterion is applied to the present case it cannot be stated that the respondent Union of India in the present case have acted with due care and caution. On the other hand the facts as disclosed on the basis of the contents of the application and the reply filed on behalf of the petitioner suggest that the respondent Union of India were negligent and were guilty of inaction on their part in not preferring the objections in time. No satisfactory Explanation has been offered for the inordinate delay of 238 days in filing the objections.

(14) One of the grounds taken in the application is that the Executive Engineer, Division No. 13, Cpwd, New Delhi, who signed the agreement on behalf of Union of India was a necessary party and notice of the filing of the award was never issued to the above said authority. In my opinion the above ground is wholly

misconceived. From a perusal of the copy of the agreement on record it is apparent that the agreement was executed between the petitioner firm and the President of India. The Executive Engineer, as alleged, was not a necessary party. Under Article 300 of the Constitution of India, the Government of India may sue or be sued by the name of the Union of India, as a Juristic personality. Union of India was a party to the proceedings and when Union of India was served through the Secretary to the Ministry of Urban Development, this was a proper service on the Union of India. I am also supported in my above views by a case *Ajvinder Singh Bagga v. Union of India* reported in 1992 Rlr 37, wherein it was held that u/s 79 and Order XXVII CPC summons in the case have to be sent to the Secretary to the Government or to its authorised officer. In the present case the notice was sent to the Secretary to the Government of India. Ministry of Urban Development, Nirman Bhawan, New Delhi and the same was duly served on 12.3.91. Even under the Rules of Business the Executive Engineer was not the authorised officer and it was, Therefore, not necessary to send a notice to him as alleged.

(15) Next contention that the petitioner had influenced the concerned clerk of the Ministry of Urban Development whose duty was to receive the mail, to return the notice on false and non-existent ground, is also not tenable. In the application even the name of the clerk concerned has not been mentioned against whom action is being taken by the respondent for the alleged lapse. Further in the application it has also not been explained as to who is the officer/official authorised to receive such process in the Ministry on behalf of the respondent Union of India and as to why such process was not received by that officer/official. To my mind, such a ground, taken by the applicant, is only a lame excuse, taken with a view to make out a ground for condoning the inordinate delay of 235 days which by no stretch of imagination can be a ground for the aforesaid purpose.

(16) In view of the above discussion, the above application for condoning the delay in filing the objections is hopelessly barred by time and the same is accordingly dismissed.

(17) is 14871/91 In view of the fact that application (IA 14872/91) for condoning the delay in filing the objections has been dismissed, the objections filed by the respondent Union of India are also dismissed being barred by limitation.

(18) S. 3846/90 As already stated no objections have been filed to the award on behalf of the petitioner. The objections filed on behalf of the respondent Union of India have been dismissed being barred by time. From a perusal of the award made by the Arbitrator it is apparent that the Arbitrator has awarded pendente-lite interest. The Constitution Bench of the Supreme Court in case *Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, ,* while over-ruling the earlier Three Judges Bench decision in case *Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, ,* have held that the Arbitrator has power to award pendente-lite interest.

(19) In view of the above discussion I make the award dated 30.11.91 given by Shri N.H. Chandwani respondent No. 2, a rule of the Court and a decree in terms thereof is passed. The respondent Union of India will make payment of the decretal amount to the petitioner firm within eight weeks from the date of the communication of the order otherwise the decretal amount shall carry interest @ 12% per annum from the date of the decree till payment. No interest will, however, be payable in case the decretal amount is paid by the respondent Union of India within the above said period of eight weeks. In the facts and circumstances of the case no order as to the costs. Decree sheet be drawn up accordingly and thereafter the file be consigned to Record Room.