(2009) 05 AHC CK 0057

In the Allahabad High Court

Managing Director, U.P. State Handlook Corpn. Ltd. APPELLANT

Vs

Smt. Asha Lata Talwar and Another RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Transfer of Property Act, 1882 — Section 106

Citation : (2009) 4 AWC 3226

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Judgement

Pankaj Mithal, J.—I have heard Sri Shiv Nath Singh, learned Counsel for the defendant-appellant and Sri P.K. MIsra alongwlth Sri K.K. Tiwari learned Counsel for the plaintiff-respondent No. 1. Respondent No. 2 is the arbitrator by name and is only a formal party. Learned Counsel for the parties agree for final disposal of the appeal at the admission stage on the basis of the affidavits already exchanged between them. Therefore, I proceed to decide the appeal finally.

2. The facts in nutshell giving rise to this appeal are as under:

The respondent in this appeal Smt. Asha Talwar is the owner of the shop in dispute No. 498B, Sadar Bazar, Jhansi and the appellant here in this appeal U.P. State Handloom Corporation Limited (hereinafter referred to as "Corporation") through its Managing Director is a tenant in the said shop. The tenancy started in the year 1977 and was continued lastly under the agreement of October, 1999, wherein the appellant was permitted to continue as tenant/lessee'' in the shop in dispute for a period of 5 years from 16.1.1998 to 15.1.2003 at the rent of Rs. 5,500 per month. The aforesaid agreement contained an arbitration clause No. 16, whereunder in case of dispute regarding interpretation amendment or effect of any clause of the agreement or lease or any claim or right or liability of the parties under the agreement was referable to the arbitration of the Managing Director of the Corporation and either of the parties were at liberty to invoke the arbitration clause. The agreement stipulated that on expiry of lease period, the lessee shall handover possession of the shop to the owner. It also contained a clause for the renewal of lease on such terms as may be mutually agreed upon. On the expiry of the lease there was no renewal and the possession was not handed over to the owner. Therefore, the owner invoked the arbitration clause and the dispute came up for consideration before the sole Arbitrator, i.e. Managing Director of the Corporation. The Arbitrator by an award dated 7.6.2006 ruled against the owner and held that as the Corporation had exercised right of renewal of lease, the possession is not to be given and the lease is to be renewed. Against the aforesaid award the owner preferred objections u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as an ''Act'')- The objections came to be registered as Arbitration Case No. 22/2006, Smt. Asha Lata Talwar v. Managing Director, U.P. Handloom Corporation Limited, Kanpur and Anr. The District Judge by the impugned judgment and order dated 7.11.2007 has allowed the objections and the award has been set aside. The court below further directed the Corporation to handover the vacant possession of the shop to the owner within one month and to pay arrears of rent from 1.1.2003 to 15.1.2003 and damages for use and occupation from 16.1.2003 till date of possession @ Rs. 250 per day.

3. The above judgment and order of the court below is under challenge in this appeal.

4. In the case in hand the admitted position is that the agreement between the parties do contain an arbitration clause which provides for the redressal of dispute through sole arbitrator named therein. The owner herself has invoked the arbitration clause whereupon the Managing Director entered into arbitration and made the award but the award of the arbitrator is not acceptable to the owner. Therefore, only, she had preferred objections u/s 34 of the Act. The objections have been allowed and the award has been set aside. The owner wanted the award to be set aside. Sri Shiv Nath Singh learned Counsel for the appellant for the Corporation also states that he also wanted the award to be set aside and he goes to the extent of saying that the award is a nullity. This means that both the parties contend and agree for the setting aside of the award. Therefore, to the extent the award has been set aside by the court below there is no problem to any of the party.

5. The only dispute which now remains is whether in setting aside the award, the court below is justified and is empowered to grant any further relief such as of the nature of eviction and delivery of possession and for payment of arrears of rent and damages.

6. The Act does not provide for an appeal against the award of the arbitrator. Section 34 of the Act only authorises the party aggrieved to apply for setting aside the award on the grounds specified therein viz., where the party was under some capacity; the arbitration agreement was not followed; the party was not given proper notice of the appointment of arbitrator or the proceedings or to

participate in the same; the award was in respect to a dispute which was not covered under the arbitration clause; the composition of the arbitral Tribunal or the procedure followed by it was not in accordance with the agreement of the parties; where the subject-matter was not capable of settlement by the arbitration; the award was in conflict with the public policy of India, i.e., it was not in the interest of India and was otherwise patently illegal. Thus, a distinction has to be drawn between the objections to be taken to the award u/s 34 of the Act and in preferring an appeal which is not provided under the Act. The scope and ambit of the appellate powers are naturally much wider. The appellate court not only has the power to set aside the order assailed before it but also has the power to determine the matter finally and for that purpose it also has the power to reassess the evidence on record take additional evidence and to substitute its own findings which power is clearly not vested in a Court dealing with objections u/s 34 of the Act for setting aside the award.

7. The Apex Court in the case of Food Corporation of India Vs. Indian Council of Arbitration and Others etc. etc., observed that the legislative intent underlying the Act is to minimise the supervisory role of the Courts in arbitral process and to nominate the arbitrator for redressal of dispute without wasting any time and thus leaving all contentious issue to be urged and agitated before the arbitral Tribunal itself. Thus, certainly the role of the Court in dealing with the award is very limited and is confined within the four corners of Section 34 of the Act.

8. It is well recognized that the jurisdiction of the Court to interfere with an award of arbitrator is a limited one. The Court while considering the objections against award is not obliged to reassess the evidence and to sit in conclusion of the arbitrator by re-examining and re-appreciating the evidence considered by the arbitrator as if sitting in appeal over the award. The Court in dealing with the objections u/s 34 of the Act is only required to examine as to whether the award suffers from any of the vices enumerated in the aforesaid section. The Court is also not empowered to substitute its own view or finding in place of the view taken or the finding recorded by the arbitrator. It cannot take upon itself the task of adjudicating the dispute which was referred to the arbitrator like an arbitrator or a court of original jurisdiction. Thus, where the Court found that the award of the arbitrator is contrary to the provisions of law or is against the terms of the contract or is otherwise patently illegal or is in conflict with the public policy of India or was not capable of settlement by the arbitrator or that the parties before the arbitrator were in some way incapacitated and were not given proper notice or the agreement itself was invalid could have only ordered for setting aside of the award but with no power to grant the original relief which has been claimed or prayed for before the arbitrator. The position in law is that the award of the arbitrator both on facts and law is final and there is no appeal from his verdict. Therefore, the Court cannot sit in appeal over the award and correct mistakes in adjudication either by reappraisal of evidence or by substituting by its own finding. The relief of possession, arrears of rent and damages are all subject-matters of evidence and when its reappraisal is not permitted and the Court

cannot substitute its own finding, it is not open for the Court u/s 34 of the Act to reverse the findings in refusing the above relief and to record its own finding and to extend such reliefs as if the Court was sitting in appeal or as a court of original jurisdiction or as an arbitrator. Therefore, in my view the court below had certainly exceeded its jurisdiction in directing the corporation to handover the possession of the shop in dispute and to pay arrears of rent and damages as it inherently lacked the jurisdiction in that regard.

9. This precisely is the view expressed by the Apex Court also in the case of McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, . In this case it has been laid down that the Court can only set aside the award leaving the parties free to begin again the arbitration if so desired.

10. The relevant paragraph 52 of the above citation is reproduced below:

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.

11. Sri P.K. Misra learned Counsel for the respondent No. 1 has placed much reliance upon the decision of the Supreme Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., and has submitted that the respondent No. 1 cannot be left remedy-less and she cannot be stopped from enforcing her right to evict the corporation from the shop in dispute. There can be no two opinions on the above settled principles of law that for every wrong there is a remedy and that no right of the party can be left unenforced but the situation in the case at hand is quite different. The owner is neither remedyless nor any one has stopped her from enforcing her right. On the face of the agreement on record without expressing any opinion about its validity and legality, it is clear that the shop in dispute was leased out to the corporation for a fixed period of time, i.e., 5 years. Its tenancy expired by efflux of time and any continuance by it thereafter makes it a ''tenant by sufferance.'' Therefore, the corporation is liable to be evicted by following the procedure prescribed by law only even if no notice to quit as contemplated by Section 106 of the Transfer of Property Act may be necessary Accordingly, the owner has remedy as well forum to enforce her right against the corporation either afresh through arbitration proceedings or by a separate suit. Accordingly, the submission is of no merit and it does not in any way benefit the owner.

12. The above discussion leads me to conclude that the Court u/s 34 of the Act

has only limited power to set aside the award of the arbitrator but has no authority of law to grant any further relief like a court of original or appellate jurisdiction and has to leave the parties to begin afresh.

13. In view of the aforesaid the appeal deserves to be allowed partly. The judgment and order of the court below dated 7.11.2007, passed by the District Judge in Arbitration Case No. 22/2006, Smt. Asha Lata Talwar v. Managing Director, U.P. Handloom Corporation Limited, Kanpur and Anr. is set aside only to the extent it grants benefits of possession/eviction, arrears of rent and damages for the use and occupation of the shop in dispute with liberty to the owner to take recourse to whatever legal remedy is otherwise available to her under law for the redressal of her grievance.

14. No orders as to costs.

