
(2005) 12 DEL CK 0044

In the Delhi High Court

Case No : IA No. 3469 of 1994 and CS (OS) No. 456 of 1993

Modern Food Industries (India) Ltd.

APPELLANT

Vs

Raj Narain Pratap Narain Rolling Enterprises (P) Ltd.

RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:

Arbitration Act, 1940 — Section 30, 31(2), 33

Citation : (2006) 126 DLT 627

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : R.K. Mittal and Ritu Gupta, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

IA No. 3469/1994 IN CS (OS) No. 456/1993

1. At the inception, there was some doubt whether this Court should take up the matter in view of increase in the pecuniary jurisdiction of this Court, but the subsequent notification dated 22.08.2003 issued has been brought to the notice of this Court where such matters are liable to be retained and orders have been passed in this behalf. It may be clarified that in view of the provisions of Sub-section (2) of Section 31 of the Act, the award having been filed in the present Court, it is this Court which would have the jurisdiction to hear and determine the present controversy.

2. The petitioner had awarded a contract to the respondent for supply, installation and commission of an automatic slicing and wrapping machine for manufacture of bread. Disputes arose between the parties on account of the allegation of the petitioner that the respondent had failed to perform its obligations under the contract / purchase order, while on the other hand the grievance of the respondent was that the amounts due under the contract had

not been paid.

3. In view of an arbitration clause existing under the contract, the matter was referred to the sole arbitration of Shri K. Ravindran Nair, who made and published the Award on 14.11.1992. The petitioner aggrieved by the same filed the present objections.

4. Learned counsel for the petitioner has taken me through the pleadings and even the documents on record. Learned counsel insisted that the documents must be read to come to the conclusion whether there has been proper appreciation of the material by the learned Arbitrator.

5. In my considered view, the approach is fallacious for the reason that it is not the function of this Court to re-appreciate the evidence. This would amount to the court sitting as a court of appeal, which is not permissible in law. 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 same set of facts and evidence on record as compared to the conclusion of the Arbitrator. It is only in the eventuality of the award being totally perverse that such an interference is called for as held by the Division Bench of this Court in *Delhi Development Authority v. Bhagat Constructions Co. (P) Ltd.*, 2004 (3) Arb. LR 481. The Apex Court has, in fact, 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 by an arbitrator is not ordinarily a matter for the Court. In appreciating the award, the matter does not need to be proceeded with by reference to each clause of the contract, but what has to be seen is that something which is not provided for at all in the contract is not awarded by the Arbitrator. Insofar as the interpretation of the contract is concerned, the same is a matter for the arbitrator and on which the court cannot substitute its own decision as observed by the Apex Court in *Sudarsan Trading Co. Vs. Government of Kerala and Another*,

6. In *Arosan Enterprises Ltd. v. Union of India and Anr.*, 1993 (3) Arb. LR 310, the Supreme Court once again examined the scope of the scrutiny by a court under Sections 30 and 33 of the Arbitration Act, 1940 (hereinafter to be referred to as, "the said Act"). It was held that use of the expression "shall" in the body of the Section makes it mandatory that the award of an arbitrator should not be set aside except for the grounds as mentioned therein. The common phraseology "error apparent on the face of the record" was, thus, held not to mean and imply closer scrutiny on merits of the documents and material on record. The Supreme Court observed that in *State of U.P. v. Allied Constructions*, 2003 (3) Arb. LR 396 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, the award cannot be set aside.

7. Learned counsel for the petitioner sought to emphasise that the basic substratum of the contract was not only that the machinery should be delivered, but that the machinery should be installed, commissioned and should perform

satisfactorily for a period of 3 months. It is only on completion of all the three aspects that the contract can be said to have been performed. It is also submitted that in the contract itself it was emphasised that if the petitioner was not satisfied with performance of the machinery, it was open for the petitioner to return the machinery and it is submitted that this offer was so made.

8. A perusal of the award shows that detailed reasonings have been set out on each of the issues raised before the learned Arbitrator. The basic issue is itself was whether the machinery contracted to be supplied was as per specifications. In respect of this, the issue arose out of the purchase order where in clause 8, it was provided that damages for breach of contract would arise in case the supply of equipment was not as per the specifications shown in the catalogue. One of the grievances of the petitioner was about spare band blades. The Arbitrator has noticed that the list of accessories mentioned in the catalogue did not include these blades, but in the specifications in the purchase order, the spare band blades have been mentioned. The quantity had not been mentioned.

9. The material fact in respect of the aforesaid is that no document was placed on record to show that the petitioner had informed the respondent regarding non- receipt of the spare blades along with the machine. The first time a mention in this behalf is made is in the communication dated 31.08.1988 of the petitioner requesting the respondent to hand over one set of blades to their representative and receipt of the same is acknowledged on the side of the letter. There is also other communication available to show supply of the said blades.

10. The aforesaid issue has been raised even though the grievance really made in the letter dated 05.01.1990 of the petitioner is that there is some problem with performance of the machinery and the grievance is not that there was non-supply of blades or there is some problem arising as a consequence thereof. The Arbitrator has found that not only was the machinery supplied and commissioned, there was no grievance regarding its performance within the stipulated period of 3 months.

11. The communications on record show that the period of 3 months expired without any grievances. If the grievances arose, they were subsequent and, thus, it could not be said that the machinery was not supplied and commissioned and the 3 months had not expired. The property and goods, thus, had passed, in view of the three things happening, in terms of The Sale of Goods Act, 1930.

12. The Arbitrator found that the petitioner had paid only 30% of the initial amount and the balance amounts were not paid. The amounts have been awarded for this balance payment which the petitioner has failed to remit to the respondent.

13. Insofar as the plea about the return of machinery and the option being available to the petitioner to that effect is concerned, the Arbitrator found that no such option was exercised during the period under the contract for such option. The machinery was commissioned in August, 1988 and the period ended in

November, 1988. Whatever communications were exchanged in respect of the offer to return the machinery, the same were well beyond the said period of time.

14. It is in view of the aforesaid context that the Arbitrator has awarded the sum of Rs. 4.5 lakhs for the balance 60% of the price and that was required to be released on or before 31.01.1993. The 10% balance value of Rs. 0.75 lakhs was to be released by 31.07.1993 and Form C had to be provided, failing which, sales- tax was to be paid by the petitioner.

15. In my considered view, the Arbitrator has correctly appreciated the terms and conditions of the contract and the purchase order and has come to a finding on the basis of the appreciation of material before the Arbitrator, which does not call for any interference.

16. Dismissed.

CS (OS) No. 456/1993

17. The objections having been dismissed and there being no other impediment in law, the Award dated 14.11.1992 of the Sole Arbitrator, Shri K. Ravindran Nair is made Rule of the Court. The respondent shall be entitled to interest @ 12% p.a. from the date of the award till the date of decree and shall be further entitled to interest @ 9% p.a. from the date of decree till the date of payment taking into consideration the prevailing market rates of interest at the relevant period of time. The respondent shall also be entitled to costs of the present proceedings quantified at Rs. 7,500/-.

18. Decree-sheet be drawn up accordingly.