

(1999) 02 DEL CK 0030

In the Delhi High Court

Case No : IA No. 1796/99 and S.No. 2281/91

Mohta Finance and Leasing Co. Ltd.

APPELLANT

Vs

M/s. Lustre Tiles Ltd. and Others

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Citation : (1999) 2 AD 347 : (1999) 3 RCR(Civil) 492

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. S.P. Aggarwal and Ms. Meenu Aggarwal, for the Appellant; Mr. P. Nagesh, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By this order, I propose to dispose of the objections filed by the petitioner against the award dated 20.4.1991.

2. The relevant facts which are necessary for the consideration of the objections against the award are that by the agreement dated 22.6.1984, the petitioner leased out certain equipment to the respondent on payment of lease rentals specified therein. The respondents paid lease rentals to the petitioner up to January 1985 and thereafter committed default and payment was not made in spite of several demands having been made by the petitioner. The disputes and the differences arising out of the said agreement were referred to the arbitral Tribunal in terms of the arbitration agreement. The arbitral Tribunal made the award on 20.4.1991. The petitioner not being satisfied with the award filed objections on 26th February, 1994.

3. The petitioner preferred a claim of Rs.15,69,527.85 before the arbitral Tribunal. The break up of the said claim is as under :

1. Lease rentals @ Rs.19,978/- p.m. from Feb. 1985 to June, 1989 and from Jul. 1989 to Sept. 1989 @ Rs.714/- p.m. aggregating Rs.1001042/- less part payments received Rs.199780/- from to time. 8,01,262.00 2. Interest from Feb. 1985 to September 1989 @ 2.5% p.m. or part thereof on compounding

basis with monthly rest in terms of clause No. 2.2 of the Lease Deed No. PL-26 dated 22nd June 1984. 9,36,980.88 3. Rentals to be received @ Rs.714/- from October 1989 to June 1992 in terms of Clause No. 8.2.2.(a) of the said lease deed on termination of lease deed. 23,562.00 4. Liquidated damage in terms of clause 2.4 of the said lease deed @ 2.5% of Rs. 7,13,500.61 being cost of acquisition. 17,837.52 5. Interest @ 18% p.a. for the month of October 1989 on Rs.15,45,347.64 in terms of clause 8.2.2(c) of the lease deed. 23,180.21 ----- 18,02,822.61 less amount of security and interest aggregating to Rs. 234294.76 adjusted in July, 1989. 2,34,294.76 ----- Net due 15,69,527.85 -----

4. The petitioner is aggrieved by the rejection of claim Nos. 2 and 4 by the arbitral Tribunal. The question for consideration is : Whether the arbitral Tribunal has committed a patent illegality in rejecting the claim Nos. 2 and 4. The submissions of the learned counsel for the petitioner may be summarised in the following propositions:-

(i) That the arbitral Tribunal has not assigned any reason for rejecting the claim Nos. 2 and 4?

(ii) That the rejection of the aforesaid claims by the arbitral Tribunal is wholly erroneous as the Tribunal has acted contrary to the terms of the contract.

5. Learned counsel for the petitioner contended that while rejecting the claim No. 2, the arbitral Tribunal has failed to take into consideration that as per clause 2.2 of the agreement dated 22.6.1984 the petitioner was entitled to get interest on arrears of lease rentals @ 2.5% p.a. on compounding basis with monthly rests. He further contended that the arbitral Tribunal has also failed to consider the effect of clause 2.4 of the agreement which confers a right on the petitioner to recover liquidated damages @ 2.5% at the cost of acquisition of the leased equipment. According to the learned counsel, the arbitral Tribunal committed a patent illegality in rejecting the petitioner's claim Nos. 2 and 4 without assigning any reasons therefore. It is significant to mention that while making the award, the arbitral Tribunal has noted the rival contentions of the parties in respect of the said claims but reasons for their rejection have not been recorded in the award. Under the Arbitration Act, 1940, a non-speaking award was permissible and was also outside the purview of judicial scrutiny since the courts cannot probe into the mental process of the arbitration to find out the reasoning which compelled him to arrive at his decision.

6. The ground for impeaching a non-speaking award and its limitations have been explained by the Apex Court in M/s. Sudarsan Trading Co. Vs. Govt. of Kerala 1989 SC 890 as under : -

"An award may be remitted or set aside on the ground that the arbitrator in making it, had exceeded his jurisdiction and evidence of matters not appearing on the face of it, will be admitted in order to establish whether the jurisdiction had been exceeded or not, because the nature of the dispute is something which

has to be determined outside the award - whatever might be said about it in the award or by the arbitrator. See in this connection, the observations of Russell on the Law of Arbitration, 20th Edn., 427. Also see the observations of Christopher Brown Ltd. Vs. Ganossenschaft Oesterreichischer (1954) 1 QB 8 and Dalmia Dairy Industries Ltd. Vs. National Bank of Pakistan (1978) 2 Lloyd's Rep. 223. It has to be reiterated that an arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award. In Halsbury's Laws of England (4th Edn., Vol. 2, para 622) one of the misconducts enumerated is the decision by the arbitrators on a matter which is not included in the agreement or reference. But in such a case one has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. See the observations in Anisminic Ltd. Vs. Foreign Compensation Commission (1969) 2 AC 147 and Regina Vs. Nosedo, Field, Knight & Fitzpatrick (1958) 1 WLR 793. But, in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the decision, the arbitrator had acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and as such, beyond jurisdiction. It has to be determined that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised....."

The learned Judge further proceeds to point out that Courts are sometime persuaded to rely on this ground to set aside an award when, actually, what they were embarking upon was an interpretation of the contract and a criticism of the arbitrator's approach thereto. It is clear that this is what has happened in the present case also. We have already mentioned that the High Court has not rested its decision on any question of the arbitrator having exceeded his jurisdiction or travelled beyond the contract; it has clearly held it to be a case of "error apparent on the face of the award". In our view, the case cannot be brought within the scope of the "excess of jurisdiction" rule either."

7. In a recent judgment rendered by the Supreme Court in M/s. M.K. Shah Engineers and Contractors Vs. State of Madhya Pradesh, :

"... award is not vitiated merely because the arbitrator has not given item-wise award and has chosen to give a lumpsum award. A lumpsum award is not a bad award. So also it is well-settled that an award need not formally express the decision of the arbitrator on each matter of difference nor is it necessary for the award to be a speaking one. It will be presumed that the award disposes of finally all the matters of difference..."

8. For the reasons discussed above, the objections raised by the petitioner deserve to be rejected.

9. In the result, the objections filed against the award are rejected. The award dated 20.4.1991 is made a rule of the Court. The award dated 20.4.1991 shall form part of the decree. No order as to costs. A decree be drawn up accordingly.