
(2009) 08 DEL CK 0347

In the Delhi High Court

Case No : FAO No. 255 of 2009 and CM No. 11344/09

Mr. Rakesh Gulati

APPELLANT

Vs

Mr. Tilak Raj Salooja and Mrs. Janak Salooja

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 12, 13, 30, 33, 34

Citation : (2009) 08 DEL CK 0347

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Chetan Sharma and M.G. Vacher, for the Appellant; Nemo, for the Respondent

Judgement

V.B. Gupta, J.—Present appeal has been filed against judgment dated, 1st July, 2009, passed by Additional District Judge, Delhi, vide which appellant's petition u/s 34 of Arbitration & Conciliation Act, 1996 (for short as "Act"), against award dated 11th March, 2008, passed by sole Arbitrator was dismissed.

2. Disputes arose between the parties on account of non-payment of rent by the appellant. Accordingly, respondents invoked the Arbitration clause and Mr. Vijay Tandon, Advocate was appointed as sole Arbitrator, who gave his award on 11th March, 2008.

3. Aggrieved by the award, appellant filed petition before the trial court, which was dismissed vide impugned judgment.

4. It is contented by learned Counsel for appellant that the appellant was deprived of his legitimate right to contest the case only on the ground that the fee of the arbitrator was not given in time. The Arbitrator also deprived the appellant of his opportunity to come in witness box and cross-examine the witness of claimant.

5. It is also contended that when arbitrator refused to give date to the appellant, he (appellant) moved an application u/s 12 & 13 of the Act, stating that he could

not pay the fee due to circumstances stated in the application and in case of non-payment of fee, the arbitrator could pass an award and claim his fee from the appellant, but, arbitrator instead of passing any order on this application, passed the award, which is against law and facts on record.

6. The appellant assailed the award before the trial court on following grounds:

- (a) The petitioner was not given an appropriate opportunity to defend his case.
- (b) No evidence has been led by the petitioner to prove his case.
- (c) No intimation of the orders passed by arbitrator on 8.2.2008 was given to the petitioner and even the certified copy of the award was not given to the petitioner on the ground that he did not pay the fee of the arbitrator.

7. Section 34 of the Act read as under:

34. Application for setting aside arbitral award-(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3)

(2) An arbitral award may be set aside by the court only if-

(a) the party making the application furnishes proof that-

- (i) a party was under some incapacity; or
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds that-

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation- Without prejudice to the generality of Sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or , if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal;

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application with a further period of thirty days, but not thereafter.

(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.

8. Supreme Court in Grid Corporation of Orissa Ltd. and Another Vs. Balasore Technical School, held that;

The award of the Arbitrator is ordinarily final and conclusive as long as the Arbitrator has acted within its authority and according to the principle of fair play. An Arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the court to set aside the award is restricted to cases set out in Section 30 of the Arbitration Act. It is not open to the Court to speculate where no reasons are given by the Arbitrator, as to what impelled him to arrive at his conclusion. If the dispute is within the scope of the arbitration clause it is no part of the province of the court to enter into the merits of the dispute. If the award goes beyond the reference or there is an error apparent on the face of the award it would certainly be open to the court to interfere with such an award.

9. Keeping in view the law laid down in Grid Corporation (Supra), it is to be seen as to whether Arbitrator has acted within its authority and according to principle of fair play.

10. As per impugned judgment, it is apparent that appellant himself was negligent in conducting the proceedings before Arbitrator, though Arbitrator gave him various opportunities to lead evidence and to prove his case.

11. Relevant findings of the trial court are as under:

13. I have considered the above stated submissions and I am of the opinion that

as regards the fairness of Sh. Vijay Tandon, Advocate, I do not find any material on record in support of contentions of the petitioner. The arbitral proceedings would show that the petitioner had been adopting frustrating tactics and Sh. M. G. Vacher, Advocate though started appearing on behalf of petitioner but he did not even file his Vakalatnama. On 20.11.2007, the arbitrator kept on waiting till 3.15pm but respondent did not file written statement and counter claim despite last several opportunities. Therefore, the arbitrator was constrained to close the opportunity to file WS and counter claim vide order dated 20.11.2007. On 12.12.2007 Sh. M. G. Vacher, Advocate appeared on behalf of respondent and filed WS and counter claim. On 17.12.2007 the arbitrator recalled his order of proceeding ex-parte accepted the WS and counter claim. The evidence on affidavit was taken but Sh. M. G. Vacher, Advocate did not file his Vakalatnama. On 11.1.2008 Sh. S. B. Patnayak, Advocate for lessee (i.e. the present petitioner) appeared but Vakalatnama was also again not filed. On 17.12.2007 a cost of Rs. 2000/- was imposed upon the petitioner. The cost was also not paid by him. One more opportunity was given to the petitioner for compliance of the cost etc.

14. On 22.1.2008, Sh. M. G. Vacher, Advocate filed his Vakalatnama and sought an application for compliance of the payment of cost. Matter was fixed for 28.1.2008. The arbitrator waited up to 3.50 pm for the lessee but none appeared for him or the condition of payment of cost and arbitral fees were complied with. Therefore, the arbitrator published the award on 11.3.2008.

15. The entire proceedings would show that the petitioner had not cooperated with the arbitrator and though the arbitrator has shown a lot of patience and given latitude, which was more than required, the petitioner kept on flouting the compliance of the order of arbitrator. However, throughout the arbitration proceedings, not even a single allegation about the unfairness or the misconduct of the arbitrator has been leveled. Further-more even before this Court, the petitioner has not been able to show as to how the sole arbitrator was unfair or biased.

16. There is no allegation that any party to the agreement was under any capacity or with the arbitration agreement was not valid. Nor it is alleged that the arbitral award was beyond the terms of the agreement. The award is also challenged on the ground that possession of the arbitral tribunal was not in accordance with the agreement. There is nothing in this matter to show that the dispute is not capable of settlement under the law.

17. Nothing has been brought on record by the petitioner to show that the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81 of the Act.

18. Therefore it cannot be said that the arbitral is in conflict with the public policy of India.

12. Thus, the appellant was given sufficient opportunity to file his written

statement as well as counter claim, which after a loss of hiccups, he did. Thereafter, he did not take part in proceedings for which no justified cause has been shown by him. So, it cannot be said that appellant was unable to present his case before the arbitrator. The Arbitrator in the present case has acted within its authority and according to the principle of fair play.

13. Under these circumstances, there is no infirmity or illegality in the impugned judgment. Thus, there is no merit in this appeal and same is accordingly, dismissed.

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14. Since, the appeal has been dismissed, the present application for stay also stand dismissed.

15. No order as to costs.