

(2012) 02 BOM CK 0235

In the Bombay High Court

Case No : Arbitration Petition No. 533 of 2010

Mrs. Sheeba Jose Flat No. A/502, Suncrest, Accolade Galaxy, near LIC Service Road, Navapada Road Thane and Mr. Jose Paramban Ouseph M/s. United Shipping Marine (I) Pvt Ltd
4th flr, Anurag Business Centre, V.T. Marg, Chembur, Mumbai
Vs

APPELLANT

Mr. Subramanian S. Iyer C501, Priyambadha CHS Ltd
Vaithara Nagar, Nahur Village, Mulund (W), Mumbai and Mr.
G. J. Kodwaney (Sole Arbitrator) 29C/ 12, Manish Rose, Four
Bungalows, Andheri (W) Mumbai

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2012) 2 BomCR 494 : (2012) 4 MhLj 887

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : C.I. Motagi, for the Appellant;

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Heard finally as listed on final hearing Board.

2. The Petitioners have invoked Section 34 of the Arbitration and Conciliation Act, 1996(for short, the Arbitration Act, 1996) and thereby challenged the impugned Award dated 29th September, 2008 passed by the sole arbitrator and thereby directed the Petitioner to Pay Rs. 17,00,000/and with interest. The Award itself shows that the Petitioners were not present when the Award was passed.

3. Para No.2 of the Award mentioned as under itself shows that by letter dated 13/08/2007, Respondents appointed arbitrator unilaterally.

By a letter of appointment dated 13/08/2007 The Claimant appointed me as a sole arbitrator and tendered 15 days notice to the Respondents. As no concurrence has been received by me from the Respondents to the notice dated 13/08/2007 of the Claimant, I entered into the arbitration and issued directives

to the Claimant and the Respondents by my directives dated 19/11/2007. The copies of the above referred directives were sent by Regd.A. D.and under Certificate of Posting to the Claimant as well as the Respondents. The directives were received by the Claimant as well as respondent No.2 i.e. M/s. United Shipping Marines(I)Pvt Ltd, however, directives addressed to the Respondent No.1 were returned back undelivered to the Respondent No.1 i.e. Mrs.Sheeba Jose.

4 The arbitration clause No.20 which is reproduced below:

Arbitration: In case of any dispute or difference arising at any time between the parties hereto as to the interpretation or effect of the Agreement or any clause or matter herein contained or the rights or liabilities of the Parties hereto or otherwise howsoever in relation to the Agreement, the same shall be referred to arbitration by a sole arbitrator, to be nominated jointly by the parties. The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or enactment thereof for the time being in force. The seat of arbitration shall be Mumbai, India and the language shall be English.

It shows that the sole arbitrator should be appointed/nominated jointly by the parties. There is nothing on the record to show that the Petitioners have given any consent and/or nominated the arbitrator. The appointment of arbitrator itself in my view, contrary to the agreement in question is illegal and impermissible. Therefore, all the proceedings before the arbitrator should also face the same consequences.

5. It is clear from the above para itself that even notices of the arbitration were never served upon the Petitioners and therefore, the Petitioners were never appeared before the arbitrator. There was no question of filing any Written Statement and/or opposing the claim of the Respondents.

6. In view of the above, without going into the merits of the matter and admittedly the Petitioners were absent and Award so passed imposing amount to the extent of Rs.17,00,000/against the Petitioners, in my view, therefore illegal and contrary to law, and definitely in breach of principle of natural justice.

7. Resultantly, the Petition is allowed. The impugned Award is quashed and set aside. However, liberty is granted to the Respondents to take steps in accordance with the arbitration and law. No costs.