

(1981) 01 DEL CK 0030

In the Delhi High Court

Case No : E.A. No. 187 of 1980 in Execution No. 40 of 1980

M/s. C.B. Tanwar and Co.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 23-01-1981

Acts Referred:

Arbitration Act, 1940 — Section 14, 15, 16, 41
Civil Procedure Code, 1908 (CPC) — Section 151, 47
Constitution of India, 1950 — Article 309

Citation : AIR 1981 Delhi 159

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : R.K. Lakhanpal, for the Appellant; Narinder Singh, for the Respondent

Judgement

J.D. Jain, J.—This is an application u/s 47 read with Section 151 of the CPC and with Section 41 of the Arbitration Act thereafter referred as the Act) on behalf of the judgment-debtor. The facts leading to this application succinctly are that Shri Ram Babu, decree-holder entered into a contract with the judgment-debtor - Union of India for the execution of the work of "widening and strengthening of Ring Road Phase III from Dhaula Khan R/A to Najafgarh R/A part of Dhaula Khan roundabout from CH 8000 towards Naraina SH Road formation sub-base and water bound macadam carriage way" under agreement bearing No. 10/ EE/ PWDV/74-75. Some disputes arose between the parties and the same were referred to an arbitrator appointed by the Chief Engineer, Delhi Administration, pursuant to an arbitration clause contained in the agreement. Shri N. C. Gupta, respondent No. 3, who was the sole arbitrator, made and published his award on 21st Dec, 1978. He awarded Rs. 67,881.52 p. to the petitioner with respect to the claims preferred by him. He also awarded Rs. 81,050.98 p. to the judgment-debtor - Union of India against the claimant-D. H. with the result that he awarded a net claim of Rupees 13,169.46 P. to the Union of India against the claimant-D. H. Upon an application having been made by the claimant u/s 14 of

the Act, being Suit No. 173-A/ 79, the award was directed to be filed in Court and the said direction was duly complied with. Thereupon, the decree-holder-claimant filed objections (I. A. 1526/79) alleging that the arbitrator had misconducted himself in the proceedings and that there was an error apparent on the face of the award. He challenged the award regarding claim of Union of India for Rs. 71,191.14 p. against the claimant-D.H. On account of difference of costs on getting the work executed for and on behalf of the claimant from another contractor. No other part of the award was, however, called in question. There was no appearance on behalf of the judgment-debtor - Union of India and therefore, ex parte proceedings were taken against them. Eventually, this Court (Sultan Singh, J.) vide its order dated 29th November, 1979, upheld the objection raised by the claimant-decree-holder finding that the award suffered from an error apparent on its face and as such the arbitrator had misconducted himself in holding that a sum of Rupees 71,129.14 p. was payable by the claimant-D. H. to the department i. e. Union of India on account of difference of cost in execution of the remaining work. Consequently, the award was modified to that extent and a sum of Rs. 57,960.08 p, having been found payable to the claimant-decree-holder by the Union of India, a decree for the same was passed in favour of the decree-holder against the judgment-debtor - Union of India along with future interest on the said amount at 9% per annum from the date of decree till payment.

2. The Delhi Administration, who was one of the respondents in petition u/s 14 of the Act, has filed the instant objection petition challenging the validity and legality of the award on the following grounds:-

(1) That the decree has been passed in favour of M/s. C. B. Tanwar & Company, which is a sole proprietary concern, even though no proceedings could be taken in the name and style of the business under Order XXX or Order X of the Code of Civil Procedure.

(2) That the execution petition has been moved by Shri Ram Babu as sole proprietor of M/s. C. B. Tanwar & Co. but he is not competent to do so unless the decree sheet and the award is amended accordingly.

(3) That this Court had no jurisdiction or power to modify the award and enhance the amount payable to the claimant-decree-holder by disallowing the claim of the judgment-debtor - Union of India. It could only act within the four corners of the various clauses contained in Section 15 of the Act and by overriding the express provisions thereof, it has exceeded its jurisdiction and made a substantial modification in the award. Hence, the decree based on the modified award is a nullity, being without jurisdiction. It is urged that the Court ought to have remitted the award u/s 16 of the Act in case the arbitrator had left undetermined any of the matters or if there was any objection to the legality of the award apparent on the face of it.

3. The objection petition is opposed by the claim ant-decree-holder, who has

averred that the application from the very beginning was in the name of Shri Ram Babu, sole proprietor of M/s. C. B. Tanwar & Co. and as such the validity and legality of the decree cannot be called in question on the ground that it was in the name of firm M/s. C. B. Tanwar & Co., a proprietary business of the decree-holder. On merits, it is urged that the award has been rightly modified u/s 15 of the Act having regard to the dictum laid in The Upper Ganges Valley Electricity Supply Company Ltd. Vs. The U.P. Electricity Board, . Thus, there was no question of the Court overriding the express provisions of clauses (a), (b) & (c) of Section 15 of the Act. It is pointed out that there is no enhancement of the amount of the award inasmuch as the amount awarded to the claimant-D.-H. has been allowed by the Court and the award was struck down only with respect to the amount which had been allowed by the arbitrator to the judgment-debtor-Union of India.

4. Before embarking upon a discussion on the points in issue, it may be pertinent to add here that an application was also made by the Delhi Administration (I. A. 2191/80) under O. IX Rule 13 read with Section 151 of the CPC and Section 41 of the Act for setting aside the ex parte decree in question but the same was dismissed by me vide order dated 9th December, 1980, primarily on the ground that the Delhi Administration not being a legal entity was not competent to move such an application, more so when there was no decree against Delhi Administration as such. A similar argument has been advanced by the learned counsel for the decree-holder against the maintainability of the present petition. However, it is to be noted that the instant application has been moved by Shri Narinder Singh, Government Counsel, on behalf of the judgment-debtor and not on behalf of Delhi Administration as such. While conceding that Delhi Administration is not a juristic person in the sense that it can sue or be sued in its own name, he has canvassed that Delhi Administration can act on behalf of Union of India with respect to the matters falling within its domain and concerning the affairs of Union Territory of Delhi. This contention of his appears to be well founded. It is pertinent to note that Section 34 of the Delhi Administration Act 1966, declares that all contracts in connection with the administration of Delhi are contracts made in exercise of the executive power of the Union and all suits and proceedings in connection with the administration of Delhi have to be instituted by or against the Government of India. That being the legal position, there appears to be no valid reason as to why Delhi Administration cannot act on behalf of the Union of 1981 India in relation to matters falling within its own sphere of administrative functions. This view seems to find support from a Division Bench judgment of this Court in H.L. Rodhey and Others Vs. Delhi Administration and Others, , in which the learned Judges discussed almost the entire law on the subject as regards the status of Union Territory of Delhi as a State. While holding that the Union Territory of Delhi is not a State and the President has power under proviso to Article 309 of the Constitution to make rules for central services in Delhi, their Lordships further held that the Administrator of Delhi, with an express direction to him by the President under

that proviso to make such rules, has similar power. A fortiori, there is every justification for Delhi Administration to act on behalf of the Union of India with respect to matters pertaining to their own administrative functions and duties. Admittedly, the contract to which the award in question pertains was in relation to work of construction on behalf of Delhi Administration, although as required by Section 34 of the Delhi Administration Act it had to be executed in the name of President of India. So, there is no good ground why Administrator cannot act on behalf of Union of India in relation thereto. In other words, the Delhi Administration is competent to act on behalf of Union of India in a matter like this. So, this objection is devoid of any force.

5. On merits, the principal submission made by the learned counsel for the judgment-debtor is that the ex parte decree is a mere nullity as being without jurisdiction. The argument advanced is that the jurisdiction of the Court to modify the award is circumscribed and limited by specific provisions contained in Section 15 of the Act and modifications and corrections of the award by the Court must be confined to the said section. In other words, if a Court goes beyond that and makes substantial modifications because it takes a different view from that held by the arbitrator as to what was just and fair, it acts without jurisdiction. This proposition of law cannot be called in question so far as it goes. However, a perusal of the order dated 29th November, 1979, of my learned brother (Sultan Singh, J.) clearly shows that the award was not modified by invoking any of the provisions embodied in Section 15 of the Act; rather it was set aside in part on the ground that the arbitrator had awarded Rupees 71,129.14 P. to the department on account of difference in the costs of execution of the work contrary to law and the award suffered from an error apparent on the face of it. Further his Lordship held that the findings given by the arbitrator under counter-claim (B) and counter-claim (J) were contradictory and inconsistent. Thus, on the authority of K.P. Poulose Vs. State of Kerala and Another, , it was held that the same amounted to legal misconduct and the award was liable to be set aside on that score. However, having regard to the fact that the arbitrator had separately determined the various items of claim and the counter-claim, his Lordship was of the view that the award was separable and it was not necessary, therefore, to remit the award to the arbitrator. Reliance in this connection was placed on the dictum laid in The Upper Ganges Valley Electricity Supply Company Ltd. Vs. The U.P. Electricity Board, . In view of the legal position enunciated by the Supreme Court in the said authority, it cannot be said by any stretch of reasoning that this Court did not have the jurisdiction to set aside the award in part i.e. in relation to a claim which was severable from other claims and counterclaims. Hence, modification of the award was an inevitable consequence of this finding. This ground of attack against legality and validity of the ex parte decree, therefore, falls to the ground.

6. The second objection raised by the learned counsel for the judgment-debtor is equally ill-founded. It is true that it is not open to a person who is carrying on business as sole proprietor to institute a suit in the name of his firm or trading

style and he must sue in his own name as an individual. It is equally true that application u/s 14 of the Act had been initially made in the name of M/s. C. B. Tanwar & Co. through its sole proprietor Shri Ram Babu. However, a glance at the said application would show that necessary correction was made and Shri Ram Babu, sole proprietor of M/s. C. B. Tanwar & Co. was shown as the applicant. Significantly, the application was signed by Ram Babu as petitioner and even the caption of the case in the order dated 29th November, 1979 of this Court is "Shri Ram Babu, Sole Proprietor M/s. C. B. Tanwar & Co. v. Union of India". Hence, a decree was passed in favour of the petitioner accordingly. However, it would appear that somehow the decree sheet has not been drawn up in conformity with the judgment and the firm M/s. C. B. Tanwar & Co. through its sole proprietor Shri Ram Babu has been shown as the decree-holder. I do not think that anything would turn merely because of this clerical or typing mistake on the part of the office in drawing up the decree. All that can be said under the circumstances is that it is a case of misdescription and nothing more. Certainly, it does not, in any manner, affect the legality of the decree and the defect, if any, is curable one. Hence, virtually nothing turns on this objection of hyper-technical nature.

7. A feeble attempt was also made by the learned counsel for the judgment-debtor, during the course of arguments, that the property of Delhi Administration cannot be attached in execution of a decree against Union of India. However, this contention is simply fallacious having regard to what has already been said above. Suffice it to remark that Delhi Administration is a part and parcel of Union of India and as such it is open to the decree-holder to attach any property of the latter at his option for realising the decretal amount.

8. As a result, I dismiss the objection petition, as being without merit, and direct that the Reserve Bank of India be required to deposit the attached amount of Rs. 66,000/- out of the account of Public Works Department, Division No. V, Delhi Administration, in this Court within a month. The office is, however, directed to work -out the actual amount due to D, H. up-till the date of attachment.

9. Be listed before the Deputy Registrar on 27th February, 1981, for further proceedings.