

(2001) 09 DEL CK 0064
In the Delhi High Court
Case No : Suit No. 1917A/96

M/s M.K. Enterprises

APPELLANT

Vs

M/s Creative Knit Crafts and another

RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Arbitration Act, 1940 — Section 14, 17

Citation : (2001) 60 DRJ 818

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. Pravin Nigam, for the Appellant;

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—This is a petition under Sections 14 and 17 of the Arbitration Act for making the award dated 29.5.1996 for Rs. 6,25,983.75 as rule of the court.

2. By way of I.A. 12410/96, respondents have challenged the validity of the award by raising the following objections:-

i) That the objector is not a member of Delhi Hindustan Mercantile Association nor did it ever agree for arbitration of the dispute to the Delhi Mercantile Association and as such entire reference initiated by the arbitrator is null and void and is liable to be set aside.

ii) That there is no legal, valid arbitration clause between the parties and the arbitrator had become functus-officio after expiry of stipulated period of four months as the reference was made on 22.11.1995 and the award was made on 29.5.1996.

iii) That the Arbitrator committed grave misconduct in proceeding ex-parte as no notice was ever served upon the respondents on 8.5.1996. Even otherwise it was incumbent upon the arbitrator to give notice while proceeding ex-parte against the respondents and since no such notice was ever given and served upon the

respondent the proceedings are bad in law.

iv) That the petitioner had made compromise agreement with the respondents wherein the petitioner agreed to withdraw the claim. In spite of this, arbitrator proceeded ex-parte against the respondents.

3. The very fact that the respondents had appeared before the arbitrator and started the compromise talks with the petitioner show that the respondents participated in the proceedings that were pending before the arbitrator. Thus it was well was aware of the claim of the petitioner. In other words, respondents had submitted to the arbitration proceedings and rightly so as the perusal of the contract shows that it contains arbitration clause.

4. Perusal of the record also shows that the original claim of the petitioner was for Rs. 9,35,765 inclusive of the interest but the arbitrator awarded Rs. 6,25,983.75. It is contended that during the compromise talks, the petitioner had agreed to accept Rs. 5 lakhs. Thus, the objection that the petitioner never agreed for arbitration or that he was not a member of Delhi Hindustan Mercantile Association and Therefore was not governed by the Arbitration clause has no substance.

5. As regards the objection of the respondents that no notice was given to the respondents before proceeding ex parte, I find no merit. Once the respondent submitted itself before the arbitrator and participated in the arbitration proceedings, it was not obligatory on the part of the arbitrator to serve another notice before proceeding ex parte. However, the record shows that the arbitrator duly served a notice upon the respondent by way of registered process. A.D. card of the registered cover shows that the same was received by one of the employee of the respondent and another notice was received by one of the partners. It shows that the arbitrator was conscious of the provisions of Section 14 of the Arbitration act of 1940 before proceeding ex parte.

6. The next surviving objection is the question whether the award is bad in law because of having been passed beyond the prescribed and stipulated period of four months or not. Learned counsel for the petitioner has drawn my attention to the letter dated 13.12.1995 sent by the respondent to the petitioner wherein there is a reference of discussion between the parties for compromising the matter. The relevant extracts of the notice read as under:-

"i). That out of the total outstanding Rs. 595729.70, we return herewith goods worth Rs. 310881.80 duly purchased from you, a debit note No. 214 dated 13.12.95 for Rs. 310881.80 is issued in this regard, duly accepted by you.

ii). That you will continue your business with us as per normal trade practices.

iii). That the balance outstanding of Rs. 284847.90 shall be adjusted along with future business with in next 6 months.

iv). That the Notice for filing claim at "The Delhi Hindustan Mercantile

Association" shall stands withdrawn upon our entering this arrangement which stands confirmed by your signing duplicate of this letter."

6. Since the respondents did not keep up the commitment as made in the aforesaid letter and gained time, the objection that the award is bad having been made after a period of four months is rendered invalid.

7. Perusal of the award further shows that the respondent did not perform his part of the agreement as agreed between the parties through document/letter dated 13.12.1995 that out of total outstanding of Rs. 5,95,729.70, the respondents would return the goods worth Rs. 3,10,881.80 duly purchased from the petitioner in respect of which debit note was issued and duly accepted by the petitioner.

8. It is a settled principle of law that finding of the arbitrator should not be interfered unless non-application of mind, perversity of illegality is writ large on its face. There is no scope of reappraisal or reassessment of the findings based on material produced before the arbitrator. It is also a settled law that if there is erroneous finding and even there is possibility of a contrary view still the Court should be reluctant to interfere with the award.

9. However, the instant award does not suffer from any legal infirmity or non application of mind or such a finding that is either beyond the terms of the agreement or afflicted with perversity. I find the objections completely devoid of merits and dismiss the same. Petition is allowed. Award is made rule of the court and suit is decreed with pendente lite and further interest @ 12% per annum till realization.