
(2017) 07 UK CK 0036
In the Uttarakhand High Court
Case No : 540 of 2016

National Highways Authority of India	APPELLANT
Vs	
Ashish Panwar and others	RESPONDENT

Date of Decision : 17-07-2017

Acts Referred:

Contract Act, 1872, Section 73, Section 74 - Compensation for loss or damage caused by breach of contract - Compensation for breach of contract where penalty stipulated for Arbitration and Conciliation Act, 1996, Section 34(5), Section 31(5) - Application for setting aside arbitral award - Form and contents of arbitral award

Citation : (2017) 07 UK CK 0036

Hon'ble Judges : U.C. Dhyani

Bench : Single Bench

Advocate : D. Barthwal, R.C. Arya, Siddhartha Singh, Sachin Panwar

Final Decision : Dismissed

Judgement

1. By means of present appeal from order, the appellant seeks to set aside the award dated 02.07.2015 and the order dated 25.07.2016, passed by learned District Judge, Haridwar, rejecting the challenge to award under Section 34 of the Arbitration and Conciliation Act, 1996.

2. A piece of land was acquired by the appellant for construction of National Highway no. 58. As per the provisions of National Highways Act, 1956, in case of dispute between the parties regarding award, the same shall be referred to Arbitrator, who is District Magistrate and whose decision shall be binding on the parties. Accordingly, the matter was taken by respondents to Arbitrator, who, vide award dated 02.07.2015, inter alia, enhanced the amount of compensation, which was challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (here-in-after referred to as "the Act") before District Judge, Haridwar. Application paper no. 4-Ka under Section 34 of the Act was dismissed by learned District Judge, Haridwar, on the ground that the same is time barred. Aggrieved

against the same, present appeal from order (A.O.) has been filed by the appellant.

3. Learned counsel for the appellant submitted that the copy of the award was not supplied to the appellant. According to learned counsel, the same ought to have been served upon the appellant as per Section 31(5) of the Act.

4. Learned counsel for the appellant placed reliance upon the decisions rendered by Hon''ble Apex Court in Benarsi Krishna Committee and others vs Karmyogi Shelters Private Ltd, (2012) 9 SCC 496 and State of Maharashtra and others vs ARK Builders Private Limited, (2011) 4 SCC 616, to show that copy of the award duly signed by the Arbitrator should have been delivered to the appellant. He also drew attention of this Court towards Munsarim's report dated 28.01.2016, to show that the application under Section 34 of the Act, filed by the appellant, is within time and within the jurisdiction of the court of District Judge, Haridwar. Learned counsel further submitted that misc. application no. 1182 of 2017 filed on behalf of respondent no. 1, along with affidavit and annexures enclosed thereto, cannot be taken on record. By way of filing supplementary affidavit, respondent no. 1 has tried to show that the award dated 02.07.2015 was duly served upon the appellant, in his office, on 15.07.2015. Learned counsel for respondent no. 1 contended that the provisions of the Amendment Act, 2015, will not apply to the instant case, inasmuch as the rights of the respondents were crystallized when the parties referred their matter to the Arbitrator. Amendment came into force on 23.10.2015 and the matter was referred to the Arbitrator much earlier. Arbitrator gave award on 02.07.2015.

5. Learned counsel for the appellant submitted that limited period for setting aside arbitral award shall be reckoned not from date copy of award is received by the objector from any source, but from date copy of award duly signed by the Arbitrator is delivered to / received by objector. Per contra, learned counsel for the private respondents submitted that this plea of extended limitation was never taken by the appellant before the District Judge, Haridwar, in objections under Section 34 of the Act.

6. It was held by Hon''ble Apex Court in Oil & Natural Gas Corporation Ltd. vs Saw Pipes Ltd., (2003) 5 SCC 705, that an award contrary to substantive provisions of law or the provisions of the Arbitration and Conciliation Act, 1996, or against the terms of contract would be patently illegal and, therefore, would be subject to interference under Section 34(2)(a)(v) of the Act.

7. In Saw Pipes Ltd. case (supra) it was impossible to assess or prove damages, the specified terms of the contract itself had made a provisions in consonance with Sections 73 and 74 of the Contract Act and, therefore, the award was set aside under Section 34(2). The facts of instant case are entirely different. It is not a case in which substantive provisions of law or the provisions of Arbitration and Conciliation Act or the terms of contract have been violated. Further, the award is not (i) contrary to (a) fundamental policy of Indian law; or (b) the

interest of India; or (c) justice or morality; or (ii) is patently illegal or (iii) is so unfair and reasonable that it shocks the conscience of the court. If the compensation of the acquired agricultural land for construction of Highway has been assessed manifold considering the demography and availability of the infrastructure adjoining the land acquired, the same will not render the award ineffective. Neither any specific case of corruption by the District Magistrate has been projected, nor is made out. In the absence of any pleadings to this effect, the writ court does not feel it necessary to go into that aspect of the case.

8. In *Navodaya Mass Entertainment Ltd. vs J.M. Combines*, (2015) 5 SCC 698, it was held by Hon"ble Supreme Court that reappraisal of material on record by court and substituting its own view in place of arbitrator"s view is not permissible in absence of perversity. Merely because two views are possible, the court cannot reappraise the matter, once arbitrator has applied his mind to said matter, as if it was an appeal. Even if two views are possible, view taken by arbitrator will prevail.

9. One of the objectives of the Arbitration and Conciliation Act, 1996, is to restrict judicial intervention in arbitral matters as much as possible. There is significant departure from the provisions of Arbitration Act, 1940 in the 1996 Act, inasmuch as the 1996 Act provides that award becomes immediately enforceable upon expiry of limitation period under Section 34. It is a special law providing a limitation period different from that prescribed under Limitation Act. An application challenging award filed beyond period mentioned in Section 34(3) would not be an application "in accordance with" sub-section (3) as required under Section 34(1). Section 5 of the Act prescribes the extent of judicial intervention in clear terms. This view was taken by Hon"ble Apex Court in *Union of India vs Popular Construction Co.*, (2001) 8 SCC 470, which was reiterated by this Court in *Reliable Filling Station and another vs Union of India and another*, 2014 (2) U.D. 359.

10. Learned District Judge dismissed the application of the appellant under Section 34 of the Act on the grounds, inter alia, that mandatory provisions of Section 34(1) and 34(5) of the Act have not been met by the appellant. Learned District Judge held that such application under Section 34 of the Act has been filed after six months, which is time barred. At the most, such application may be filed within three months + one month = 4 months, whereas in the instant case, objections have been filed after six months.

11. District Judge has also held that provisions of Section 34(3) of the Act [i.e., application for setting aside award may not be made after three months have elapsed from the date on which the party making an application has received the arbitral award] and Section 34(5) of the Act [application to be filed by a party only after issuing a prior notice to the other party and an affidavit by the applicant endorsing compliance with the said requirement], which are mandatory provisions, have not been complied with.

12. There is no dispute that the National Highways Act, 1956, provides for arbitration and the Arbitrator is District Magistrate / Collector.

13. Reference to a court against an arbitral award may be made by an application for setting aside such award and the arbitral award may be set aside by the court only if ? the party making the application furnishes proof that a party was under some incapacity; or, the arbitration agreement is not valid under the law to which the parties have subjected it; or, arbitration agreement is not valid under the law for the time being in force; the party making an application is not given proper notice of the appointment of arbitrator; the arbitral award deals with a dispute not falling within the terms of the submission to arbitration; the composition of the arbitral tribunal or the arbitral procedure is not in accordance with the agreement of the parties; the court finds that the subject-matter of the dispute is not capable of settlement by arbitration; the arbitral award is in conflict with the public policy of India, or the court finds that the award is vitiated by patent illegality appearing on the face of the award.

14. Although an attempt has been made by learned counsel for the appellant to show that the award is in conflict with the public policy of India, inasmuch as huge money has been siphoned off by the Arbitrator, but it will not be inappropriate to mention here that the public policy has been explained by the Amendment Act of 2015, as follows: "Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."

15. Nothing has been pointed out to show that the making of the impugned award was induced or affected by fraud or corruption or was in violation of confidentiality. It is not a case covered by Section 81 (admissibility of evidence in other proceedings) of the Act either. Nothing has been pointed out as to how it is in contravention with the fundamental policy of Indian law or is in conflict with the most basic notions of morality or justice.

16. Thus, the limited points on the basis of which arbitral award may be set aside, are not attracted in the instant case.

17. Much emphasis is laid by learned counsel for the appellant on munsarim's report dated 28.01.2016. A Munsarim is ministerial officer of the court. He is required to report on court fee, jurisdiction, limitation etc., which is subjected to

scrutiny of the court. Munsarim's report is not final. The other party may challenge the jurisdiction of the court and thereafter the court may give a finding that suit or appeal is not triable by him. Likewise, Munsarim may give a report that a suit is maintainable and within time, but the court, at an appropriate stage, could hold that the suit is time barred. So, it cannot be said that Munsarim's report is final. It is provisional, subject to correction by the court, at an appropriate stage.

18. Since all the relevant documents have been brought on record, therefore, the Court has proceeded to decide the A.O. without calling for lower court record.

19. No patent illegality appearing on the face of the award is manifested and, therefore, award cannot be vitiated on this ground. Mere erroneous application of the law or re-appreciation of evidence is not permissible for setting aside an arbitral award.

20. An application for setting aside arbitral award may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award. In the instant case, the application for setting aside the award was made before learned District Judge after three months. 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 within a further period of 30 days, but no further. No case of extension of limitation was taken before learned District Judge. Learned District Judge did not find such sufficient cause for making the application and, therefore, held that the application is time barred. This Court does not find any infirmity in the said order of the District Judge.

21. Learned counsel submitted that the compensation has been increased four fold by learned Arbitrator. If rate of agricultural land (Rs.835/- per sq. mt.) has been enhanced to Rs.3500/- per sq. mt. considering the demography and availability of infrastructure adjoining the land acquired, the writ court is not required to deal with such enhancement, as is usually done in cases falling under Land Acquisition Act. The law governing the field here is the Arbitration and Conciliation Act, 1996, read with the National Highways Act, 1956, and nothing more.

22. The Court does not find any illegality in the award impugned. No interference is called for in the order passed by learned District Judge, Haridwar.

23. The writ petition, therefore, fails and is dismissed.