

(2007) 11 DEL CK 0143
In the Delhi High Court
Case No : OMP No. 516 of 2007

National Publishing House and Another	APPELLANT
Vs	
Shri Arvind Kumar Singh and Another	RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34(2)

Citation : (2007) 11 DEL CK 0143

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : S.P. Singh and Y.R. Sharma, for the Appellant; Chandra Shekhar, Sanjay Kumar Tyagi, Shehroz Akhtar and Sudhanshu Raj, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—Mr. Arvind Kumar Singh (for short "AKS") filed a suit for permanent injunction and damages against National

Publishing House through its proprietor K.L. Malik and Sons (P) Ltd. as defendant No.1 and Shri Surinder Malik as defendant No.2 (for short the

"publisher"). AKS is the grandson of late Shri Ramdhari Singh "Dinkar", a distinguished national poet and is the copyright holder of 32 works of

late Shri Dinkar in pursuance to a Will. A letter of administration already stands granted to AKS.

2. The dispute pertains originally to an agreement dated 1.5.1986 entered into between AKS and the National Publishing House for publication of

29 books out of the 32 books of late Shri Dinkar. The agreement was to be in force for a period of five years from the date of the agreement and

one copy each of all the 29 books were to be handed over to the publishing house by AKS and the publication had to take place as per the terms

of clauses of the agreement. A provision for fifteen (15) per cent royalty was

provided for in the agreement. The agreement also contained an arbitration Clause 11 that in case of disputes and differences the matter would be referred to the arbitration of Shri Ganga Saran Sinha and failing which to Dr. L.M. Singhvi.

3. It appears that disputes arose possibly soon after the execution of the agreement and it is the case of the plaintiff that though the agreement expired by efflux of time on 30.4.1991 he also served a notice of termination dated 16.3.1991 by way of abundant caution asking the publishers to desist from publishing the books from 1.5.1991. AKS claimed that despite the same the publication was carried out and royalty cheques were sent. There were certain subsequent exchange of notices and after February 1995 AKS did not accept any royalty.

4. AKS filed a suit for permanent injunction and damages in this Court for restraining the publishers from marketing, advertising and selling the 29 books and for restraining them from using the passage written by Shri Dinkar in their book named KABYANJALI in respect of which it was alleged that there was no agreement. AKS also sought a direction for return of the original manuscript copies and damages to the tune of Rs.5,20,000.00, costs and a decree for mesne profit.

5. The suit and the interlocutory application were disposed off vide order dated 5.11.1998. Since Shri Ganga Saran Sinha had passed away, the parties agreed to the sole arbitration of Dr. L.M. Singhvi and the reference was accordingly made.

6. The arbitrator made and published an award dated 14.8.2000 and the publishing house and Shri Malik filed an application u/s 34(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act) challenging the said award. This application was filed in the earlier suit which already stood disposed of. Certain other applications were also filed. This Court passed order on 21.8.2007 disposing of the other applications and directing that is No.12760/2000 u/s 34 of the said Act was not maintainable in the disposed of suit and the same along with pleadings and documents be registered as an OMP and a fresh file prepared. It is in pursuance thereof that the present OMP has now been registered. It appears that the cause title has been wrongly shown, once again showing the parties as described in the suit while in fact the National

Publishing House and Shri Surinder Malik should be shown as petitioners and Shri Arvind Kumar Singh and the arbitrator be impleaded as

respondents. The cause title be accordingly amended.

7. A perusal of the award would show that the same is a reasoned award based on the appreciation of the evidence and interpretation of the

clauses of the agreement. One of the main aspects which emerged for consideration was as to whether the plea of the publishers could be

accepted that the agreement between the parties was extended after the initial period of five (5) years. The relevant Clause 8 is as under:

Clause 8: That this Agreement shall hold good for a period of five years from the date of signing the Agreement. At the expiry of the term of five

years, the Agreement may be continued, revised or modified for any specified term with the written concurrence and agreement of both the parties.

It is also agreed that while settling the matter of future publication of the books which form the subject matter of this Agreement the Party of the

Second Part will in his absolute discretion give preferential consideration to the Party of the First Part, provided their performance and dealings

during the period of this Agreement to the entire satisfaction of the Party of the Second Part.

8. The learned arbitrator on appreciation of the evidence and interpretation of the clauses came to the conclusion that it was not even the case of

the publishers that the agreement was renewed after the initial period of five (5) years by execution of any documents in writing, which was so

mandatorily provided in the aforesaid Clause 8. Simultaneously the arbitrator took note of the fact that AKS continued to receive royalty up to a

certain period of time and the plea of estoppel raised by the publishing house could not be sustained in view of the repeated and express

disclaimers of the continuance of the agreement by AKS through written communication. It was, thus, concluded that the payment of royalty made

or offered to AKS could not be construed or obliterate or substitute the express condition of the agreement which required the written

concurrence. This is apart from the fact that an express notice of termination was given well in advance.

9. The arbitrator has taken into consideration the publishing and selling rights as provided in the agreement for royalty @ 15 per cent and on the

basis of the evidence on record and past payment found that the consolidated sum of Rs.3.50 lakh was liable to be paid in that behalf apart from a

sum of Rs.1.50 lakh as token damages for violation of the agreement. The award was, thus, made for a sum of Rs.5.00 lakh along with interest @

9 per cent per annum from the date of the award till date of payment. The arbitrator also issued further directions that the property in the remaining

unsold stocks of all the books would vest in AKS who would be entitled to the delivery thereof within one month from the date of decree and up

to date statement of accounts of books printed, sold and lying in stock would be given by the publishers to AKS. A further directions was issued

that the publishers would cease and desist from claiming or exercising any publishing rights with regard to the books listed and there would be

permanent injunction prohibiting them from publishing and selling the said books. In this behalf reliance was placed on the signed statement of stock

dated 31.8.1999 and thus any stock added to the same as well as to the plates or photo films or any other material or accessories for the

production of the books were to be returned to AKS.

10. The publishers aggrieved by the said award, as noted above have filed the objections.

11. I deem it appropriate to first consider the scope and ambit of scrutiny by this Court while exercising the jurisdiction u/s 34(2) of the said Act.

The 1996 Act came in super cession of the earlier Act of 1940. If the legal position even under the 1940 Act would be considered, it would be

trite to say that in the absence of an award being absurd reasonableness was not a matter to be considered by a court as appraisal of evidence

by an arbitrator was not ordinarily a matter for the court. This Court was, thus, not to sit as a court of appeal and it was not for the court to

interfere with an award merely on the basis that the court would come to a different conclusion on the material available before the arbitrator. The

1996 Act was brought into force to further restrict the interference of the court though to some extent that aspect stands diluted in view of the

judgment of the Apex Court in Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., . However, even within the parameters of the said

judgment all that has been done is that the phrase "public policy of India" was given a wider and not a narrower meaning and thus it was held that

the Court could set aside the award if it is contrary to fundamental policy of Indian law, interest of India, justice or morality or is patently illegal or

is so unfair and illegal that it shocks the conscience of the court. It was made clear that even illegality of trivial nature was to be ignored.

12. It is in terms of the aforesaid parameters that the objections filed by the publishers would have to be considered.

13. It is the claim of the publishers that endeavor was made by the arbitrator to in fact, settle the matter during the course of the proceedings and

the issues for settlement were the payment of royalty/damages; return of unsold books or letting the same to be sold by the publisher by giving a

proper period; not to publish the books further and return the negatives to AKS.

14. It is stated that while settling the matter, the parties had agreed on two issues: the publishers had agreed to relinquish their rights to publish late

Shri Dinkar's books as desired by AKS; the publishers agreed to pay the royalty as they have been offering the same as and when it fell due and

the consolidated amount of royalty was agreed to be paid as would be directed by the arbitrator or in any manner as mutually agreed upon.

15. The publishers contend that the arbitrator ignored the legal consequences of the receiving of royalty after the expiry of the contract and the

reason for denying the extension of the contract despite the best possible performance. It is the case of the publishers that no reason has been

given for non-exercise by way of extending the contract and the damages have been awarded without looking into the legal position and the harsh

market conditions. Similarly a grievance has been made about the direction of return of unsold stocks and negatives free of charge and the finding

that the agreement stood terminated by efflux of time has been challenged.

16. I find no force in the aforesaid submissions. These are matters which squarely fall within the parameters of the arbitrator and do not fall within

the scope and ambit of Section 34(2) of the said Act. Even if this aspect has to be examined on merits, though that is not the scope of this Court, it

would hardly be said that on the interpretation of Clause 8, which specifically asks for renewal of contract by consent in writing, the conclusion was

absurd. As observed above, even if this Court would have to come to a different conclusion the same would have no ground to interfere unless the

finding was absurd.

17. The arbitrator has appreciated the evidence on record and awarded the lump sum amount. The amount can hardly be said to be excessive or harsh. The publisher continued to publish the books contrary to the terms of the agreement as it was beyond the period prescribed for in the agreement. The intention of AKS was clear from the notice of termination sent by him as also by the subsequent communications. I thus find no merit on this aspect.

18. The last aspect pressed in the objections is that Mr. Surinder Malik remained unwell for considerable period of time and was unable to attend the proceedings personally. This can hardly be a ground especially when the matter was entrusted to a counsel, who stopped appearing suddenly. It was the bounden duty of the publisher to have instructed the counsel and the counsel should have continued to appear. Not only that almost all the aspects were settled and the aspect of quantification of the amount was left to the discretion of the arbitrator. The arbitrator has exercised the discretion in pursuance to what was agreed to by the parties.

19. There is no infirmity in the award and the objections are accordingly dismissed with costs quantified at Rs.7,500.00.