
(2004) 08 DEL CK 0133

In the Delhi High Court

Case No : IA 115 of 2004 in OMP No. 326 of 2003

Neeraj Munjal and Others

APPELLANT

Vs

Atul Grover and Another

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Arbitration and Conciliation Act, 1996 — Section 34, 34(3), 85
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Consumer Protection Act, 1986 — Section 22
Limitation Act, 1963 — Section 5

Citation : (2004) 08 DEL CK 0133

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Vikas Pahwa and Pawan Sankhla, for the Appellant; Sudhanshu Batra, for the Respondent

Judgement

R.C. Jain, J.—Respondent no.1 Mr.Atul Grover minor through his natural guardian Mrs.Anita Grover has filed this application under Order 7 Rule 11 read with Section 151 CPC praying for the dismissal of the petitioners u/s 30 and 33 of the Indian Arbitration Act, 1940.

2. This case has a chequered history. The applicant herein had filed a complaint before the National Consumer Disputes Redressal Commission, New Delhi (in short ""National Commission"") for recovery of compensation from the petitioners herein for deficient cy in service. With the consent of the parties, National Commission referred the matter to arbitration and appointed Mr.Justice A.B.Rohtagi, a retired Judge of the High Court as sole arbitrator for settling the subject matter of the complaint. The sole arbitrator made and published his award on 19.8.1996 and remitted the same to the Commission. The National Commission in terms of the award decided the complaint of the respondent. The petitioners, aggrieved by the order of the National Commission, preferred an appeal being Civil Appeal No.1920/1997 before the Hon''ble Supreme Court. Vide

an order dated 16.1.2003 the Hon"ble Supreme Court allowed the appeal of the petitioners with the following observations: ""We have heard learned counsel for the parties and are of the view that this case stand covered by a decision of this Court in Skypak Couriers Ltd. Vs. Tata Chemicals Ltd., , wherein it was held that the complaint filed u/s 22 of the Consumer Protection Act requires the Commission to decide the matter in accordance with the evidence, documents and the respective case of the parties including the submission made before it and not by referring the matter to an Arbitra or by giving an Award. In view of the said decision, this appeal deserves to be allowed. Consequently, the judgment under challenge is set aside.

The appeal is allowed. There shall be no order as to costs.

We may clarify that it will be open to the respondent to enforce the Award under the provisions of the Arbitration and Conciliation Act, 1996. Any amount deposited by the appellants shall be refunded to them forthwith.?

3. Along with the application u/s 30 and 33 dated 21.4.2003, an application u/s 5 of the Limitation Act has also been made on behalf of the petitioners praying for condensation of delay in filing the application u/s 30 and 33 . The said application sets out the details of the proceedings before the National Commission, learned arbitrator and the Hon"ble Supreme Court and it is stated that copy of the order of the Hon"ble Supreme Court dated 16.1.2003 was received by the petitioners on 18.1.2003. It is also stated that due to inadvertence in its order, the Hon"ble Supreme Court had incorporated that the award would be proceeded in accordance with the provisions of Arbitration and Conciliation Act, 1996 and since the 1996 Act provides 90 days period for challenging the award, the application is being filed within 90 days from the receipt of the order of the Supreme Court. It is also stated in the application that on examination of the matter it is seen that the award dated 1 .8.1996 ought to be challenged as per the Arbitration Act, 1940 because Act of 1996 came into force with retrospective effect from 26.8.1996 vide Notification No. GSR-375(e). It is also stated that the time taken for the misconceived proceedings before the National Commission is liable to be excluded for the purpose of limitation and the slight delay had been caused because of the inadvertent mentioning of the Arbitration and Conciliation Act, 1996 in the order of the Hon"ble Supreme Court, which is liable to be condoned.

4. It is pertinent to note that after filing the above application in this Court, the petitioners filed an application is 4/2003 u/s 151 CPC in Civil Appeal No.1920/1997 before the Supreme Court seeking modification of the order dated 16.1.2003 to the extent that the petitioners be allowed to challenge the award of the sole arbitrator in accordance with the provisions of Arbitration Act, 1940. The said application was dismissed by the Hon"ble Supreme Court vide an order dated 25.7.2003, which reads as under: ""No order is required. is is dismissed."".

5. Before filing their reply/response to the application / objection of the

petitioners under Sections 30 and 33 of the 1940 Act, the respondent has filed the present application under 7 Rule 11 read with Section 151 CPC stating therein that the petition u/s 30 and 33 of the Arbitration Act, 1940 is not maintainable as the award is enforceable and or challengeable under the Arbitration and Conciliation Act, 1996 only in terms of the orders of the Hon''ble Supreme Court dated 16.1.2003 an 25.7.2003. It is urged that the petition does not disclose any cause of action arising under the Arbitration Act, 1940 and that the said petition is an abuse of the process of the Court.

6. The application is opposed on behalf of the petitioners and a reply has been filed stating that the application is nothing but a motivated attempt on behalf of the respondent to misuse the process of the Court. It is denied that the objections under the 1940 Act are not maintainable. It is stated that the petitioners filed an application seeking modification of the order passed by the Hon''ble Supreme Court dated 16.1.2003 to the extent that the petitioners be allowed to challenge the award passed by he learned arbitrator in accordance with the provisions of the Arbitration Act, 1940 and to condone the delay caused due to the pendency of the instant proceedings in challenging the award. It is maintained that the award in question can only be challenge ed under the provisions of 1940 Act as at the time of passing of the award it was the old Act which was in force, Therefore, remedy, if any, lay under the old Act. Reference has been made to certain observations made by the Hon''ble Supreme Court in the case of Skypak Couriers Ltd. Vs. Tata Chemicals Ltd., wherein it was stated that ""it will be open for parties to challenge the award on such grounds as are available under the Arbitration Act, 1940 and or the Arbitration and Conciliation Act, 1996."" Reference is also made to the provisions of Section 85 of the Arbitration and Conciliation Act, 1996 relating to repeals and savings and on the strength of the same it is urged that the objections u/s 30 and 33 of the 1940 Act are maintainable.

7. I have heard Mr.Sudhanshu Batra, learned counsel for the applicant and Mr.Vikas Pahwa, learned counsel for the non-applicant petitioners and have given my thoughtful consideration to their respective submissions. Mr.Batra has emphatically urged that on the face of the orders dated 16.1.2003 and 25.7.2003 passed by the Hon''ble Supreme Court, by no stretch it can be said that the petitioners could file an application u/s 30 and 33 of the Arbitration Act, 1940, for setting aside the award of he sole arbitrator. Mr.Pahwa, on the other hand, vehemently contended that there was an inadvertent mistake in the ultimate paragraph of the order of the Supreme Court dated 16.1.2003, in giving liberty to the petitioners to file the objections against he award under the provisions of the Arbitration and Conciliation Act, 1996 which should in fact have been under the provisions of Arbitration Act, 1940. He made a vehement plea that this Court should correct the said mistake in the order of Hon''ble Supreme Court and should read the order by substituting the Arbitration and Conciliation Act, 1996 with Arbitration Act, 1940. In this connection he has heavily relied upon the observations of the Supreme Court in the case of M/s Skypak Couriers

Ltd. Vs. Tata Chemicals Ltd. (supra) on the basis of which the appeal of the petitioners was answered by the Supreme Court. To say the least, the said plea of the petitioners is wholly misconceived because firstly this Court by no stretch is in a position to correct the alleged inadvertent mistake in the order of the Supreme Court even if any such existed and secondly there seems to be no question of any inadvertent mistake because the Hon''ble Supreme Court has declined to clarify the said order and dismissed the application of the petitioner seeking a modification/clarification of the said order, Therefore, there is absolutely no occasion for this Court to read the order of the Supreme Court in any other way. Learned counsel for the petitioners had the audacity to read the order of the Supreme court dated 25.7.2003 so as to mean that the application was not dismissed but simply disposed of with liberty to this Court to consider the question as to whether the objections could be filed by the petitioners under the Arbitration Act, 1940 or the Arbitration and Conciliation Act, 1996. The arguments appears to be fallacious on the face of it and are liable to be rejected.

8. Now the important question is as to whether the petitioner was, in fact, given any liberty to file an application/objections u/s 30 and 33 of the Arbitration Act, 1940 or for that reason under the Arbitration and Conciliation Act, 1996. A pla in reading of the last paragraph of the order dated 16.1.2003 (supra) does not lead to an inference that the petitioner was given any liberty to challenge the award of the sole arbitrator by filing a petition/objections under either of the Act. The orde does not say so. A careful reading of the order dated 16.1.2003 would bring out that even after allowing the appeal of the petitioners and setting aside the judgment of the National Commission, the Hon''ble Supreme Court had given the liberty to the respondent and not to the petitioners, to enforce the award under the provisions of the Arbitration and Conciliation Act, 1996. The order does not say that the petitioners or the appellants in the appeal before the Supreme Court were given any liberty to challenge the said award either under the provisions of the old Act or the new Act. This would clearly bring out the intention of the Hon''ble Supreme Court that despite setting aside the judgment of the National Commission the Hon''ble Supreme Court did no want to disturb the award and, Therefore, kept the award intact and only gave the respondent liberty to enforce the same under the provisions of the Arbitration and Conciliation Act, 1996.

9. Assuming for the sake of arguments that the petitioners could challenge the said award of the sole arbitrator, he could have filed an application u/s 34 of the new Act. By no stretch he could resort to the provisions of Sections 30 and 33 of the Arbitration Act, 1940 and even after dismissal of the petitioner''s application for modification, the petitioner struck to his stand that the petition filed by him under Sections 30 and 33 of the Arbitration Act, 1940 was maintainable. In the opinion of this Court this stand of the petitioner is wholly contrary to the order of the Supreme Court dated 16.1.2003. Besides, it appears that the petitioner is trying to play hot and cold in the same breath because on one hand he seeks the condensation of delay beyond 90 days by application of the provisions of Section 34(4) of the Arbitration and Conciliation Act, 1996, and at the same time filed

objections under 1940 Act, in which 30 days limitation was prescribed for filing the objections against the award from the date of the receipt of the award. Admittedly, the award was received by the parties in the year 1996 itself. Even if we assume that the objections could be filed under the 1940 Act, the same at could at the latest be filed within 30 days of the order of the Hon'ble Supreme Court dated 16.1.2003. It is otherwise well settled that Section 5 of the Limitation Act has no application in the matter of condensation of time in filing the objections against the award either under the 1940 Act or 1996 Act.

9. The contention of counsel for the petitioner that 1940 Act would apply because the Arbitration and Conciliation Act, 1996 was not in force when the award in this case was passed is also factually incorrect because the Arbitration and Conciliation Act, 1996, though assented to by the President on 16.8.1996 and notified in the Gazette on 19.8.1996, still was deemed to have come into force w.e.f. 25.8.1996 when the first ordinance was brought into force. It is, Therefore clear that the award dated 19. .1996 passed by the arbitrator was made after the enforcement of the Arbitration and Conciliation Act, 1996.

10. Thus, looking at the matter from any angle, the inevitable conclusion is that the application under Sections 30 and 33 of the Arbitration and Conciliation Act, 1940 filed by the petitioner challenging the award of the sole arbitrator is wholly misconceived, vexatious and contrary to the decision of the Hon'ble Supreme Court dated 16.1.2003 and is, Therefore, not maintainable. Accordingly, Civil Appeal No. 115/2004 is allowed and OMP 326/2003 and Civil Appeal No. 8409/2003 are dismissed with costs, which are quantified at Rs.10,000/-.