

(1999) 10 DEL CK 0038

In the Delhi High Court

Case No : FAO No. 67, 68, 69, 70, 71, 72, 73 of 1998 and C.MS. 633-35, 636-38, 639-41, 642-44, 645-47, 648-50, 651-53 of 1998

Nutan K.V. Crimpers

APPELLANT

Vs

Tilak Raj Kapoor
 M/s. M.H. Textiles, Surat and Other
Vs Teraj Agencies Pvt. Ltd.

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 20, 30, 33

Citation : (1999) 6 AD 614 : (1999) 82 DLT 434 : (2000) 52 DRJ 19

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. Krishan Kumar, for the Appellant; Mr. Harish Malhotra, Mr. Rajinder Aggarwal and Mr. Ashwani Sood, for the Respondent

Judgement

Dr. M.K. Sharma, J.—By this common order I propose to dispose of the aforesaid appeals as they involve similar and common questions and as arguments advanced in the said appeals were also common.

2. After hearing the parties and for the reasons stated, the delay in filing all the appeals stands condoned and I proceed to dispose of the appeals on merits.

3. These appeals arise as against the order passed by the Additional District Judge on 29.9.97 making the awards passed by the arbitrator rules of the court and passing decrees in terms of the awards.

4. On the basis of applications filed by the respondent seeking for reference of the disputes to arbitration, the Additional District Judge referred the disputes arising between the parties to arbitration. Pursuant to the aforesaid order passed by the Additional District Judge, the arbitrator entered into the reference and made and published his awards. After passing of the awards applications were filed before the Additional District Judge under Sections 14 & 17 of the Indian Arbitration Act by the arbitrator for making the awards rules of the court.

Objections of the objector/petitioner were filed under Sections 30 & 33 of the Arbitration Act. On the said objections filed by the petitioner parties were heard and three issues were framed which are as under:-

1. Whether the objections under Sections 30 & 33 of the Arbitration Act are filed within limitation? OPD.

2. Whether the award filed by the arbitrator is liable to be set aside for the reasons stated in the objection petition? OPD.

3. Relief.

5. All the aforesaid three issues were decided in favor of the respondent and the awards were made rules of the court and decrees were passed in terms of the awards. Although the Additional District Judge found that the objections filed by the petitioner were barred by limitation yet it decided the said objections on merits and disposed of the same by a speaking order. The trial court found that notice of filing of the award was issued to the objector/petitioner which was served by Regd. A.D. Post, after which objections were filed beyond the period of 30 days, which is the period of limitation prescribed under the Limitation Act. The aforesaid objections were, Therefore, admittedly barred by time. There was no prayer for condensation of delay in filing the said objections but still the court proceeded to deal with the merits of the case.

6. The first plea taken was that there was no territorial jurisdiction of Delhi courts to entertain the petition for making the award a rule of the court. The trial court, however, found that the arbitrator was appointed by the court of Additional District Judge at Delhi pursuant to which the award had been made by him and published. The said proceedings before the arbitrator were also contested by the petitioner without raising any objection in respect of territorial jurisdiction of the said arbitrator or of the Delhi courts. Even otherwise, it was found by the trial court that the Delhi courts have jurisdiction and, Therefore, the said objection was rejected. The said conclusions are arrived at in accordance with law and the same are also in consonance with the settled position of law. Reference in this connection may be made to the decision of the Supreme Court in *Guru Nanak Foundation Vs. Rattan Singh and Sons*, . In that decision, the Supreme Court held that an award could be filed in any court having jurisdiction in the matter to which the reference relates.

7. The next submission urged before me was that there was no valid arbitration agreement and ,therefore, there could not have been any valid award. In respect of the same the Additional District Judge held that the aforesaid issued could not be raised at these proceedings which were filed for making the awards rules of the court and should have been raised during the pendency of the proceedings u/s 20 of the Arbitration Act. The said order passed u/s 20 of the Arbitration Act was not challenged at any time. Rather on the other hand the petitioner without raising any objection whatsoever contested the arbitration proceedings before the arbitrator on merits and, Therefore, he held that there was no occasion for

raising the aforesaid issued at that belated stage. The afore said aspect was also raised before me by the counsel appearing for the appellant contending, inter alia, that there was no contract between the parties and, Therefore, there was no arbitration agreement at all. According to the counsel appearing for the appellant, the entire proceedings are required to be set aside. In support of his contention he relied upon the ratio of the decision in R.S. Deboo, (since deceased by L.R"s) Vs. Dr. M.V. Hindlekar and Another, .

8. Mr. Malhotra appearing for the respondent submitted that the decision of the Additional District Judge referring the disputes to the arbitrator holding that there is a valid arbitration agreement has become final and binding. He further submitted that there was no challenge to the aforesaid finding of referring the disputes to the arbitrator, before any competent court and, Therefore, the same cannot be re-opened at this stage. He also submitted that there was a valid arbitration agreement between the parties as would be crystal clear from the bills issued by the respondent to the petitioner and, Therefore, in terms thereof the arbitrator was justified in deciding the disputes and passing an award and the trial court was also justified in making the same a rule of the court. In support of his contention he relied upon the decision in M/s. Luda Ram Ved Parkash Vs. M/s. Maharani of India and Another AIR 1989 Delhi 169.

9. I have considered the aforesaid contention raised by the counsel appearing for the appellant that there was no arbitration agreement between the parties, and , Therefore, the award is bad in law and consequently, the said award could not have been made a rule of the court. In my considered opinion, the aforesaid plea is without any merit in view of the decision of this court in M/s. Luda Ram"s case (supra) wherein it was held as under:-

"Where goods had been sold to the objector firm vide the bills which contained the clause regarding the goods having been sold in accordance with the rules and regulations of Delhi Hindustani Mercantile Association, Delhi, the mere fact that objectors were not members of the said Association or that the bills on the basis of which the goods were sold were not signed by the objector would not mean that no arbitration agreement had been entered into by the objector or that the reference could not be made to any arbitrator. When the facts showed indisputably that the goods were sold on the basis of the bills which contained a printed clause that they were being sold subject to the rules and regulations of the said Association, and the rules and regulations of the said Association contained the arbitration clause and also the mode as to how the reference to the arbitrator was to be made the arbitration agreement could be held to be arrived at between the parties in respect of the bills including the bills which did not bear signatures of the purchaser."

To the same effect is a decision of the Division Bench of this Court in Sohan Lal Vs. Krishan Ghander Ramesh Ghander and Brothers, and Single Bench decision of this court in M/s. Luda Ram Ved Parkash Vs. M/s. Maharani of India & Others reported in AIR 1989 Delhi 169 . The Supreme Court also had occasion to

consider a similar clause of Delhi Stock Exchange and it held in Banwari Lal Kotiya Vs. P.C. Aggarwal, that arbitration clause contained in the contract when read with relevant bye-laws of Delhi Stock Exchange Ltd. was clearly an arbitration clause.

10. In view of the aforesaid ratio of the decision laid down by the courts, it is amply established and crystal clear that there was clearly an arbitration agreement between the parties hereto and the disputes between the parties were rightly referred for arbitration to the Delhi Hindustani Mercantile Association according to its rules and regulations and that its award is final and binding on the parties, Besides, if at all, the appellant was in any manner aggrieved by the aforesaid decision of the Additional District Judge referring the disputes to arbitration, the same should have been challenged by the appellants, at that stage only. Not only that the same was not challenged rather the appellant participated in the arbitration proceedings before the arbitrator without any objection and took an opportunity and suffered an award. The appellant, Therefore, cannot challenge the award on the ground that there was no arbitration agreement between the parties on the said date. There was no other plea raised by the counsel appearing for the appellant. The aforesaid plea having been found to be without any basis, there is no merit in the aforesaid appeals. The appeals are dismissed but without any costs.