

(2010) 08 GUJ CK 0121
In the Gujarat High Court
Case No : First Appeal No. 28 of 1988

Oil and Natural Gas Commission		APPELLANT
	Vs	
S.P. Patel and Another		RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Arbitration Act, 1940 — Section 30, 39

Citation : (2010) 08 GUJ CK 0121

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : K.J. Brahmbhatt, for the Appellant; J.V. Bhairavia, for Defendant 1, for the Respondent

Judgement

M.D. Shah, J.—Present First Appeal is preferred u/s 39 of the Arbitration Act by the appellant herein - original opponent No. 1 against the judgment and order passed by the learned Civil Judge (S.D.), Bharuch in Misc. Application No. 46 of 1984 by which the application of the respondent herein - original applicant was allowed.

2. The applicant had filed above Misc. Application before the learned Civil Judge, Bharuch for making the award as rule of Court and to award 12% interest from the date of decree till realization. Certain disputes arose between the original applicant and original opponent out of the contract awarded to the applicant by the opponent for the work of metalling and carpeting. As per the provisions of arbitration clause in the agreement, same was referred to sole arbitrator - Chief Engineer, ONGC, Vadodara. After hearing both the parties, sole Arbitrator declared the award. The applicant wanted to make award the rule of Court and therefore, preferred above Misc. Application. Opponent No. 1 resisted the said application and raised contention that Arbitrator has not given the break up of the awarded amount and as such the award is not binding. It was also contented that there was non application of mind on behalf of the Arbitrator. After considering documentary evidence on record, learned Civil Judge (S.D.), Bharuch

allowed the application and awarded 12% interest from the date of decree till realization.

3. Ms. Brahmbhatt, learned Advocate appearing on behalf of the appellant - original opponent No. 1 has submitted that learned Trial Court has acted illegally in not setting aside the award even though it did not give any break up as regards claim made by respondent herein in his claim statement. It is further submitted that learned Trial Court has materially erred in law in not holding that award was beyond the scope of arbitration agreement and therefore, beyond the scope of reference and the arbitrator had no jurisdiction under the Arbitration Act to entertain such claims. It is also further submitted that learned Trial Court failed to appreciate that the Arbitrator does not have any jurisdiction to entertain the claim made by respondent herein in connection with the escalation at the rate of 50% on the entire amount of the contract value. It is also submitted by Ms. Brahmbhatt, learned Advocate that without giving any reasons, Arbitrator has passed the award. By making above submissions it is requested to allow present First Appeal.

4. Mr. Bhairavia, learned Advocate for the respondent herein has submitted that no illegality has been committed by the learned Trial Court and he has supported the judgment and decree passed by the learned Trial Court. It is also submitted that appellant herein has not challenged the award u/s 30 of the Arbitration act. By making above submissions it is requested to dismiss present First Appeal.

5. Heard learned Advocates for the respective parties and perused record and proceedings.

6. From the perusal of the record it appears that Arbitrator has passed the award after considering documentary evidence and submissions of both the parties. The contentions raised by the learned Advocate for the appellant has been discussed by the learned Trial Court in detail. It is required to be noted that Arbitrator has been appointed by the appellant. So far as the contention on behalf of the appellant that Arbitrator has not assigned any reasons for the award is concerned, it is required to be noted that the Arbitrator has been appointed by appellant and after considering documentary evidence and material, Arbitrator has passed the award, so this contention cannot be accepted. So far as the contention on behalf of the appellant that Arbitrator did not give any break up as regards claim made by respondent herein in his claim statement is concerned, it is required to be noted that Arbitrator has passed the award after considering documentary evidence on record and it is further observed that the award passed by the Arbitrator was not challenged by the appellant u/s 30 of the Arbitration Act. Now so far as the contention on behalf of the appellant that Arbitrator has no jurisdiction to pass the award is concerned, on perusing the record, it appears that nothing is on record to show that Arbitrator has exercised jurisdiction arbitrarily.

7. For the reasons stated above, I am of the opinion that learned Civil Judge

(S.D.), Bharuch has not committed any error in passing the judgment and decree dated 29.08.1987 in Misc. Application No. 46 of 1984 and same is confirmed. The First Appeal is dismissed. No order as to costs.