
(1998) 03 PAT CK 0054

In the Patna High Court

Case No : Misc. Appeal No. 173 of 1996 (R)

Raj Kumar and Brothers

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Arbitration Act, 1940 — Section 20, 22

Citation : (1998) 3 BLJR 2300 : (1998) 3 PLJR 175

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal by the plaintiff appellant is directed against the judgment and order dated 15.5.1996 passed by the Sub--Judge II. Bermo at Tenughat in arbitration case No. 16 of 1995 whereby an application filed by the plaintiff u/s 22 of the Arbitration Act seeking relief for direction to the defendant respondents to file arbitration agreement and for referring the disputes for arbitration has been rejected.

2. It is not necessary to go into the detailed facts of the case and suffice it to say that the plaintiff was allotted work by the respondents for renovation and modification of A.S.H. Bundh at City P.S. Under the agreement, the time for completion of the work was stipulated. It appears that the work could not be completed in the schedule time and the time was extended, but even then, the work could not be completed. However, according to the plaintiff, a good value of the work was completed apart from extra work, but payments were not made, although bills were submitted in time. According to the plaintiff, on much persuasion, part payment was made by the respondents and despite notice issued to the respondents, nothing was paid, nor the disputes or differences were committed to arbitration. The plaintiff, therefore, filed an application u/s 20 of the Arbitration Act. The defendant respondents opposed the application u/s 20 of the Arbitration Act contending. inter alia, that the petition is not sustainable and

tenable in law and the same is mala fide. It was further stated that all claims made by the petitioner with regard to execution of the work of renovation and rectification of A.S.H. Bundh had already been paid to him for which he has made a No claim certificate" on the measurement books. It was further contended that the petitioner had field the suit in the Court of Munsif, Tenughat, which was ultimately withdrawn and thereafter this application, which is false and frivolous, was filed.

3. Learned Court below after the hearing the parties and after considering the evidence, came to the conclusion that no difference or dispute existed in view of the fact that the contract was terminated after full and final settlement of all claims of the plaintiff appellant and on the grant of no claim certificate" by the appellant. Accordingly, the application was rejected by the Court below.

4. Mr. N.K. Prasad, learned senior counsel appearing for the appellant assailed the impugned order of the Court below as being illegal and contrary to facts and evidence on record. Learned Counsel submitted that the Court below has committed grave error of law in not appreciating the case that no unconditional or voluntary no claim certificate" was given by the appellant while receiving some amount against the bills. The learned Counsel further submitted that the Court below has not correctly appreciated the fact that immediately after execution of the no claim certificate, the appellant gave several notices to the respondents raising demand for payment of further amount against the bills. The learned Counsel relied on the decisions of the Apex Court in the cases of Damodar Valley Corporation Vs. K.K. Kar, ; Union of India (UOI) and Another Vs. L.K. Ahuja and Co., and Bharat Heavy Electricals Ltd. v. Amar Nath Bhan Prakash .

5. On the other hand, Mr. Debi Prasad, learned Senior Counsel for the respondent--Damodar Valley Corporation in course of submissions drew my attention to the original measurement books and the bills, copies of which have been annexed with the objection petition filed before the learned Court below. Learned Counsel submitted that in the measurement books (MBs) and in all bills, the appellant contractor gave a receipt of full and final settlement of the claims and further declared that no other claim is due. Learned Counsel further submitted that after receipt of payment in full and final settlement of the claims, the appellant again gave notice and made further claim of a huge amount and then the suit was field for recovery of the said amount. However, the suit was ultimately withdrawn by the appellant. Not only that, the appellant withdrew the security money also on 10.5.1996 by different cheques after the entire claim was paid and finally settled. According to the learned Counsel, therefore, the Court below has rightly held that the alleged dispute is not referable to arbitration. In this connection, the learned Counsel relied on the decisions reported in the cases of P.K. Ramaiah v. Chariman and M.D. National Thermal Power Corporation 1994 Suppl. (3) SCC 126 and Nathani Steels Limited v. Associated Construction 1995 Suppl. (3) SCC 324.

6. As noticed above admittedly, the appellant had made endorsements in his own pen in the measurement books and at the bottom of the bills accepting that there is no further claim under the said contract. The endorsements made in the MBs and at the bottom of the different bills reads as under--

Received the payment in full and final settlement of our claims, I have no other claims to DVC so far this work is concerned, further the cost of rectification in connection with the work of A.S.H. Bundh may also be deducted from the final bills as mutually agreed.

It further transpires that after receipt of the full amount, the appellant by a letter dated 22.1.1993 raised further claim. However, by another letter dated 5.10.1993 addressed to the Executive Engineer of the respondent, the appellant withdrew the claims made by the aforesaid letter dated 22.1.1993.

7. In the light of the aforesaid fact, the only question which falls for consideration is as to whether the Court below was justified in rejecting the application filed by the appellant u/s 20 of the Act and refusing to refer the dispute to arbitration. Before answering this question, it would be useful to go through the decisions relied upon by the parties.

8. In the case of Damodar Valley Corporation v. K.K. Kar (supra), the fact was that after execution of the work, the respondent contractor was asked to submit bills along with a receipt stating that he received payment in full and final settlement of the claim and, there was no other claim; but the respondent while submitting bills did not give receipt as desired. However, the amount of bill was paid to the respondent of that case and after receipt of the payment, a further claim was raised including damages for termination of the contract. In the light of those facts, their Lordship held that the question whether payments have been made in full and final settlement of the claim is itself a dispute referable to arbitration.

9. Learned Counsel for the appellant has put heavy reliance on other two decisions of the Apex Court, viz. the case of Parashram Thakur Dass v. Ram Chand (supra) and the Union of India v. L.K. Ahuja and Co. (supra). It appears that these two decisions and the case of Damodar Valley Corporation v. K.K. Kar (supra), have been considered by the Apex Court in the case of P.K. Ramaiah v. Chairman and M.D., National Thermal Power Corporation (supra). Their Lordships have made a clear distinction and distinguished the earlier decision and held as under--

8. On those facts, this Court held that although there was alleged payment as final satisfaction of the contract, yet as the respondent did not give any receipt accepting the settlement of the claim, the payment was unilateral, so the dispute still subsisted and, therefore, it was arbitrable dispute and the reference was valid. In Bhan Prakash case also there was no full and final settlement and payment was not received under a receipt. In L.K. Ahuja and Co. case, this Court while laying the general law held that if the bill was prepared by the department,

the claim gets weakened. This was not a case of accord and satisfaction but one of pleading bar of limitation without prior rejection of the claim. Therefore, the ratio therein is of little assistance. The Calcutta High Court merely followed the statement of law laid in Ahuja and Co. case. It is not shown to us that the Chief Construction Manager was competent to acknowledge the liability or an authority to refer the dispute for arbitration. So neither his letter binds the respondent nor operates as an estoppel. Admittedly the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there is accord and satisfaction by final settlement of the claims. The subsequent allegation of coercion is an afterthought and a device to get over the settlement of the dispute, acceptance of the payment and receipt voluntarily given. In Russell on Arbitration, 19th Edn. p. 396 it is stated that "an accord and satisfaction may be pleaded in an action on award and will constitute a good defence." Accordingly, we hold that the appellant having acknowledged the settlement and also accepted measurements and having received the amount in full and final settlement of the claim, there is accord and satisfaction. There is no existing arbitrable dispute for reference to the arbitration. The High Court is, therefore, right in its finding in this behalf. The appeal are dismissed but in the circumstances without costs.

10. In the case of National Steels Ltd. v. Associated Construction (supra), the Apex Court once again considered the question and following the decision given in the case of P.K. Ramaiah v. Chairman and M.D., National Thermal Power Corporation (supra), held that once dispute is amicably settled between the parties finally, the arbitration clause cannot be invoked by a party to resolve the same on any ground. The apex Court held as under--

Even otherwise, we feel that once the parties have arrived at a settlement in respect of any dispute or difference arising under a contract and that dispute or difference is amicably settled by way of a final settlement by and between the parties, unless that settlement is set aside in proper proceedings, it cannot lie in the mouth of one of the parties to the settlement to spurn it on the ground that it was a mistake and proceed to invoke the arbitration clause. If this is permitted, the sanctity of contract, the settlement also being a contract, would be wholly lost and it would be open to one party to take the benefit under the settlement and then to question the same on the ground of mistake without having the settlement set aside. In the circumstances, we think that in the instant case, since the dispute or difference was finally settled and payments were made as per settlement, it was not open to the respondent unilaterally to threaten the settlement as nonest and proceed to invoke the arbitration clause....

11. In the instant case, as noticed above, the appellant gave an unconditional declaration and/or certificate to the effect that he has received payment in full and final settlement of the claims and no other claim in respect of the work in question is recoverable from or payable by the respondents. Not only that, after receipt of the amount, the appellant treated the contract as completely

terminated, withdrew the security money also which was paid by different cheques. Thus, in my opinion, the decision of the Apex Court in the cases of P.K. Ramaiah (supra) and National Steels Ltd. (supra), fully apply in the facts and circumstances of the present case. In that view of the matter, the appellant having acknowledged the settlement and having received the amount in full and final settlement of the claim, the contract came to an end and no arbitrable dispute exists for reference to arbitration. The learned Court below has, therefore, rightly come to the conclusion that the arbitration clause does not exist and the application for invoking the arbitration clause is not maintainable.

12. In the result, there is no merit in this appeal, which is, accordingly, dismissed.