
(2006) 08 DEL CK 0224

In the Delhi High Court

Case No : FAO (OS) No. 242 of 2005 and CM No. 11178 of 2005

Ramey

APPELLANT

Vs

M.C.D.

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Arbitration Act, 1940 — Section 14, 30, 33
Limitation Act, 1963 — Section 5

Citation : (2006) 134 DLT 106

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

Bench : Division Bench

Advocate : V.K. Shali, for the Appellant; Mini Pushkarna, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present appeal arises out of the judgment dated 11th April, 2002 passed by the learned Single Judge in Suit No. 2752/1993, rejecting the objections filed by the appellant/respondent under Sections 30 and 33 of the Indian Arbitration Act, 1940 (hereinafter referred to as 'the Act') in the suit, and making the award dated 5th October, 1993 published by the learned Arbitrator, rule of the court.

2. Along with the present appeal, the appellant has filed an application u/s 5 of the Limitation Act (for short 'the Limitation Act') for condoning a delay of 1203 days in preferring the present appeal. It is submitted by the appellant that he was not made aware of the impugned judgment by his counsel and that the said judgment came to his knowledge only around 15th July, 2005 when he received a copy of the execution application calling upon him to appear in court on 5th August, 2005. The appellant states that he was under the impression that his objections were still pending as he was informed by his counsel that as and when the same would come up for hearing, the appellant would be so intimated. The appellant has also stated that he is a poor and illiterate person and has passed only 4th standard and was unable to understand the implications of the

judgment dated 11th April, 2002. It has been submitted that the appellant contacted his previous counsel to collect the case file only in the last week of July, 2005 and thereafter, he engaged the present counsel to file this appeal and hence, he should not be made to suffer for no fault of his and the appeal should be considered on merits after condoning the delay in filing the same.

3. The respondent/MCD (hereinafter referred to as 'the MCD') has opposed the aforesaid application filed by the appellant and stated in its reply to the application for condensation of delay that there is no ground for condoning the delay in filing the appeal as the grounds taken by the appellant in his application are frivolous and deserve to be dismissed. It was submitted that the claim of the appellant that he is poor and illiterate and could not understand the implications of the award is baseless for the reason that the appellant has entered into the contract with the MCD worth lakhs of rupees and is well aware of his legal rights and obligations under the contract. It was submitted that he cannot be permitted to plead ignorance and lay the entire blame at the door of his counsel for seeking condensation of delay in preferring the present appeal. It was also submitted that the conduct of the appellant could be deduced from the fact that all the cheques issued by him in favor of the MCD were dishonoured on presentation and that the same must also be a factor that should weigh with the court while exercising its power to condone the delay in filing the present appeal.

4. Learned Counsel for the appellant has drawn our attention to two judgments of the Supreme Court, namely, Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and N. Balakrishnan Vs. M. Krishnamurthy, wherein it has been held that the court should adopt a liberal approach while disposing of applications for condensation of delay and that the word 'sufficient cause' u/s 5 of the Act should receive a liberal construction so as to advance the cause of substantial justice.

5. We have perused the aforementioned judgments. There is no doubt that it is settled law that as against a technical and pedantic approach of throwing out a party on grounds of delay and laches, ends of justice are better met by rendering a decision on merits.

6. At the same time, we would also like to refer to a judgment of the Supreme Court in the case of Salil Dutta Vs. T.M. and M.C. Private Ltd., , wherein, while distinguishing the decision in Rafiq and Another Vs. Munshilal and Another, , it was observed as below:

The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engaged him. It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex- parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such

absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

7. In the light of the above and in the facts and circumstances of the present case, we are not persuaded to exercise our power of condensation of delay in favor of the appellant. We are not inclined to condone the delay of 1203 days in filing the present appeal as the appellant has failed to furnish any satisfactory Explanation in his application warranting condensation of delay. On the contrary, his application does not inspire any confidence. Admittedly, no complaint has been filed against the Advocate who was allegedly not diligent in pursuing the litigation on behalf of the appellant. Putting the entire blame upon the Advocate and trying to portray as if the appellant was illiterate and poor and hence totally unaware of the nature and significance of the pending proceedings, is quite unacceptable, particularly in view of the fact that the appellant has entered into a contract worth Rs. 20 lacs with the MCD and is, Therefore, not only business savvy and worldly wise, but quite capable of taking care of his commercial interests. He is not a rustic ignorant villager hailing from the backwaters who has no knowledge of the legal proceedings and the court procedures.

8. In the course of arguments, the learned Counsel for the appellant vehemently argued that this Court ought to exercise its discretion and condone the delay in filing the appeal for the reason that even on merits, he has a very arguable case in his favor and hence he should not be thrown out at the threshold merely on account of certain technicalities and that his Explanation as given in the application ought to be accepted.

9. In view of the aforesaid submission of the learned Counsel for the appellant, we also propose to examine the matter on merits. The learned Counsels for the parties have taken us through the records. We have perused the award dated 5th October, 1993 as well as the impugned judgment dated 11th April, 2002. We have also perused the documents placed on the record.

10. The facts of the case are that the MCD invited tender for removal of dead animals from within its jurisdiction for the periods 19th November, 1991 to 31st March, 1992 and 1st April, 1992 to 31st March, 1993. The said tender was awarded to the appellant for an annual bid of Rs. 20 lacs. The appellant deposited three cheques worth Rs. 10,34,250/- with the MCD towards the contractual amount and the security. However, all the three cheques were dishonoured on presentation and the appellant failed to deposit the contractual amount which resulted in disputes between the parties. The said disputes were referred by the Commissioner, MCD to an arbitrator in terms of the letter dated 10th December, 1992 whereunder, the disputes as raised by the MCD were referred to the sole arbitrator to adjudicate upon and decide. The sole arbitrator entered upon reference and after hearing the parties and going through the records and the evidence produced by both the parties, published an award

dated 5th October, 1993 whereunder the appellant was directed to pay a sum of Rs. 27,34,250/- to the MCD along with interest at the rate of 15 per cent per annum, as also Rs. 10,000/- towards the cost of the arbitration proceedings.

11. Pursuant to the aforesaid award dated 5th October, 1993, the MCD filed an application u/s 14 of the Act before the learned Single Judge for filing of the award and making the same rule of the court, which was registered as Suit No. 2752/1993. The appellant herein, who was the respondent in the suit entered appearance and filed objections under Sections 30 and 33 of the Act. In his application, the appellant had raised five grounds for setting aside the award. The learned Single Judge heard the parties, perused the award and held that none of the objections taken by the appellant were tenable and that there was no legal infirmity in the award on the face of it. Thus, vide order and judgment dated 11th April, 2002, the objections filed by the appellant were dismissed by the learned Single Judge as being devoid of merits and the award was made rule of the court.

12. Before us, the counsel for the appellant confined the grounds of challenge in respect of the impugned judgment dated 11th April, 2002 passed by the learned Single Judge to two counts; first, that the award in question was a lumpsum award and no reasons/justification whatsoever were given by the arbitrator while passing the same and secondly, that the counter claims of the appellant in the arbitration proceedings were not adjudicated upon by the arbitrator and hence the award was liable to be quashed and the impugned judgment dated 11th April, 2002 was liable to be set aside.

13. In support of the impugned award and the judgment dated 11th April, 2002, the learned Counsel for the MCD submitted that both the aforesaid arguments raised by the learned Counsel for the appellant are untenable and without any basis. In so far as claim of the appellant that his counter claims were not adjudicated upon by the arbitrator is concerned, counsel for the MCD/respondent relied upon the terms of reference dated 10th December, 1992 which make it manifest that only the disputes/claims referred to the arbitrator by Municipal Corporation of Delhi were to be adjudicated upon and hence there was no occasion for the arbitrator to adjudicate upon and decide the counter claim(s) of the appellant. Here, we may note that on perusal of the impugned judgment dated 11th April, 2002, we find this objection has not been taken before the learned Single Judge nor has it been alleged in the appeal that the said objection was taken by the appellant before the learned Single Judge, but not dealt with by him.

14. On the second issue of the award being a lumpsum award passed without any reasons and hence not sustainable, the same has been answered by the learned Counsel for the MCD by referring to and relying upon the judgment of the Supreme Court, namely, Paradip Port Trust and Others etc. Vs. Unique Builders etc., In the said judgment, the Supreme Court has held that an award cannot be assailed for being non-speaking and that merely because an award is

made in lumpsum, it is not possible to take a view that the same is arbitrary or unsustainable.

15. In several decisions rendered by the Supreme Court and this Court, the provisions of Sections 30 and 33 of the Act have been discussed and it has been held that generally, an award passed by the arbitrator is considered binding between the parties and the power of the court to set aside the award is restricted to cases as set out in Section 30 of the Act. The award of the Arbitrator is final, both on facts as well as law. It has also been held that when an award is non-reasoned, it is not open to the courts to guess and speculate the reasons for the award or to investigate the mental process by which the arbitrator has arrived at the conclusions where it is not visible from a perusal of the award. There was no obligation on the part of the Arbitrator to give a reasoned award and, Therefore, no fault could be found with the action of the Arbitrator in giving a non-speaking award. Further, an Arbitrator can give a lumpsum award and he is not bound to give a separate award for each claim. In this connection, we may advert to the following judgments:

- (i) Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others,
- (ii) Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others,
- (iii) State of Orissa and Others Vs. Lall Brothers,
- (iv) Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore,
- (v) Puri Construction Pvt. Ltd. Vs. Union of India (UOI),
- (vi) Sudarsan Trading Co. Vs. Government of Kerala and Another,
- (vii) Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, .

16. In the light of the aforementioned discussion, we find that even on merits, the appellant has failed to make out any case for interference with the impugned judgment dated 11th April, 2002 passed by the learned Single Judge. Neither the conduct of the appellant nor the grounds taken by him on merits for quashing the aforesaid judgment warrant any interference in appeal. The appeal is, Therefore, dismissed as being devoid of merits. The application for condensation of delay also stands dismissed. No order as to costs.