
(1979) 01 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous (F) Appeal No. 209 of 1973

Ramsharan and Ramdayal Dau Co.

APPELLANT

Vs

Hindustan Steel Ltd., Bhilai

RESPONDENT

Date of Decision : 01-01-1979

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (1980) JLJ 689

Hon'ble Judges : G.P. Singh, C.J.; S.K. Seth, J

Bench : Division Bench

Advocate : P.C. Pathak, for the Appellant; A.P. Tare, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.—The appellant M/s Ram Sharan and Ramdayal Dau Company, Durg, hereinafter referred to as the contractors, entered into a contract with the respondent Hindustan Steel Limited, Bhilai, hereinafter referred to as the Company, for construction of 600 units of single-roomed quarters in Bhilainagar. The parties signed a contract, being Contract No. C-37/62, dated 17th March 1962. The contract contained an arbitration clause (Clause 61) which provided for reference to arbitration of two arbitrators, one nominated by each party, to resolve "any question, dispute or difference-upon or in relation to or in connection with the contract".

2. The work was started on 1st September 1961 and completed on 31st July 1963. The final bill was prepared on 12th April 1963 and signed by both the parties. The bill contained an endorsement made by the Divisional Engineer of the Bhilai Steel Plant as follows:

Certified that the work has been completed in accordance with the prescribed drawing and specifications and after taking into account all the authorised additions and alterations and instructions given from time to time conforming with the terms of the contract agreement. Nothing is outstanding against the

contractor for this work.

The final bill also contained an endorsement made by the contractors as follows:

Final measurements and bill accepted.

On 12th April 1963 the contractors made three endorsements in the Measurement Book as follows;

Final measurements and bill accepted in full and final settlements of:

Certified that there is nothing outstanding to me from Bhilai Steel Project against this work excepting refund of security deposit;

I will not claim for reimbursements or royalty for the quarry material obtained from outside sources.

3. In June 1965 the contractors raised a dispute claiming (i) refund of Rs. 11,931.30 as excess royalty charged by the Company; (ii) refund of Rs. 3,283 39 and Rs. 516.95 as royalty on metal and sand not supplied by the Company; and (iii) Rs. 36,006.30 on account of extra item of work. The contractors nominated Dharampal Gupta as their arbitrator. The Company took the stand that no dispute as contemplated under the contract agreement arose between the parties and, without prejudice to this stand, it nominated Shri T.S. Vedachari, Chief Industrial Engineer as its arbitrator. By award made on 28th June 1966 the claim of the contractors for a sum of Rs. 22,244.34 was allowed. The Company then made an application under sections 30 and 33 of the Arbitration Act, 1940, for setting aside the award on various grounds. One of the grounds for challenging the award raised by the Company was that after the payment made in full and final settlement of the final bill the contract was fully and finally settled and the arbitration agreement contained in the contract became extinguished. The arbitrators, therefore, has no jurisdiction to entertain the dispute, for answer to this ground of challenge the contractors submitted that the payment was accepted in full and final settlement under duress and that the payment was not really in full and final settlement. It was also submitted that the arbitration clause in the contract continued to be effective and the arbitrators had jurisdiction to make the award. The 1st Additional District Judge, Durg, accepted the plea raised by the Company and set aside the award by his judgment dated 17th April 1973. It is against this judgment that the contractors have filed this appeal. The Company has also filed a cross-objection.

4. The only question before us is whether the payment made by the Company and accepted by the contractors in full and final settlement of the final bill extinguished the arbitration clause in the contract and the arbitrators has no jurisdiction to entertain the dispute raised by the contractors.

5. The law on the point has been laid down in two decisions of the Supreme Court; The Union of India Vs. Kishorilal Gupta and Bros., and Damodar Valley Corporation Vs. K.K. Kar, . In Kishorilal's case, Subba Rao J. (as he then was),

delivering the majority judgment, laid down the following propositions;

(1) An arbitration clause is a collateral term of a contract as distinguished from its substantive terms; but none the less it is an original part of it; (2) however comprehensive the terms of an arbitration clause may be, the existence of the contract is a necessary condition for its operation, it perishes with the contract; (3) the contract may be non est in the sense that it never came legally into existence or it was void ab initio; (4) though the contract was validly executed the parties may put an end to it as if it had never existed and substitute a new contract for it solely governing their rights and liabilities thereunder; (5) in the former case, if the original contract has no legal existence, the arbitration clause also cannot operate, for along with the original contract it is also void; in the latter case, as the original contract is extinguished by the substituted one, the arbitration clause or the original contract perishes with it; and (6) between the two falls many categories of disputes in connection with a contract, such as the question of repudiation, frustration, breach etc. In those cases it is the performance of the contract that has come to an end, but the contract is still in existence for certain purposes in respects of disputes arising under it or in connection with it. As the contract subsists for certain purposes, the arbitration clause operates in respect of those purposes.

(p. 1370).

The aforesaid propositions go to show that an arbitration clause in a contract does not come to an end merely because the performance of the contract has come to an end. The arbitration clause still survives for adjudication of disputes arising under it or in connection with it. The legal position is different when the parties put an end to the contract as if it had never existed and substitute a new contract in its place. In that class of cases the original contract is superseded by another contract by novation and the arbitration clause being a component part of the original contract falls with it. In Kishorilal's case in dealing with the settlements reached between the parties the majority held that the last settlement, which had taken place on February 22, 1949, had put an end to the earlier contracts and substituted a new contract in their place by novation. It was expressly recited in the last settlement that the earlier contracts stood finally concluded in terms of that settlement and no party would have any further or other claim against the other. The minority consisting of Sarkar J. held that the aforesaid settlement was merely accord and satisfaction and not novation and that the earlier contracts were not put an end to.

6. Kishorilal's case was referred to and explained in K.K. Kar's case. It was held that the majority in Kishorilal's case did not dissent from the principle laid down by Sarkar, J. that "accord and satisfaction does not put an end to the arbitration clause." It was further held that "the question whether there has been a full and final settlement of the claim under the contract is itself a dispute arising from or in relation to or in connection with the contract" which can be decided by the arbitrators. It was also held that "the question whether there has been a

settlement of all the claims arising in connection with the contract also postulates the existence of the contract."

7. In the light of these authorities, we are of opinion that the arbitration clause in the original contract between the parties was not put an end to by the plea of payment in full and final settlement raised by the Company which was disputed by the contractors. The plea that the contractors accepted the payment in satisfaction of all claims in connection with the contract except as to security deposit means that the contract was discharged except as to security amount by performance in the shape of payment made to the contractors satisfaction. The plea does not raise any case of substitution of the original contract by another contract. The plea in its true character is not a plea of novation but only of accord and satisfaction. The question whether this plea was tenable or, in other words, whether there was in fact payment in full and final settlement binding on the contractors was a matter which under the authority of the decision in K.K. Kar's case had to be decided by the arbitrators, being a question-arising from or in relation to or in connection with the contract. We may also refer to an unreported judgment of the Supreme Court in the case of Hindustan Steel Ltd., Bhilai v. M/s Dali Construction Co. C A. No. 1236 of 1968, decided on 3rd April 1969 (Supreme Court) in which it was held that the question about the finality of measurements which the contractors alleged were accepted under misrepresentation, pressure and undue influence is completely within the jurisdiction of the arbitrators and the Civil Court has no say in it. It is true that in K.K. Kar's case there was no receipt signed by the contractors accepting the payment in full and final settlement as is the position in the instant case; yet the receipt is only a piece of evidence to show whether the payment was made in full and final settlement. The question whether by so accepting the payment there was accord and satisfaction and the Company was relieved of any further obligation under the contract was a matter fully within the jurisdiction of the arbitrators.

8. The Additional District Judge relied upon a Single Bench decision of this Court in Hindustan Steel Limited, Bhililai v. M/s Ramdayal Dau and Co., Durg 1972 MPLJ 46. In that case, it was held by Bhawe, J. in almost identical circumstances that the arbitrator had no jurisdiction and that the arbitration clause in the original contract ceased to be effective. In view of the ruling of the Supreme Court in K.K. Kar's case, Bhawe, J's decision cannot now be taken as laying down good law. For the reasons given above, the arbitrators had jurisdiction to entertain the dispute raised by the contractors. The appeal must, therefore, be allowed.

9. The Company has filed a cross-objection that the award is invalid on the grounds mentioned in clauses (a) and (c) of section 30 of the Arbitration Act. The objections relating to the invalidity of the award on the grounds mentioned in section 30 have not yet been examined by the Additional District Judge. These objections cannot be decided in this appeal and the proper thing would be to remand the case.

10. The appeal is allowed. The order under appeal is set aside and the case is remanded to the Additional District Judge for deciding the remaining questions raised before him. There shall be no order as to costs of the appeal.