
(1983) 10 DEL CK 0013

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 57 of 1978

Roofrite Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-10-1983

Acts Referred:

Citation : (1984) 25 DLT 182 : (1984) 6 DRJ 40 : (1984) RLR 50

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : Amarjit Singh and Ratan Lal, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) THIS civil revision is directed against the order dated August 9, 1977 of Shri P.K. Jain, then Additional Senior Sub Judge, Delhi whereby he dismissed the appeal preferred by the plaintiff-petitioner M/s. Roofrite Private Limited, Rajouri Garden, New Delhi, against the order dated February 24, 1976 of Shri K.C. Lohia, Sub Judge 1st Class, Delhi.

(2) THE agreed findings of both the courts below are to the effect that there was a binding arbitration agreement between the parties and that the controversies posed by this litigation were disputes referable to the arbitrator under the arbitration agreement.

(3) BOTH the aforesaid findings have now been challenged by the plaintiff/revision- petitioner in this petition as erroneous.

(4) THE plaintiff-petitioner is a manufacturer of Tar-felt under I.S.I. license and is a registered contractor for water proofing and damp proofing works with the M.E.S. The Garrison Engineer, M.E S. Sagar Cantt., respondent No. 2, on behalf of respondent No. 1, sent to the plaintiff-petitioner tendered documents in respect of the provision of water proofing treatment on roofs of certain buildings at Dhanna The plaintiff-petitioner complied by submitting his tender which was

accepted vide letter No. 8472/13/E8 dated January 15, 1974 by respondent No. 2 on behalf of respondent No. 1, Union of India. The contract in question was not carried out by the plaintiff- petitioner and the same was got completed by the respondents through some other person after cancelling the contract with the plaintiff-petitioner. The disputes arose between the parties for the reason that the respondents made a demand of Rs. 21,426-50 P. on account of damages for the aforesaid alleged breach of the contract and then they wanted to adjust the same against the dues of the plaintiff-petitioner from other works of the respondents. The petitioner thereupon brought the suit against the defendants-respondents for a permanent injunction seeking to restrain the latter from making the aforesaid demand of Rs. 21,426-50 P. on account of damages as also from appropriating and adjusting the same against the other dues of the plaintiff-petitioner from the other works of the defendants-respondents.

(5) BEFORE filing the written statement in the suit the defendants- respondents filed an application u/s 34 of the Arbitration Act, 1940 alleging the existence of an arbitration clause between the parties and for the stay of further proceedings in the suit.

(6) AS already pointed out above the learned trial court as also the learned first appellate court decided that there was a validity completed contract between the parties and that there was an arbitration clause therein binding both the parties and also that the disputes between the parties which were the subject matter of this suit were covered by the arbitration clause and were referable to the arbitrator.

(7) THE learned counsel for the petitioner during the course of arguments contended that the controversy posed by this litigation had .nothing to do with the contract in question and consequently and arbitrator had no jurisdiction to decide the same and the same was not referable to arbitrator. This contention of the learned counsel for the revision-petitioner is correct in as much as the demand made by the respondents upon the petitioner by way of damages as also for appropriation or adjustment thereof towards some other dues of the petitioner from the respondents in some other works, is not tenable for the reason that this demand on account of damages is only an unsettled and an uneducated claim as yet and has not ripened into any decretal amount and till such a claim ripens into decree, the same cannot be claimed. nor can the adjustment or appropriation thereof be claimed. There are two clear authorities upon this proposition of law and the same are reported as Marwar Tend Factory v. Union of India 1974 RLR 218 and Union of India v. Raman Iron Factory 1974 RLR 369. The former authority is a Division Bench authority of Delhi High Court while the latter is of Supreme Court. The latter authority has laid-down as follows :

" GOVERNMENT'S claim for damages for alleged breach of contract by contractor is not a claim for a sum presently due and it cannot appropriate same against other sums due to the contractor. If it does so then it can be restrained by

injunction u/s 41, Schedule II, Arbitration Act and under Order 39, CPC 1973."

The former authority lays down that the claim of damages or compensation which the Government thinks is due to it in regard to same contract or any other contract confers only a right to sue and if the claim is not admitted and is disputed then it is not a debt and it cannot be unilaterally adjusted or arbitrarily appropriated by the Government. So, the relief of permanent injunction sought by the petitioner in the suit is based on a well settled proposition of law and has nothing to do with the contract in question and, on the other hand, something independent of and separate from the contract in question between the parties. The Supreme Court authority reported as Union of India (UOI) Vs. Salween Timber Construction (India) and Others, , and also relied upon by the learned lower appellate court lays down the test for deciding as to whether the dispute existing between the parties is covered or not by the arbitration clause of the contract as under :

"THE test for determining whether a dispute is one. "arising out of the contract" or "in connection with the contract is whether recourse to the contract by which both the parties are bound is necessary for the purpose of determining whether the claim of the party is justified or otherwise. If it is necessary to take recourse to the terms of the contract for the purpose of deciding the matter in dispute, it must be held that the matter is within the scope of the arbitration clause and the arbitrators have jurisdiction to decide that dispute."

It is quite obvious that for deciding the question of making a demand by the respondents upon the petitioner in regard to the aforesaid uneducated and unsettled amount or for the appropriation and adjustment thereof from the dues of the petitioner in its other contracts with the respondents one cannot feel the necessity of referring to terms of the contract and on the contrary recourse to the contract between the parties is altogether unwarranted and the prayer for the grant of permanent injunction made by the petitioner in its suit against the respondents can be decided even without looking at the contract in question. In this view of the matter, the interpretation of the courts below on this point is erroneous and has to be rejected.

(8) THE learned counsel for the petitioner also disputed the factum of the coming into existence of the alleged contract between the parties asserting that there was no compliance whatsoever of the mandatory provisions of law contained in Article 299 of the Constitution of India pertaining to all the contracts. This contention of the learned counsel stands negatived by the Supreme Court authority reported as Union of India (UOI) and Others Vs. N.K. Private Limited and Another, and in para 8 of this authority the following observations appear :

"THE crucial question which arises for determination is whether there was a concluded contract, and if there was one, whether the mandatory requirements of Article 299 of the Constitution for entering into a valid and binding contract

have been satisfied ? It is now settled by this Court that though the words "expressed" and "executed" in Article 299(1) right suggest that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorised on this behalf by the President of India, A contract whether by a formal deed or otherwise by persons not authorised by the President cannot be binding and is absolutely void."

So, from this authority it stands established that it is not necessary that all the contracts should be completed as ordained by Article 299 of the Constitution of India but a contract can be completed if there is a tender and an acceptance thereof by a person duly authorised in this behalf by the President of India. The question still remains whether the officer who accepted the tender of the petitioner-plaintiff in this case was a person authorised by the President of India in this behalf. The perusal of the records of the case as at present does not show that the officer who accepted the tender in this case was a person authorised by the President of India in this behalf. This is a matter of evidence and no evidence has as yet been adduced by any party in the suit inasmuch as no stage for evidence has yet arisen on account of the filing of the earliest application u/s 34 of the Arbitration Act, 1940 for the stay of the suit. Furthermore, this question regarding the existence of the binding contract between the parties and raised by the pleadings pertaining to the application u/s 34 of the Arbitration Act, 1940 and the reply thereto, need not be gone into in view of my finding on the question whether the disputes between the parties are referable to the arbitrator.

(9) IN view of the above discussion, the revision petition succeeds and consequently the impugned orders of both the courts below are set aside and as a necessary consequence thereof the application u/s 34 of the Arbitration Act, 1940 is dismissed with costs throughout. Counsel's fee Rs. 500.00 .

(10) THE parties are directed to appear before the learned trial court on 24-10-1983.