

(2002) 07 GAU CK 0016
In the Gauhati High Court
Case No : Regular First Appeal No. 64 of 2000

Santokh Singh Bhabra and Another	APPELLANT
Vs	
Kalsi Babra Construction Company and Another	RESPONDENT

Date of Decision : 22-07-2002

Acts Referred:

Arbitration Act, 1940 — Section 14, 30

Citation : (2003) 1 GLR 12

Hon'ble Judges : P.P. Naolekar, C.J;B. Biswas, J

Bench : Division Bench

Advocate : S. Medhi and P. Upadhyay, for the Appellant; S.S. Sharma and D.K. Bhatra, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—This appeal is directed against the judgment and decree passed by the learned Civil Judge (Sr. Division) No. 1 Guwahati in T.S. (Arb.) No. 96/96 making the award passed by the arbitrators a Rule of the Court rejecting the objection of the appellant.

2. The arbitration proceedings was initiated on an application filed u/s 8 of the Arbitration Act, 1940 on behalf of M/s Kalsi Bhabra Construction Company, a partnership firm having its principal seat of business at Guwahati through its partner, Sri Kewal Singh Kalsi. A number of grievances were raised in the petition with regard to different transactions as well as business equipments of the firm praying for settlement of the disputes through arbitration. The Civil Court by the order dated 7.1.1991 appointed arbitrators to decide the dispute as per parties" contention with stipulation that the award be passed within a period of four months from the date of entering the reference.

3. The arbitration agreement is incorporated in para 18 of the deed of partnership. Para 18 reads as follows :

"18. That if any dispute shall arise between the parties in respect of the conduct

of the business of the partnership of in respect of interpretation, operation of enforcement of any of the terms or conditions of this Deed or in respect of any other matter. Cause or thing whatsoever not herein otherwise provided for, the same shall be referred for adjudication to arbitrators, one appointed by each party of such number of arbitrators, one appointed by each party of such number of arbitrators, as they may mutually decide and their decision shall be final and binding. In case of there being no unanimous decision of the Arbitrators, the Arbitrators shall appoint one common Umpire and the majority and/or unanimous decision of the Arbitrator (Arbitrators) and Umpire shall be final and it will be binding on the parties of his nominees and their legal representatives."

4. The arbitrators after entering the reference issued notice to all the partners. On receipt of claims and counter claims and the documents including written argument from the concerned parties, the arbitrators passed the award dated 16.4.1994, within the time extended by the Court. The award reads as follows :

"Award

In respectful compliance with the direction of the Court of Hon"ble Assistant District Judge No. 1, Guwahati vide Order dated 17.2.1993 passed in T.S. (Arb.)267/92, notice whereof communicating the order dated 17.2.1993 was received by us on 24.6.1993. Accordingly, by order dated 3.8.1993 notices were issued by Registered post with A/D to the parties, asking them to appear before us on 29.8.1993 for hearing and reconsideration of the Award dated 18.7.1991 passed earlier. The notices were served upon the addressees and both the parties appeared on 29.8.1993 before us and thereafter the arbitration proceeding were held on 26.9.1993, 10.10.1993, 17.10.1993, 31.10.1999, 21.11.1993, 11.12.1993, 24.12.1993. 29.1.1994, 20.3.1994, 24.3.1994, 1.4.1994 and 10.4.1994. From time to time applications were made to the Court for enlargement time for making the Award. On our application the learned Court made available the required award and other papers on 7.10.1993. And ultimately vide Order dated 4.2.1994 the learned Court granted the time to submit the Award by 18.4.1994. After due service of notices both parties appeared and participated in the arbitration proceeding by submitting their respective claims, counter-claims, rejoinder and also submitted their documents in support of their respective claims. The parties have also submitted their written arguments in the proceeding. Upon submission of written arguments by both the parties in the arbitration proceeding was concluded and reserved our Award to be delivered on 16.4.1994.

We carefully went through and perused the documents produced before us, the claim submitted by the respective parties and after careful consideration of all the materials produced before us we hold that Sri Kewal Singh Kalsi and Smt. Harkirat Kaur have been able to show that they are entitled to get a lump sum amount of Rs. 6,10,000 from Sri Santokh Singh Bhabra and Sri Nirvair Singh Bhabra, the other two partners of M/s Kalsi Bhabra Construction Company jointly and severally.

We accordingly award that a sum of Rs. 6,10,000 (Six lakhs ten thousand) be paid by Sri Santokh Singh Bhabra and Sri Nirvair Singh Bhabra to Sri Kewal Singh Kalsi and Smti, Harkirat Kaur within a period of one month from today, failing which they shall also be liable to pay interest @ 12% per annum over Rs. 6,10,000 till full payment is made to Sri Kewal Singh Kalsi and Smti. Harkirat Kaur.

We further pass the award that the firm's Account No. 3/196 at State Bank of India, Nowgong Branch shall be unfrozen and the amount lying in the said account shall be distributed amongst the four partners namely, Sri Kewal Singh Kalsi, Smti. Harkirat Kaur, Sri Santokh Singh Bhabra and Sri Nirvair Singh Bhabra equally and the said account will be closed thereafter. The distribution of the fund from the said Bank account to the respective partners shall be undertaken by Sri Kewal Singh Kalsi.

We further pass the award to the effect that in view of the irreconcilable dispute amongst the partners the firm M/s Kalsi Bhabra Construction Company, Bharalumukh, Guwahati be treated to be dissolved and discontinued and none of the partners will carry on the business any more in the name of the said firm M/s Kalsi Bhabra Construction Company."

5. Mr. S. Medhi, learned senior counsel appearing for the appellants challenged the award on the ground that the arbitrators did not consider their counter claim and arbitrarily fixed the liability on the appellants for payment of Rs. 6,10,000 to Sri Kewal Singh Kalsi and Smt. Harkirat Kaur, other partners. The apart, the award in respect of dissolution of the firm and the direction not to carry any business in the name of the firm has also been challenged on the ground that it was beyond the term of reference.

6. Section 30 of the Act of 1940 provides the grounds for setting aside an award. Section 30 reads as follows :-

"Grounds for setting aside awards. - An award shall not be set aside except on one of more of the following grounds, namely :-

- (a) that an arbitrator or umpire has misconducted himself or the proceedings ;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after the arbitration proceedings have become invalid u/s 35;
- (c) that an award has been improperly procured or is otherwise invalid."

7. The alleged improper conduct highlighted by Mr. Medhi, learned senior counsel is relatable to ground (a) i.e., misconduct. In so far as the award relating to payment of Rs. 6,10,000 is concerned, the arbitrators appear to have given the direction for payment of the amount after scrutiny of the documents and materials produced by the parties and on consideration of the respective claim of the parties. This is indicative of application of mind. They have, obviously, not

recorded any reason like a Court of law. Whether absence of reasons will amount to misconduct within the meaning of Section 30 of the Act ?

8. The appellants in their objection before the learned Civil Judge pleaded that the award was not properly prepared ; the amount payable has been assessed at a higher rate without any basis. They also raised objection with regard to the direction for freezing the bank account.

9. Section 14 of the Act of 1940 provides that an award is made when it is written out or at least when it is written out and signed. The language of Section 14 does not provide that reason is required to be recorded before making the award. In *Bank of Baroda Vs. B.J. Bhambani and Another*, , it has been held :

"It is not necessary that speaking award should give detailed reasoned judgment. It is sufficient if the arbitrator makes clear his mind in the award what he has done in the impugned order. In view of the same, we cannot interfere with the High Court on this ground or to refer the matter to a larger Bench as particularly this point was not raised before the High Court. This petition fails and is accordingly dismissed."

10. In *State of Orissa and Another Vs. Consolidated Construction Company (Engineers and Contractors) and Another*, , relying upon a number of judgments of the Apex Court as well as other High Courts, it has been held ;

".....the criticism of learned Additional Government Advocate that the arbitrator rejected the counter claim without any discussion is uncharitable. The arbitrator is entitled to give reason, but there is no obligation for him to support his conclusion in favour of or against a party by giving reason. I must, therefore, hold that the tenability of the counter claim had been duly dealt with by the arbitrator and he has found that the counter claim has no justification. Keeping the nature of the award in view, I do not think it is open to the State to raise any further challenge to the finding."

11. The above decisions show that reasons are not to be recorded by the arbitrators. In the instant case, the arbitrators made the award by putting their signatures and the contents therein show that they had taken into consideration all the materials including written argument before making the award. They have clearly indicated their mind which admits of no room for any confusion. Therefore, the award cannot be said to be bad in law.

12. The next question is whether the arbitration agreement quoted hereinbefore and the reference of the disputes by the learned Civil Court vide order dated 7.1.1991 vested authority with the arbitrators to make an award for dissolution of the firm ? For this purpose, we may refer back to para 18 of the deed of partnership. Apart from adjudication of the disputes with regard to any term or condition of the partnership deed, the words "in respect of any other matter" incorporated therein denote that the powers vested with the arbitrators by the aforesaid agreement were wide and the same embrace within its fold all matters

including dissolution of the firm. The order of reference passed by the Court on 7.1.1991 was omnibus in nature. In an appropriate case where, because of existing disputes almost in all counts, the business of the firm could not be carried out in terms of the partnership deed, an award for dissolution thereof cannot be said to be beyond the powers of the arbitrators. In the instant case, the parties were in dispute with regard to almost all the matters including custody of the office furniture and other accessories. There was total loss of trust and confidence amongst them. The records do not show that the firm was carrying on business for the last 10/15 years. The rule of prudence did not permit the arbitrators to make any attempt to re-activate the firm which was already defunct. For this reason, we find no error in the decision of the arbitrators. In our opinion, the power exercised by them in making the award that the firm be treated as dissolved and no transaction be carried out in the name of the said firm cannot be said to be in excess of the authority derived from Clause 18.

13. In *M/s. V.H. Patel and Company and Others Vs. Hirubhai Himabhai Patel and Others*, , the Supreme Court in para 12 held as follows :

"12. So far as the power of the arbitrator to dissolve the partnership is concerned, the law is clear that where there is a clause in the articles of partnership, or agreement or order referring all the matters in difference between the partners to arbitration, the arbitrator has power to decide whether or not the partnership shall be dissolved and to award its dissolution. (See *Phoenix v. Pope* 8). Power of the arbitrator will primarily depend upon the arbitration clause and the reference made by the court to it. If under the terms of the reference all disputes and difference arising between the parties have been referred to arbitration, the arbitration will, in general, be able to deal with all matters, including dissolution. There is no principle of law or any provision which bars an arbitrator to examine such a question. Although the learned counsel for the petitioner relied upon a passage of *Pollock & Mulla*, quoted earlier, that passage is only confined to the inherent powers of the court as to whether dissolution of partnership is just and equitable, but we have demonstrated in the course of our order that it is permissible for the court to refer to arbitration, a dispute in relation to dissolution as well on grounds such as destruction of mutual trust and confidence between the partners which is the foundation therefor."

14. The ratio available in the above decision of the Supreme Court, in the given circumstances of the case at hand, clearly justify the course of action adopted by the arbitrators. Restoration of lost trust and confidence is not an easy task. The arbitrators do not have long arms of law to secure meticulous compliance of any direction in this behalf, particularly when non of the partners pleaded for revival of the otherwise defunct firm.

15. The next question raised by Mr. Medhi is that the liabilities and the assets of the firm have not been distributed by the arbitrators in the impugned award and since the arbitrators became defunct after making the awards, the partners are

left at lurch which will result in further quarrel and squabble amongst them. We have considered this aspect of the matter. It would appear that Section 48 of the Indian Partnership Act, 1932 takes care of the aftermath situation. Appropriation of the assets after discharge of liabilities has to be pro-rotam division of the residue only. The partners are free to invoke the above provision of law. Absence of decision in this regard in the award cannot be treated as a deficiency amounting to misconduct for the purpose of setting aside the award.

16. In the result, the appeal is dismissed. The parties are to bear their respective cost.