

(1995) 07 DEL CK 0019

In the Delhi High Court

Case No : Suit No's. 1470-A and 1493 of 1989

Saraf Agencies Ltd.

APPELLANT

Vs

Cement Corporation of India Ltd.

RESPONDENT

Date of Decision : 20-07-1995

Acts Referred:

Citation : (1995) 3 AD 485 : (1995) 59 DLT 331

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Dhruv Aggarwal and Alakh Kumar, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) The award dated 17th May, 1989, made and published by the Arbitrator in the matter of disputes which had arisen between the parties under an arbitration agreement, was filed in this Court. On notice having been given to the parties, the petitioner filed objections to the said award. Besides other objections, one of the objections taken in the petition under Sections 30 and 33 of the Arbitration Act is that this Court has no jurisdiction to try the present matter and / or make the award a rule of the Court. The submission made is that an application u/s 20 of the Arbitration Act for referring the disputes to the Arbitrator was filed in the High Court of Calcutta. By order dated 8th June, 1988 Calcutta High Court was pleased to refer the disputes to the Arbitrator to be appointed by Chairman-cum-Managing Director of respondent No. 1. In terms of the orders dated 8th June, 1988 passed by Calcutta High Court, the Arbitrator was appointed by a letter dated 13th July, 1988 and the Arbitrator entered upon the reference on 18/19th July, 1988. An ex-parte award was made and published by him on 17th May, 1989. It is further submitted that an application u/s 14(2) of the Arbitration Act, 1940 for a direction to the Arbitrator to file the award was filed in the Calcutta High Court. It was brought to the notice of the Calcutta High Court that the Arbitrator knowing fully well that he was appointed in terms of the order dated 8th June, 1988, had filed the award in the Delhi High Court. The

respondent was ^ represented by Counsel in the said proceedings in the Calcutta High Court and it was stated by the respondent that provisions of Section 31(4) of the Arbitration Act would not be attracted so far as filing of award was concerned and as such according to the respondent High Court of Delhi had jurisdiction to entertain the award filed by the Arbitrator.

(2) After hearing the parties the Calcutta High Court by its order dated 27th June, 1991 held that as the order was passed by the Calcutta High Court u/s 20 of the Arbitration Act referring the matter to arbitration, the Calcutta High Court had the jurisdiction to entertain an application under Sections 30 and 33 of the Arbitration Act after the passing of the award. It was also held by the High Court that it did not find any reason as to what impelled the Arbitrator to file the award in High Court of Delhi and after holding that the Calcutta High Court had jurisdiction to entertain the award as well as objection, it held that it was for the parties to approach the High Court of Delhi for necessary orders for sending the award to that Court or returning the award to the Arbitrator. With these observations the application of the petitioner before the Calcutta High Court was disposed of and as the award was not before the Court, application under Sections 30 and 33 of the Arbitration Act was not decided.

(3) The respondent in the present case have argued that the Calcutta High Court did not have any jurisdiction to entertain petition u/s 20 of the Arbitration Act and as such the order of the High Court of Calcutta was without jurisdiction.

(4) The arguments advanced by the Respondent is without any merits. u/s 31 of the Arbitration Act 1940 where in any reference any application under the Act had been made in a Competent Court to entertain the same that Court alone had the jurisdiction over the arbitration proceedings in all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court. Reference to arbitration was made by the High Court at Calcutta and, Therefore, all subsequent applications including the award and the petition for setting aside the award could be filed only in High Court of Calcutta and in no other Court. It was in view of this provision that the Calcutta High Court made an observation in order dated 27th June, 1991 that it did not find any reason as to what impelled the Arbitrator to file the award in High Court of Delhi. This argument that the Calcutta High Court did not have any jurisdiction to make a reference u/s 20, was also considered by the Court and it was held that it had the jurisdiction to pass an order u/s 20 of the Arbitration Act. This order of the Calcutta High Court, in my opinion, will operate as res-judicata between the parties and does not require any further arguments to justify the filing of the award in this Court.

(5) I am, Therefore, of the opinion that the award could not have been filed in this Court and the only Court where the award can be filed is the Calcutta High Court. There is no need to go into the merits of the petition under Sections 30 and 33 of the Arbitration Act as on the point of jurisdiction I am holding that this Court has no jurisdiction.

(6) I, Therefore, direct the award be returned for filing in the Calcutta High Court. The petition is, accordingly, disposed of without any order as to costs.