

(2002) 04 PAT CK 0021

In the Patna High Court

Case No : Miscellaneous Appeal No. 186 of 1998

Satya Narain Prasad Gupta and Another

APPELLANT

Vs

Sri. Sudhir Kumar Singh

RESPONDENT

Date of Decision : 18-04-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 10, 4
Limitation Act, 1963 — Section 5

Citation : (2002) 2 PLJR 682

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Ram Chandra Jha and Vibhakar Misra, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Pathak, J.—This miscellaneous appeal is directed against the judgment dated 30.4.98 passed by Sub Judge I, Saharsa, in Misc. case No. 17/97 dismissing the claim of the Plaintiff-Appellants seeking amendment of the award dated 26.2.97 which was put to execution in case No. 2/97.

2. Certain facts will be apt to be stated, precisely, in order to bring the bone of contention between the parties into sharp focus. The Defendant-Respondent, Sudhir Kumar Singh, was a tenant under Satya Narain Prasad Gupta, the Plaintiff-Appellant, and, perhaps, his wife Smt. Ram Dulari Devi in a house situated within the jurisdiction of the local Municipality having holding No. 244 over old khata No. 190, old khesra No. 4203, new khata No. 392, new khesra No. 731 (kha and ga). Sudhir Kumar Singh was running a medical shop named as Popular Medical Hall in this house. There was an alleged agreement between Satya Narain Prasad Gupta and Sudhir Kumar Singh to sell the aforesaid house for Rs. 2 lakhs. Satya Narain Prasad Gupta had received Rs. 1,40,500/-. Rest of the consideration money was to be paid by Sudhir Kumar Singh and then it was agreed that on payment of this amount both the husband and wife snail execute a deed of registration over the said house. Thereafter, when Satya Narain Prasad Gupta

and his wife failed to execute the deed as per the agreement, the panches intervened and rendered an award. Then Satya Narain Prasad Gupta filed the suit in the court below to set aside the award on legal and factual grounds and when this prayer of Satya Narain Prasad Gupta was rejected, they filed this appeal before this Court.

3. The award rendered by the so-called panches had been challenged on various grounds. Firstly, the ground on which this award was assailed was that the agreement entered into between Satya Narain Prasad Gupta and Sudhir Kumar Singh was not joined by his wife, Ram Dulari Devi. It was next assailed on the ground that the award does not refer to odd number of Panches as enjoined by Section 10 of the Arbitration Act, 1996. Moreover, initially the concerned award referred to six panches, but thereafter it refers to 16 panches, out of which only 13 panches signed on the award. Signature of Satya Narain Prasad Gupta was obtained on page 4 of the award under coercion and without his voluntary participation in the alleged proceeding. The panches did not appoint an umpire (President). On the aforesaid legal grounds, the award, in question, was challenged. The lower court rejected all these objections and held that the objections were also time barred in the court below, and, accordingly, dismissed the misc. case, against which this appeal has been preferred.

4. In the first place, I am to see whether the arbitration agreement itself was valid without the same being joined by the wife of Satya Narain Prasad Gupta. Recitals of the award itself show that both Satya Narain Prasad Gupta and his wife Ram Dulari Devi had agreed to sell the house, in question, under the tenancy of Sudhir Kumar Singh. This recital finds mention in paragraph 2 of the reference (Ext. B). Admittedly, the house, in question, stands in the name of Ram Dulari Devi. It was the contention of the Respondents that this house was purchased by Satya Narain Prasad Gupta in the name of his wife and, so, it was his property. So, he was required to enter into the agreement of reference. But the recital which I have referred to above indicates that both the husband and wife had to execute the sale-deed. Moreover, admittedly when the house, in question, stood in the name of wife of Satya Narain Prasad Gupta, the probability of the alleged agreement for sale of the house must be that the sale-deed would be executed both by Satya Narain Prasad Gupta and his wife. In such a circumstance, non-joining of wife of Satya Narain Prasad Gupta in the agreement of reference to arbitration, of course, rendered it invalid and moreover this agreement of reference appeared to be doubtful. This agreement (Ext. B) refers to appointment of six panches. No date is mentioned on this deed of agreement (Ext. B). In such a circumstance, it is doubtful whether the agreement was entered into between the parties on 26.2.97 itself. The award dated 26.2.97 refers to panches as many as 16. It is not understandable as to when the original agreement (Ext. B) referred to appointment of six panches, how suddenly 16 panches figured on the award. The signature of Satya Narain Prasad Gupta, which is on page 4 of the award was alleged to have been obtained under undue coercion upon him. The trial court on the basis of certain evidence, oral and

documentary, held that this signature was not obtained under any coercion, but it is to be noted that Satya Narain Prasad Gupta did not mention his full name on page 4, and when 16 persons figured as panches, who were rendering the award, it is not understandable how 16 panches appeared on 26.2.97 when the agreement of reference appointed only 6 panches. So, it may be rightly suspected whether Satya Narain Prasad Gupta was in the know of things regarding the date of panchayati and the place of the same. Then the final award has been signed by only 13 panches. This also raises doubt whether there was, of course, a panchayati on 26.2.97 and award. I shall refer to legal provisions point by point later. At this stage, I am simply enumerating the irregularities as they emerged from the recitals of the award itself. Then, again there are signatures of six more panches at page 7 who were perhaps, mentioned in the deed of agreement (Ext. B.). So, all these facts which are apparent on the face of the award (Ext. C) naturally clothe the award with serious doubts. The award, in question, is to the effect that Sudhir Kumar Singh will offer the remaining amount of consideration money to Satya Narain Prasad Gupta and the latter shall execute the sale-deed in respect of the house, in question, within 15 days. One Devendra Kumar Singh @ Lalan was authorised to execute registration deed regarding the award.

5. The award was challenged on the ground that it violates certain provisions of the Arbitration Act. In this connection, Section 10 was firstly mentioned. This section has clearly stipulated that the parties to the agreement of reference are free to determine the number of arbitrations, but this number shall not be an even number. Admittedly, initially six panches were appointed and then on the award 16 panches have appeared to decide the dispute between the parties. Then after the decision was rendered, six panches who figured in the earlier agreement (Ext. B) have also, perhaps, put their signatures. From the aforesaid circumstances, it is not clear whether the final award was rendered by 16 panches or 19 panches. Admittedly, therefore, the initial agreement for reference referred to six panches and the award itself refers to the decision of 16 panches. So, admittedly the arbitrators were of even number. The trial court has referred to Section 4 of the Act where it has been laid down that if the concerned parties proceed with the arbitration without stating their objection knowing fully that the agreement derogated from the required provision under the Act, the illegality attaching to the arbitration agreement as enjoined by Section 10 would be removed. But Section 4 has clearly mentioned that the parties who know that any provision of the Act has been violated and still proceed with the arbitration, only in that case, the acquiescence of the parties shall amount to their waiver of right to challenge the illegality attaching to the arbitration agreement. In the instant case, it was not proved that Satya Narain Prasad Gupta was conscious of all the provisions of the Act or Section 4. In such a circumstance, the opinion of the trial court that illegality attaching to the arbitration agreement in derogation of Section 10 did not vitiate the agreement, was not sustainable. Non-joining of Ram Dulari Devi to the agreement for reference or her absence at the time of

arbitration proceeding also vitiated the award because as per recital of the agreement itself she was to execute the sale-deed with respect to the house standing in her name, even though Satya Narain Prasad Gupta, her husband, was looking after her affairs. This aspect of the case has been totally ignored by the trial court. I have already referred to above, that the arbitration agreement does not contain any date on the signature of the panches and the same of the parties. So, it is not clear as to on what date the agreement was entered into and whether Satya Narain Prasad Gupta was aware of date of Panchayati and whether he was informed in advance about this date. So, when the very agreement appeared to be doubtful, the subsequent panchayati and the award would also be rendered invalid so far the award itself is concerned, when there were 16 panches and 13 signed on it, the three dissenting panches should have given note of dissent and in that case it would have been presumed that all the 16 panches were participating and decision was rendered by the majority of the panches. But when there was complete absence of three out of 16 panches, the award would be invalid. The next question is whether the Plaintiff-Appellant Satya Narain Prasad Gupta had knowledge of the award and whether he was supplied with copy of the same. In this connection, the trial court referred to the evidence of Lalan Singh who said that he had tendered the copy of the award to Satya Narain Prasad Gupta who refused to receive the same. Then the copy of the award was sent to him under certificate of posting. Some documents in this connection were brought on the record (Exs. D and E). Ext. D is the certificate of posting which contained the address of Satya Narain Prasad Gupta and there is seal of the post office concerned. This will indicate that something was dispatched to Satya Narain Prasad Gupta under certificate of posting. Ext. E is a receipt of deposit of fee in search of some document. This is dated 21.11.98. So, this receipt also does not indicate that the copy of the award dispatched to Satya Narain Prasad Gupta under certificate of posting was actually received by him. A letter or any document dispatched under certificate of posting is delivered to the addressee and the receipt is obtained by the Peon delivering the document. No receipt was produced on the record of the case in order to establish that, of course, the copy of the award was dispatched to Satya Narain Prasad Gupta. In such a circumstance, the evidence of D.W., Lalan Singh, was not easily to be relied on. The Plaintiff-Appellant pleaded that he came to know of the award when it was put to execution and from the date of knowledge, his objection was filed within 30 days. The rejection of the objection on the ground of delay was, therefore, also not a correct decision of the court below. A few words more about the delayed filing of the objection to the award as mentioned in the judgment of the lower court would suffice in order to find out whether the Appellant had, of course, knowledge of the award in order to enable him to file the application for setting aside the award in time. In this connection, the lower court had stated that A.W. 1, the applicant, at paragraph 32 had stated that he had knowledge of the award one month's prior to the filing of the title suit No. 35/97. This title suit was filed on 6.3.97. So, one month prior to this date would go back to 6.2.97, but the evidence of O.R witness, Lalan Singh was that he had tendered the copy

of the award to the Appellant on 27.2.97. So, there was no question of knowledge regarding the award gained by the Appellant on 6.2.97. So, the lower court's reference to the statement of A.W. 1 at paragraph 32 was irrelevant. The lower court has also stated in its judgment that as per the statement of Lalan Singh and as per the averment in the pleading of the O.P (Respondent) the copy of the award was served on the Appellant on 3.3.97. A.W. 1 did not deny this averment and, so, he was supposed to have been served with the copy on 3.3.97. In this connection, I am of the opinion that when already A.W. 1 had denied service of copy of the award, it was complete denial of service and, so, specific denial that he was not served with the copy on 3.3.97 was not necessary. I have already stated above that neither Ext. D nor Ext. E established service of copy of the award on the Appellant. of course, there is a presumption attaching to the postal dispatch of any letter or any document, but this presumption is always rebuttable and when the Appellant denied this service, the Respondent had to prove the same by reliable evidence. In this connection, the receipt of the delivery by the postal dispatch under certificate of posting was imperative. It was incumbent on the part of the Respondent who was O.P. in the lower court to examine the postal peon to prove the service. Ext. E. rather indicated that there was loss of the dispatched document and, so, the opposite party filed a search application for which fee was paid. The lower court itself stated in its judgment that application to set aside the award was filed on 8.7.97 and he had obtained certified copy of the award on 12.6.97 and from this date the filing of the application to set aside being made on 8.7.97 was within 30 days. Moreover, there was an application u/s 5 of the Limitation Act. In all circumstances, therefore, the court should not have taken a hyper technical view of the delay in filing the objection to the award, when already the award suffers from inherent material and legal defects as pointed out above.

6. Before I part with this judgment, I would like to make certain more comments upon the award, in question, (Ext. C). I find that recitals regarding decision of the arbitrators continued up to the page 6 of the award and then signatures of the panches started from the foot-note of page 6 and it continued up to the page 7 where the last panch Md. Niyamuddin signed. Thereafter, there is the endorsement regarding authority to Lalan Singh to register the award. Thereafter, there is signature of six panches who had, perhaps, figured on the arbitration agreement (Ext. B) and then follows the signatures of the parties Sudhir Kumar Singh and Devendra Kumar Singh. So, from the aforesaid recitals, it is apparent that six panches who had earlier figured in the arbitration agreement did not participate in the deliberations of the panchayati. Although I find that some names are common in the 13 panches who had signed the decision of the panches. In any case, it is further apparent that 16 panches who have subsequently figured as holding panchayati at page 4 of Ext. C had not all participated, three of them were apparently absent. So, if it is presumed that 16 plus 6 who figured in Ext. B were the panches to hold panchayati, still out of the aforesaid figure three were absent. In such a circumstance, as I have already

stated above, if the total number of panches appointed was 22, three should have either registered their dissent, if they were at all participating in the deliberations in order to render the award to be valid, and to have been delivered by a majority of the panches. Absence of signatures of three panches would indicate that they were absent. Their absence would, therefore, invalidate the award.

7. In the circumstances, as referred to above, it is more than obvious that the award rendered by the concerned panches (Ext. C) which the court below held to be valid was redolent with serious doubts. In such a circumstance, it was bound to be set aside.

8. In the result, this appeal is allowed and the award, in question (Ext. C), is set aside.