
(1992) 03 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 345 of 1991

Sevaram Laxmidas Sachdev	Vs	APPELLANT
National Insurance Company and another		RESPONDENT

Date of Decision : 27-03-1992

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 16, 17, 30
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1993) MhLj 1544

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Advocate : D.A. Gursahani, for the Appellant; U.N. Upadhye for Respondent No. 1 and V.J. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Chapalgaonker, J.—A truck bearing No. M.T.8. 9202, owned by the present petitioner, met with an accident. The matter was referred for arbitration and the sole arbitrator, respondent No. 2 herein, made an award on 12th July 1985. filed it in the Court for its conversion in decree on 12th August. 1985. Notice of filing the award was received by the respondent No. 1, Insurance Company on 16-10-1985, and the decree came to be drawn in terms of the award by the learned Civil Judge, Senior Division, Ahemadnagar, on 2nd November, 1985. An application was moved by the Insurance Company for setting aside this decree on the ground that it was incompetent for the Court to convert the award into decree before the statutory period of limitation of 30 days, as is provided, for filing an objection to the award under Article 119(b) of the Limitation Act, 1963. Learned Civil Judge, Senior Division, Ahemadnagar, after hearing the parties was pleased to set aside the decree vide his order dated 17-2-1988, which has been challenged in this Writ Petition.

2. Shri D. A. Gursahani, learned counsel for the petitioner, was very fair enough to concede that passing of a decree before expiry of 30 days" limitation for filing

objection to an award was irregular and cannot be sustained. However, he has taken an exception to the direction of the learned Civil Judge that respondent No. 1 Insurance Company is further given an opportunity to file objection within a week from the date of that order. According to Shri Gursahani, the time would start running once notice is given by the Court about filing of the award and once this notice under sub-section (2) of section 14 of the Arbitration Act, 1940, is received by the party, the time would not stop running and unless it is shown that an objection was filed within 30 days" from the date of receipt of this notice, no further objections can be filed, objecting the award and, therefore, even if the learned Judge found that the decree was drawn before the expiry of 30 days limitation, he was free to set aside the decree and order of drawing decree again but was not competent to grant further time of seven days to the respondent No. 1 Insurance Company for taking objections to the award. Sub-sections (1) and (2) of section 14 of the Arbitration Act, 1940, are extracted below for the purpose of ready reference:

14. Award to be signed and filed. - (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.

Therefore, when the award is made the arbitrator or umpire shall give notice in writing to the parties of making and signing of award but there is no provision in sub-section (1) to file objection to the award. The stage of objection comes only when the award is filed in the Court and Court gives a notice to the parties of the filing of the award. u/s 16 Court has power to remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration and u/s 17 decree is to follow the award after the time for making application to set aside the order has expired. Section 17 of the Arbitration Act is quoted below for ready reference:

17. Judgment in terms of award - Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award.

It, therefore, follows that the Court has no jurisdiction to pronounce a judgment in respect of award before expiry of period prescribed for making application to set aside the award. Though there is no limitation prescribed for such an application in the Arbitration Act itself but a limitation for the purpose has been prescribed by Article 119(b) of the Limitation Act, 1963. If the Court does not wait, as per the mandate of provision of section 17 of the Arbitration Act read with Article 119(b) of the Limitation Act, 1963, the judgment pronounced and the decree drawn by the Court in terms of the award would be a nullity in law since it is passed without jurisdiction and not a mere irregularity.

3. In *Ravjibhai Kashibhai Vs. Dahyabhai Zaverbhai Patil*, , the Division Bench of this Court was pleased to hold that an award passed before the expiry of the period would be a nullity or illegal ab initio. The same view was taken by the learned Single Judge of the Madras High Court in the case of *Sheikh Esuf Rowther alias A.S. Mohammed Yusuf and Others Vs. Sheikh Davad Rowther and Another*, . If a notice u/s 14(2) for filing of the award was served upon a party, the party gets a right to file an objection within 30 days from the said notice and, if the Court has pronounced judgment before expiry of this period, the illegality cannot be remedied by mere redrawing the decree after expiry of 30 days but without issuing a fresh notice to the party concerned. The notice lapses and when the Court pronounces the judgment and passes a decree and based upon the same notice, no fresh decree can be passed. Section 14, sub-section (2) of the Arbitration Act gives a valuable right to the parties to file an objection to the award. The decision of the Arbitrator will have to be considered by the Court in the light of the objections raised by the party and then he will have to exercise his discretion either u/s 16 or u/s 17 of the Arbitration Act, 1940. By mere redrawing of the decree this legislative mandate cannot be said to have been complied with and the contention raised by Shri Gursahani that pronouncing a judgment and drawing decree before expiry of 30 days is a mere irregularity and can be cured by redrawing the decree will have to be rejected.

4. Shri Gursahani relied on the judgment of the Punjab and Haryana High Court in the case of *Jagan Nath Vs. Des Raj and Others*, , wherein an amendment was sought beyond the period of limitation of 30 days in an application u/s 14(2) of the Arbitration Act, 1940, read with section 119(b) of the Limitation Act, 1963, and the learned Single Judge of the Punjab and Haryana High Court was pleased to hold that allowing new pleas and new grounds for objection by an amendment beyond the period of 30 days would be contrary to the law and without jurisdiction. Relying on this judgment, Shri Gursahani submits that the ratio of this judgment is that nothing can be pleaded, objecting the award after the period of 30 days from the date of the receipt of the notice is over. The other side of the proposition is that 30 days" period will have to be allowed. When the notice of filing of the award was served on the respondent No. 1 on 16-10-1985 30 days" period was not allowed for filing of the objections. When the judgment was pronounced and decree was passed on 2nd November, 1985, the Court had become functus officio and there was no opportunity to respondent No. 1 to file

objections to the decree. This cannot be remedied either by redrawing the decree without fresh opportunity of filing the objections or by giving a period shorter than 30 days to compensate the lesser period allowed when the earlier order dated 2nd Nov. ,1985 was passed. It would not be a compliance of section 14(2) of Arbitration Act read with section 119(b) of the Limitation Act. He will have to issue a fresh notice and then wait for a period of 30 days enabling either of the parties to file objections to the award and then proceed either u/s 16 or u/s 17 to exercise his power u/s 16 or 17 of the Arbitration Act, 1940.

5. Shri Gursahani invited my attention to another Division Bench judgment of this Court in the case of Sachin Sahakari Gruhanirman Sanstha Maryadit Vs. Shree Ram Construction Co., . The Division Bench was pleased to hold that if an application to set aside an award on the ground covered by section 30, is barred by limitation, then the Court has no power to set aside award suo motu. There can be no quarrel with the proposition laid down in this case but an application for setting aside award on the grounds mentioned in section 30 will have to be filed within limitation as provided u/s 119(b) and since I am holding that the notice itself has lapsed because the judgment was pronounced without jurisdiction and decree drawn before the expiry of 30 days, the application cannot be said to be barred by limitation and the objection can still be filed. If 30 days" time would have been allowed by the Judge and then decree is passed, no application to set aside such decree is maintainable.

In this case the Division Bench was pleased to hold that the Court cannot suo motu set aside an award on any of the grounds mentioned in section 30 of the Arbitration Act, 1940. Disagreeing with the earlier views expressed in Ciba Dyes Ltd. Vs. Commissioner of Income Tax, Bombay City, , and relying on judgment of the Supreme Court in the case of Madan Lal Vs. Sunderlal and Another, and The Union of India (UOI) Vs. Shri Om Prakash, , the learned Judges of the Division Bench of this Court were of the opinion that unless an application is presented within the prescribed limitation, the Court has no power to set aside an award suo motu. Relying on this judgment, Shri Gursahani wants to contend that the application submitted by the respondent No. 1 in the trial Court to set aside the earlier decree would be in the form of an application under Order 9, Rule 13, and no such application is maintainable under Order 9, Rule 13 and no power is there with the Court to suo motu set aside the decree and, therefore, the order dated 17-2-1988 passed by the learned Civil Judge, Senior Division, Ahemadnagar, is without jurisdiction. When the judgment is pronounced and decree is ordered to be drawn without jurisdiction, it is not a ground covered by section 30 of the Arbitration Act, 1940. Section 30 of the Arbitration Act, 1940, speaks about the grounds on which the award can be set aside. Restriction placed by section 30 of the Arbitration Act is only applicable for setting aside the award and not for setting aside a pronouncement of the judgment and decree in terms of section 17. If the judgment and decree are passed without jurisdiction, they are nullity in law and Court has power to so declare and quash it when it is brought to its notice that the said pronouncement and decree are contrary to the legislative

mandate of section 17 of the Arbitration Act. 1940. If an order passed by the Court is nullity, the same Court can so declare and correct the error by virtue of its inherent powers declared u/s 151 of Code of Civil Procedure, 1908.

6. In the result, the writ petition is dismissed. However, the order dated 17-2-1988 passed by the Civil Judge, Senior Division, below Exh. 13 in Miscellaneous Application No. 179/1985 is maintained so far as it sets aside the earlier order dated 2-11-1985 granting decree in terms of award but the trial Judge shall issue a fresh notice as is required u/s 14(2) of the Arbitration Act to the parties and the parties are at liberty to file objections within a period of 30 days from the receipt of said notice. Thereafter, as provided by law, the learned Judge, after considering those objections, may proceed with the matter. Rule discharged with the above observations. There will be no order as to costs.