

(1971) 08 DEL CK 0020
In the Delhi High Court
Case No : Suit Appeal No. 143 of 1967

Shiv General Finance (Pvt.) Ltd.

APPELLANT

Vs

Dhir Singh Ahlawat and Another

RESPONDENT

Date of Decision : 24-08-1971

Acts Referred:

Citation : (1971) ILR Delhi 747

Hon'ble Judges : Prakash Narain, J

Bench : Single Bench

Advocate : S.K. Mehra and T.N. Sethi, for the Appellant;

Judgement

Prakash Narain, J.

(1) The parties hereto, M/s. Shiv General Finance (Private) Ltd., New Delhi and Sarvshri Dhir Singh Ahlawat and Mahabir Singh entered into a hire purchase contract dated Nov. 11, 1965 in respect of a new Tata Mercedz Benz truck on terms and conditions mentioned in the said agreement. Inter alia, this agreement contained an arbitration clause which read as under :

"all questions and matters of difference between the Parties hereto or their representatives touching the constructions hereof any act or thing in regard to the rights, duties and obligations or their enforcement or performance including the failure to pay the claim under the several herein before recited clauses and/or arising out of or relating to this agreement or to the subject matter hereof shall at the owner's discretion, be referred to the sole arbitration of Sh. LalChand Vatsa, Advocate Dev Nagar, N. Delhi or his nominees for arbitration in accordance with the Indian Arbitration Act, 1940. In such case the party raising the question or matter in difference shall give 10 days" notice thereof the other party or parties and to the arbitrator address to his or their usual last notified address and the notice shall be deemed to have been served when it would have been delivered ordinary and the party raising the question or matter shall deposit Rs. 50 as arbitration fees with the Arbitrator. Costs shall be in the discretion of

the arbitrator. The award thus obtained shall be final and binding on all the parties concerned."

(2) Certain disputes arose between the parties resulting in a petition u/s 20 of the Arbitration Act, 1940 being filed in this Court for filing of the arbitration agreement and reference of the disputes between the parties for adjudication by an arbitrator. On May 22, 1967 the parties agreed to have the arbitration agreement filed in this Court and further agreed that Shri Devinder Kurnar Kapur, Advocate should act as the sole arbitrator to adjudicate upon the dispute which had given rise to the filing of the application u/s 20 of the Arbitration Act. Accordingly, by an order of that date passed by this Court the arbitration agreement was ordered to be filed and the disputes between the parties were referred to Shri Devinder Kumar Kapur, Advocate as the sole Arbitrator. In accordance with the agreement of the parties recorded by the Court on that date it was further ordered that the respondents shall deposit Rs. 16,000 in Court by May 25, 1967 and also furnish security to the extent of Rs. 20,000 for the satisfaction of any amount that may be found due from them to the petitioner Company on the basis of the above mentioned hire purchase agreement. The petitioner Company was given liberty to withdraw the sum of Rs. 16,000 subject to furnishing of security. On the respondents' depositing Rs. 16,000 the truck in question was to be released by the Receiver and handed over to Dhir Singh.

(3) Shri Devindar Kumar Kapur entered on the reference and called upon the parties to the reference to file their respective claims and documents. After this had been done and evidence recorded the sole Arbitrator made and published his Award on January 24, 1968 and served the parties with notice of the making of the Award. Along with which notice he also sent a copy of the Award made by him to each of the parties. The sole Arbitrator filed his Award and the arbitration proceedings in Court and notice of the filing of the Award was given to the parties. The petitioner Company, M/s. Shiv General Finance (P) Ltd., by O.M. 271 of 1967 preferred objections under Sections 30 and 16 of the Arbitration Act against the said Award. Notice of this application was given to the opposite parties who have contested the application and have prayed that the contention of the petitioner Company to set aside the Award or remit the same be rejected and the Award be made a rule of the Court.

(4) The parties have led their respective evidence on the pleas raised by them. I have heard Shri S. K. Mehra for the objector, namely the petitioner Company and Shri T. N. Sethi for Dhir Singh-respondent No. 1.

(5) Mr. Mehra has raised four contentions by way of challenge the Award, although the objection petition is a fairly extensive document. The four contentions that he has raised are as follows:

(A) The sole Arbitrator did not afford opportunity to the petitioner Company to adduce its evidence before him. (b) The sole Arbitrator settled issues for determination of the disputes between the parties and has made a reasoned

Award, a reading of which shows that issue No. 2 settled by the sole Arbitrator has not been decided by him in terms of the issue as settled and whatever has been decided is also wrongly decided by ignoring conditions of the contract between the parties. (c) Part of the claim has not been adjudicated upon by the sole Arbitrator and he has ignored material evidence to come to certain conclusions. (d) The sole Arbitrator himself cross-examined the representative of the petitioner Company which was not called for and refused permission to the counsel for the petitioner to examine the representative of the respondent.

(6) Before I proceed to examine the objections muted by Shri Mehra, it will be advantageous to read some portions of the claims and counter-claims filed by the parties before the sole Arbitrator, some portions of the Award given by the sole Arbitrator and then to notice law with regard to consideration of objections to Awards.

(7) The claim of the petitioner Company as filed before the sole Arbitrator is Ext. C.W. 1/2. After setting out that in terms of the hire purchase agreement dated November 25, 1965, the petitioner Company is the owner of the truck covered by the said agreement, it is stated that the respondents were liable to pay to the petitioner Company Rs. 7200 by way of hire-money, Rs. 2177.52 by way of over due interest, insurance and other incidental charges and Rs. 8,000 by way of "running stock" which means the truck itself. A sum of Rs. 6,000 was also claimed from the respondents for wrongful use and possession of the truck apart from claiming the possession of the vehicle.

(8) The respondents had challenged the validity of the hire purchase agreement and they asserted that the total amount borrowed by them from the petitioner Company was Rs. 43,525.00 out of which Rs. 41,115.00 had been paid leaving a balance of Rs. 2,410. This amount was sought to be adjusted against a claim for damages of Rs. 4,500 and an award was claimed for Rs. 2,090 against the petitioner Company. The case of the respondents was that the petitioner Company had merely financed the purchase of the said truck by the respondents. The petitioner Company had disputed the claim as put forth by the respondents.

(9) The sole Arbitrator had settled the following issues on the respective claims and counter-claims made by the parties:

"(1) Whether the Respondents are liable to pay the amount or any part thereof to the claimants as per their claim. (2) Whether the claimants are entitled to possession of the vehicle Dlp 3487 in terms of the Agreement dated 25-11-65. (3) Whether the claim is made by a duly authorised person. (4) Whether Respondent No. 1 is entitled to any damages as claimed in his cross objections, if so to what amount. (5) Whether the claimants are entitled to claim damages for wrongful use and possession of the vehicles by Respondents, and if so to what amount. (6) What is the amount paid by the Respondents on the basis of Agreement dated 25-11-65 regarding vehicle No. Dlp 3487. (7) Relief.

(10) With reference to the objections raised against the Award the only relevant

parts of the Award which may be read are paragraphs 5, 6 and 7 thereof. These read as under :

"5. Now coming to issues Nos. 1 & 6 which I will take up together, I have carefully gone through the accounts of the parties. The main dispute is about three amounts which the Respondents state they have paid to claimant Company and which the claimant Company has failed to adjust in their account. These amounts are Rs. 11,900 mentioned in Exhibit Cw 1/25, Rs. 3,200 vide two cheques Exhibits Rw 2/1 and Rw 2/2 and Rs. 2,315 vide Receipt Cw 1/22.

(11) So far the first amount of Rs. 11,900 is concerned the receipt has been admitted by the claimant Company, but it is stated that the payment relates to vehicles Dli 550 which is alleged to have been given to the Respondent Dhir Singh jointly with some body else. Dhir Singh has denied that this vehicle Dli 550 was ever given to him or that he made any payment in the account of the said vehicle. There is nothing on record to show that vehicle Dli 550 was ever given to Respondent Dhir Singh. Therefore, I hold that this amount of Rs. 11,900 was paid by Sh. Dhir Singh in account of the disputed vehicle DLP-3487 to the claimant company.

(12) So far the amount of Rs. 3,200 is concerned the Respondents have produced Rw 2, the manager of the United Commercial Bank Ltd., who has produced the original cheques Exhibit Rw 2/1 and Rw 2/2 which had the endorsement of the Respondent Dhir Singh "On account of hire money Rjr 4007" which is now Dlp 3487 i.e., the disputed vehicle. Besides the Respondents have also produced copy of notice Ex. Cw 1 / 8 in which specific instructions have been given to the claimant Company for adjustment of these two cheques amounts in the account of Bus No. Dlp 3487/RJR 4007.

(13) Thus I hold these two amounts of Rs. 3,200 have been paid towards the account of the disputed Bus. Now lastly the disputed amount is Rs. 2,315 vide exhibit Cw 1/22.

(14) This to my mind appears to be Kacha receipt. The nonexistence of entry in the books of claimant company for this amount on that day is not material as the amount can be entered later on.

(15) Thus I hold that the Respondents are not entitled to claim adjustment of Rs. 2,315 and are liable to pay the same.

(16) The Respondents have admitted their liability to pay the sum of Rs. 2,410 but they have adjusted Rs. 2,315 in their account which they are not entitled to do and they are liable to pay this amount as well. Thus the Respondents are liable to pay Rs. 4275 to the claimant company with interest at the rate of 6% per annum from 22-5-67, and thus total comes to Rs. 4915. The Respondents have given sufficient security in the Court for the payment of the above amount.

6. The claimants have claimed Rs. 6277.52 paise as incidental charges. No receipts for all these terms have been produced or proved and as such the

claimants have failed to prove the incidental expenses claimed by them the claimants have already adjusted a sum of Rs. 4,000 in this account which they are not entitled to do. This claim of claimants is Therefore rejected. 7. Then I will take up issue No. 2. The claimants have taken most of the amount from the Respondents leaving only a sum of Rs. 4,275 and thus they are not entitled to the possession of the vehicle, which shall remain with the Respondents as owners."

(17) So far as this Court is concerned the law with regard to scope of the objections to an Award and circumstances in which the same may be set aside or the meaning given to the words "error on the face of the Award" has been settled in the Bench decision of this Court in *M/s. The Salween Timber and Construction Company (India) Versus Union of India*, 1968 Delhi Law Times, 93 ("). Almost the entire case law on the subject has been reviewed at considerable length by my brother Tatachari J. who spoke for the Court. After noticing the various decisions the following rules were laid down:

(A) The Award may be set aside by the Court on the ground of an error of law on the face of the Award if the Arbitrator expressly states some reasons or grounds for his conclusion and an error is patently found in the reasons or grounds so stated. A caution, however, has to be exercised in doing this for the Court is not to sit in appeal over the decision of the Arbitrator nor is it required to re-appreciate or appreciate the evidence produced before the Arbitrator or to try to find out as to what impelled the Arbitrator to arrive at his conclusion or to attempt to probe the mental process by which the Arbitrator reached his conclusion. In other words, as was stated by the Supreme Court in the case *Union of India Versus Bango Steel Furniture (P) Ltd.* (Civil Appeals No. 373 and 543 of 1965-decided on September 14, 1966) O. "It is well settled that the Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out whether or not the Arbitrator committed an error of law.....". (b) The decision of the Arbitrator on questions of fact cannot be set aside unless the decision is based on no evidence. Even on questions of law the decision of an Arbitrator is final if the question of law has been specifically referred to him but the decision on a question of law arising incidentally may result in setting aside the Award if such decision has resulted in an error apparent on the face of the Award.

(18) I would now, Therefore, come to the various contentions raised by Mr. Mehra.

(19) With regard to opportunity not being afforded to the petitioner Company to lead its evidence the grievance is about not admitting into evidence a large number of vouchers produced by the petitioner Company before the sole Arbitrator. It was not in dispute that these vouchers were made by the petitioner Company and were in its custody throughout. The sole Arbitrator had directed the parties to the reference to file all their documents before him on June 4, 1967 by the next date of hearing. After this date the sole Arbitrator held sittings

on the under mentioned dates but these vouchers were not produced namely: on July 6, 1967, July 21, 1967, July 29, 1967, August 10, 1967, August 19, 1967, August 26, 1967, September 4, 1967, September 24, 1967, October 1, 1967, October 7, 1967, October 14, 1967 and October 28, 1967. Directions were given on various hearings up to this point of time to file the documents and admit and deny the same to the parties. Documents were filed on various hearings and admission and denial carried out. For the first time the question of filing the vouchers arose during the recording of the testimony of Lal Chand Gupta on behalf of the petitioner Company when Mr. Mehra, learned counsel for the petitioner Company prayed for an adjournment for producing copies of the vouchers as a reference to vouchers was made by the witness on that date during the course of his testimony. The hearing was adjourned to October 29, 1967 subject to the objection by the respondents' counsel regarding the filing of the vouchers at that stage. On October 29, 1967 the hearing was adjourned to November 5, 1967. On that date for the first time the petitioner Company filed copies of the vouchers. After another adjournment or two on December 10, 1967 the sole Arbitrator disallowed the vouchers being admitted into evidence on an objection by the respondents that the authenticity of these documents coming from the custody of the petitioner Company at such a late stage was doubtful and the petitioner Company had defaulted in not producing all documents in its power and possession at the initial stage let alone even when several other opportunities to produce documents had been given. This decision of the sole Arbitrator is assailed by Mr. Mehra most vehemently, inasmuch as, the claim of the petitioner Company for incidental charges etc., could be proved only with the help of these vouchers. When a party has in its power and possession certain documents and does not produce the same at an earlier stage of the litigation and the documents are such which can be manufactured at a late stage, even Courts of Law tend to look at such documents with suspicion and disallow production at a late stage. However, this is a matter which is in the discretion of the Court and an appellate Court does not normally interfere with such discretion. If the rule in Court proceedings is as I have noticed above, I see no reason why this rule would not be attracted in arbitration proceedings. An Arbitrator is not bound to follow strict rules of evidence but as a reasonable man he cannot be denied the right to exercise his discretion judiciously. In any case in proceedings u/s 30 of the Arbitration Act, the Court does not sit in appeal on the orders passed by the Arbitrators, unless it is shown that an order of the Arbitrator was manifestly illegal or beyond his jurisdiction, the Court will not upset the orders of the Arbitrator or interfere with his discretion. I would, Therefore, be loathe to interfere with the order of the sole Arbitrator in refusing to admit the vouchers in evidence. Apart from this I am convinced that in the circumstances the sole Arbitrator was not only justified but rightly disallowed the admission of the vouchers in evidence. I have myself been taken through the various vouchers and considered them to be highly suspicious in character. They may have been manufactured by the petitioner Company at a later date. No justification has been shown why the same were not produced at the initial stage

or why at least the account books of the Company were not placed before the sole Arbitrator so as to show that entries of the various vouchers had been made in those account books and there was no chance of the vouchers being manufactured or fabricated later on.

(20) At this stage, I may notice another contention raised by the learned counsel for the petitioner Company and that is that the sole Arbitrator was unfair to the petitioner Company in refusing to admit the vouchers produced at a late stage while he allowed . admission of two documents on behalf of respondents which also were produced at a late stage. These two documents are two cheques which were got produced by the respondents from the custody of the Bank. Apart from the fact that no objection to their late production was raised I find that Mr. Mehra's contention has no force, inasmuch as, the documents admitted on behalf of the respondents did not come from their custody but from the custody of a third party who was not under the power and control of the respondents. The first objection, Therefore, that opportunity was not afforded to the petitioner Company to lead its evidence has no force.

(21) With regard to the second contention that the decision of the sole Arbitrator is not in accordance with issue No. 2 as settled by him, I find that there is no force in this objection. Mr. Mehra invited my attention to conditions 2 and 3 of the hire purchase agreement which state that if the hirer shall pay Rs. 12,335 as initially done, payment of Rs. 12,335 by way of Installments of hire moneys and exercises his option to purchase the vehicle he would become the owner thereof but if he fails to do so the petitioner Company would remain the owner of the vehicle and respondents merely the hirers or bailees. The contention is that the sum of Rs. 11,900 paid by the respondent to the petitioner has been wrongly adjusted against this transaction as there was no mention of this amount in the agreement dated November 25, 1965. The finding of the Arbitrator is that the sum of Rs. 11,900 was paid by the respondent Dhir Singh in the account of the disputed vehicle and not in the account of any other vehicle as asserted by the petitioner Company. This is a finding of fact which cannot be interfered with. Apart from this by virtue of conditions 2 and 3 of the hire purchase agreement dated November 25, 1965 there is no bar to the hirer paying the monthly hire moneys in advance. In any case, the Arbitrator has believed the story of the respondents that this amount was paid towards the vehicle in suit and no objection can be taken against this finding which is tenable in law. If this finding was to be interfered With, it would amount to re-appreciation of evidence which is not permissible. The Arbitrator was not bound to restrict his finding only on legal questions or on technicalities and could very well go into the equities of the case. Having found that substantial portion of the amount financed had been paid by the respondents to the petitioner Company, the Arbitrator was justified in equity to grant possession to the respondents. As I read the Award a finding has been given that under the agreement dated November 25, 1965 possession cannot be claimed by the petitioner Company, at least on equitable considerations.

(22) The third objection raised by Mr. Mehra is with regard to the adjustment of Rs. 11,900 covered by the receipt Ext. C.W. 1 /1. The question of adjustment of this amount was specifically p, pleaded by the respondents. After reading the claim made in para 3 of the claim of the petitioner Company and the evidence recorded, the arbitrator allowed the adjustment. On the principles applicable to objections u/s 30 of the Arbitration Act. this is a decision which is not subject to judicial review.

(23) The last objection of Mr. Mehra has reference to the proceedings dated December 10, 1967 and January 13, 1968. I find that the Arbitrator had asked certain questions with regard to the pleas set up by the petitioner Company about another vehicle and I do not find that any question was irrelevant. The Arbitrator must be given liberty to satisfy any doubt in his mind and no objection can be taken to his making enquiries from witnesses in the presence of parties particularly when further examination of witnesses is permitted to the parties as has been done in the present case. On January 13. 1968 R.W. I-Dhir Singh was being examined and a question put in cross-examination to him about a vehicle other than the vehicle in suit was disallowed by the Arbitrator with regards to one Than Singh being co-hirer of that vehicle with Dhir Singh. In my view the question was rightly disallowed A but even it be assumed it was wrongly disallowed Mr. Mehra has not been able to show to me how an answer to this question could throw any light on the controversy between the parties which was being adjudicated upon by the sole Arbitrator. In any case, as is settled law this Court is not required to scrutinize the evidence recorded before the sole Arbitrator as a Court of appeal or substitute its decision for that of the sole Arbitrator or whether certain questions in evidence should have been allowed or disallowed. If this salutary principle is not followed the very purpose of Arbitration would be defeated and the proceedings before the Court in which Awards are challenged would become nothing better than first appeals. It is in this context that I may with advantage quote from the famous speech of Williams, J. in the C case of Hodgkinson Versus Verne which was quoted with approval by the Privy Council in Champsasey Bhara Company Versus Jivraj Baloo Spinning and Weaving Company Ltd. 50 Indian Appeals, 324(3) :

"THE law has for many years been settled, and remains so at this day that, where a cause or matters in difference are referred to an arbitrator, a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact..... The only exceptions to the rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted is now, I think firmly established, viz., where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established."

(24) The Supreme Court in Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, also observed as under:

"and award made by an arbitrator is conclusive as a judgment between the parties and the Court is entitled to set aside an award if the arbitrator has misconducted himself in the proceedings or when the award has been made after the issue of an order by the Court suspending the arbitration or after arbitration proceedings have become invalid under s. 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid : An award may be set aside by the Court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and argument it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion."

"THE Court in dealing with an application to set aside an award has not to consider whether the view of the arbitrator on the evidence is justified. The arbitrator's adjudication is generally considered binding between the parties, for he is a tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in s. 30. It is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive" at his conclusion. On the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award."

(25) The result is that none of the contentions raised by Mr. Mehra are tenable. No imputation has been made that the arbitrator has in any other way misconducted himself or the proceedings. The decision of the arbitrator may be right or wrong, but it is not open to the Court to set aside his Award even if it feels that it would take a different view than the Arbitrator on the evidence as recorded by the Arbitrator.

(26) I, Therefore, dismiss the objection petition and make the Award given by Shri Devinder Kumar Kapur on January 24, 1968, a rule of the Court and pass decree in terms thereof. The Award will be incorporated in the decree. The respondents will be entitled to their costs of proceedings in this Court to be taxed in accordance with the rules applicable to the original side of the High Court.