

(1990) 09 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : O.M.P. No. 347 of 1987

Shivalik Forest Company	Vs	APPELLANT
The state of H.P. and Another		RESPONDENT

Date of Decision : 21-09-1990

Acts Referred:

Arbitration Act, 1940 — Section 28(2), 29, 30, 33
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (1990) 2 ILR HP 1598

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : Prem Goel, for the Appellant; M.S. Guleria, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

D.P.Sood, J.—In these objections filed u/s 30 of the Arbitration Act, 1940, the award made on September 24, 1985 by the Deputy Commissioner (Arbitrator), Mandi has been assailed by the claimants.

3. Claimants were carrying on forest business in the name and style of Shivalik Forest Company, Forest Lessees Dhangu Road, Pathankot. It was a partnership firm. They had taken Lot No. 1.0 of 1968-71, Chamba Forest Division (Tissa Range), on lease from the Respondents in open auction held on April 20, 1968 for an amount of Rs. 12,02,000/-. The details of the timber for this auction were contained in the auction notice. The claimants executed an agreement pertaining to the aforesaid lot. Clause-29 thereof provided that if any dispute arose between them, it shall be referred to the arbitration of Deputy Commissioner, Mandi, District Mandi, or in case of his unwillingness to accept the same to such an Assistant as the Deputy Commissioner, Mandi may appoint as the sole Arbitrator.

4. Dispute arose between the parties and consequently Deputy Commissioner, Mandi was appointed as an arbitrator. Claims were invited. Both parties filed their

claims and counter-claims before him. The claimants claimed to have suffered loss of Rs. 23.75 lacs as per the detail given below:

(i) Value of timber of Shahpur Kandi Guard Depot, Pathankot, sold by the Respondents in the year 1968

4.00 lacs

(ii) Value of timber of two Glial is wrongly and illegally confiscated at Shahpur Kandi Depot and disposed of by the Respondents

Rs. 13.00 lacs

(iii) Value of converted timber, trees logs etc. confiscated by the DFO vide his order No. 18/74-75 dated 20-4-1974 and trees standing etc. in other forest sold

Rs. 11.00 lacs

(iv) Investment made by the Rs. 5.50 lacs Petitioners in the lot Total ... Rs. 33.50 lacs Less amount of royalty (Approximate) Rs. 9.75 lacs Total amount of claim to which the Petitioners are entitled.

Rs. 23.75 lacs.

5. On the contrary the Forest Department having refuted the claim in its entirety contended that no timber belonging to the firm was lying in the depot or the forest at the material time and the claimants could not claim anything on that count; that confiscation of the timber and auction on account of the claimants having failed to pay the royalty inspite of extension of time, were justified in view of the terms of the agreement. In fact the Department laid down its own claim with respect to the following terms:

(i) Balance royalty Rs. 7,69,545.56 p (ii) Interest for belated payment up Rs. 2,90,137.60 p to 20-4-1974 (iii) Penalty for short supply of Rs. 1,01,167.96 p railway sleepers (iv) Price of Railway sleepers not Rs. 2,20,809.25 p supplied (v) Extention fee Rs. 2,000.00 p Total ... Rs. 13,83,660.37 p Both parties were afforded ample opportunity to lead their evidence. The Arbitrator after hearing the arguments and considering the evidence so adduced by them, chose to make a speaking award on September 24, 1985.

6. The award aforesaid was filed before this Court for making it a rule of the Court. Notices were served on both the parties. The claimant alone assailed the impugned award by filing the objections within the statutory period u/s 30 of the Arbitration Act. The same has been registered as Civil Suit No. 71 of 1986.

7. The main objections raised by the claimant are that the Arbitrator not only misconduct himself but also the proceedings and the award is, therefore, not only vitiated but is otherwise invalid; that Arbitrator misinterpreted the terms and conditions of the agreement as also other documents so produced and the findings thereon except on issue No. 7 are such which amount to apparent error on the face of the record and the award is liable to be set aside; that the

impugned award is sketchy and does not disclose reasons for rejecting the relief sought for by the claimants; that the Arbitrator did not afford reasonable opportunity to the claimant to adduce evidence; that the claim with respect to damages worth Rs. 4 lacs contained in Item (i) of his claim filed before the Arbitrator, has illegally been rejected and that the Arbitrator was not competent to award interest on the amount awarded to the Respondents.

8. The Respondents vehemently resisted the aforesaid objections by contending that the Arbitrator was competent to extend the time for concluding the proceedings with the consent of the parties, which he did, without the intervention of the Court; that the Arbitrator was competent to award interest in terms and conditions of the agreement; that there is no apparent error on the face of the record nor the Arbitrator had misconduct himself nor the proceedings and as such, the impugned award is legal and valid. As regards the factum of providing opportunity to adduce evidence, it has been contended that full opportunity was afforded to the claimants to do so.

9. In re-joinder the claimants reiterated the facts averred in their objection petition and controverted the contentions so raised by the Respondents.

10. In view of the controversy referred to above, this Court vide order dated March 29, 1988 framed the following issues:

1. Whether the learned Arbitrator has misconduct himself and the proceedings and the award is liable to be set aside on that ground? OP Objector.
2. Whether the award has been given beyond the time limit and is, therefore, invalid? OP Objector.
3. Relief.

Both parties were also directed to adduce evidence by way of affidavits which they did.

11. At this stage it would be pertinent to detail that on September 28, 1988, this suit was dismissed in default for nonappearance of the claimants or their learned Counsel. However, subsequently, vide order dated July 19, 1990, this suit was restored.

12. I have heard the learned Counsel for the parties at length and have also carefully gone-through the evidence, oral as also documentary, on record and considered the arguments so advanced.

13. My issue wise findings are as under:

Under this issue, the first limb of arguments advanced by the learned Counsel of the claimants pertains to the competency of the Arbitrator to award interest. According to him Arbitrator was not a Court and thus, he could not award interest preceding to or during the pendency of the reference or future interest in relation thereto. The proposition pertaining to the award of interest has been set

at rest by the decision of the Supreme Court in Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others, which has consistently been followed in various cases i.e. (i) State of Orissa and Others Vs. Construction India, (ii) State of Jammu and Kashmir Vs. Haji Ghulam Rasool Rather and Sons, (iii) Secretary to the Government of Orissa and Another Vs. Sarbeswar Rout, (iv) Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, (v) State of Orissa Vs. J.P. Lath, and (vi) M/s. Hind Builders Vs. Union of India, . The principle laid down is that:

In the cases to which the 1978 Interest Act applies the award of interest prior to the proceedings is not open to question. In regard to pendente lite interest, that is, interest from the date of reference to the date of the award, the claimants would not be entitled to the same for the simple reason that the arbitrator is not a Court within the meaning of S. 34 of the CPC nor were the references to arbitration made in the course of suits. In the cases which arose before the commencement of the Interest Act, 1978, the claimants are not entitled to claim interest either before the commencement of the proceedings or during the pendency of the arbitration. They are not entitled to claim interest for the period prior to the commencement of the arbitration proceedings for the reason that the Interest Act, 1939 does not apply to their cases and there is no agreement to pay interest or any usage of trade having the force of law or any other provision of law under which the claimants were entitled to recover interest. However, the case is quite different where the Arbitrator is empowered under any agreement entered into between the parties or any other substantive law to award interest. Since, the Arbitrator is required to conduct himself and made the award in accordance with law, he is bound to exercise his judicial discretion whether or not to award interest in case the agreement provides such a clause. In other words if the agreement in between the parties entitles the Arbitrator to award interest no further question arise and the Arbitrator may award interest. Similarly, if there is usage or trade having the force of law, the Arbitrator is empowered to award interest. Again if there are any other provisions to the substantive law enabling the award of interest, the Arbitrator may award interest.

14. Since the reference to arbitration in this case is without the intervention of the Court, ordinarily the Arbitrator was not competent to award interest either prior to or during the pendency of or even for the period subsequent to the award. In the instant case Clause 7-A condition of sale of auction provides for the payment of interest at the rate of 6¼% to be payable by the claimants in case they fail to pay the installments of royalty regularly in accordance with the payment-schedule in the agreement referred to above. Also, claim of interest had been made by the Respondents (Forest Department) in (heir counter-claim in accordance with the aforesaid terms and conditions of the agreement as well, that is to say, the relief as to interest so claimed had also been referred for adjudication of the Arbitrator and such dispute was within the ambit of his jurisdiction. Thus, in that view of the matter, the Arbitrator was well within his powers to adjudicate upon the dispute relating to the interest and consequently

award it in favour of the successful party which in the instant case was found to be Respondents. However, he could award the interest till the date of making the award. In other words, future interest so awarded by the Arbitrator in the instant case being not within his power requires to be deleted from the award. As such, the award in as much as the interest which had been awarded, is set aside to the extent of future interest only, because the Arbitrator becomes functus officio, the moment he makes award under his signatures and thereafter to award future interest is within the power of the Court u/s 29 of the Arbitration Act, read with Section 34 of the Code of Civil Procedure. In that view of the matter in the interest of justice, the Respondents are entitled to interest at the agreed rate from the date of the award till its realisation. Thus, keeping in view the entire facts and circumstances, the Respondents are held entitled to interest in the light of the observation made above

15. The second limb of the arguments of the learned Counsel for the claimants/objectors pertains to non-consideration of Item (i) of the claims/objections filed before the Arbitrator. It is pointed out that earlier this lot was registered as Lot No. 1 and 4/63-66 which was sold in auction to M/s Timber Pvt. Ltd., Pathankot. The said firm failed to extract this lot consequent to which ultimately the entire lot was confiscated and re-auctioned. At the time of re-auction, this lot was converted into Lot No. 10 of 1968-71. It is at this stage that the claimants being the highest bidder, had been allotted the said lot. The arguments of the learned Counsel is that this lot contained timber stacked at Shahpur-Kandi Depot also; that said timber was not delivered by the Respondents (Forest Department) to them and it was sold in auction by them on 8-7-1968 for a paltry amount of Rs. 28,600/- only; that the timber stacked therein was worth Rs. 4 lacs and as such, the Arbitrator should have considered this claim and awarded the damages to that extent.

16. It is well settled that when a Court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the Court is limited as expressly indicated in the Arbitration Act, 1940 and it has no jurisdiction to sit in appeal over views of Arbitrator by re-examining and re-assessing the materials. In other words, this Court can not go into question of correctness of the award. Adjudication by an Arbitrator is a forum chosen by the parties. His decision becomes binding between the parties and the power of the Court to set aside the award becomes restricted. Unless and until the alleged mischief is not shown to be covered by Section 30 or 33 of the Arbitration Act, the award can not be set aside by the Courts. It is also well settled that an Arbitrator or Umpire is not under obligation of giving reasons in support of his decision under the arbitration agreement or the deed of submission he is required to give such reasons and if the Arbitrator or Umpire choose to give reasons in support of his decision, it is open to the Court to set aside the award if it finds that an error of law has been committed by the Arbitrator or Umpire on the face of the record on going through such reasons and that an award can neither be remitted nor set aside merely on the ground that it does not contain

reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. Equally the parties can not assail the award either on law or on facts when the same is good on the face of it. Therefore, when Arbitrator commits a mistake either in law or in fact in determining the matters referred to him, when such mistake does not appear on the face of the award and the documents appended to or incorporated so as to form part of it, the award will neither be remitted or set aside. The above said view is expressed by the Supreme Court in case S. Harcharan Singh v. Union of India, JT 1990 (3) S.C. 692; State of Orissa Vs. Dandasi Sahu, ; and Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao,

17. Viewing the above said submissions of the learned Counsel for the claimants in the light of the well settled principles, this argument also appears to be devoid of merits, because the aforesaid timber allegedly to be stacked in Shahpur-Kandi Depot does not form part of the auction notice of sale (Ex. PW 1/A) pursuant to the agreement entered into between the parties. That is to say, this timber stacked in the aforesaid depot was not sold to the claimants nor they had any right, title or interest therein. The Arbitrator has rightly rejected the claim in view of the evidence adduced by the parties which appear to have been thoroughly considered. It is to be noted that in the instant case, the Arbitrator has chosen to make a speaking award, that is to say, he has given reasons for his conclusion despite the fact that he was not obliged to give reasons. Thus, unless and until it is demonstrated to this Court that the reasons for rejection of the aforesaid claim put forth by the claimant is erroneous or with the view taken by the Arbitrator which can be possibly sustained on the evidence adduced by it then only it can be assailed provided it is shown that it tent amounts to an apparent error on the face of the record. Here in the instant case it has not at all been shown nor there is any evidence nor can this Court now re-appreciate the evidence to come to this conclusion. It may be mistaken error of law or fact on the part of the Arbitrator even then the award can not be set aside. Thus, this point has no force and is rejected.

18. The third facet of the argument put forth by learned Counsel for the claimant is that the Arbitrator did not issue launching permit for floating the extracted timber numbering 12,342 scants. My attention has been drawn to the affidavit filed by Shri Trilochan Singh a partner of the claimants' firm in this respect. Bare reading of the award shows that this matter has been dealt with by the Arbitrator under description of issues No. 3 and 4 of the award. In this respect the admitted facts are that the claimants did not pay any installments of the royalty amounting to Rs. 12,02,000/- from beginning to end regarding which several demands were made by the Respondents at different occasions. Further, the bare reading of the record shows that the claimants demanded the issuance of launching permit on payment of Rs. 1 lac which was not deposited by them till 4-3-1972. Keeping in view the difficult terrain for the purpose of extraction of timber of the lot in question, the Respondents even had issued launching permits

even without payment of royalty on the timber so extracted and desired to be floated (which was other than the timber numbering 12,342 scants). The bare reading of the record further shows that an amount of Rs. 1 lac was, in fact, deposited on March 8, 1972 and the launching permit had been issued in that year on May 19, 1972 but the claimants started floating the timber in February, 1973. In that view of the matter it can not be said that the view taken by the Arbitrator in rejecting this claim amounted to an error apparent on the face of the record or that the Arbitrator had either misconduct himself or the proceedings. Thus, this submission being devoid of merit is also rejected.

19. The last limb of the argument under Issue-1 advanced by the learned Counsel for the claimants is that no reasonable opportunity was afforded to them to adduce evidence in relation to their claim. In this respect suffice it to state that record shows that there exist neither oral nor written request for adducing additional evidence ever made to the Arbitrator on behalf of the claimant. Rather on the contrary as per the record, the statement of last witness of the claimants was recorded on June 1, 1981 and further opportunity to adduce evidence was sought for and the case was thus fixed for the said purpose on 2nd of July, 1981. Thereafter, several opportunities to adduce evidence were given and ultimately on June 28, 1982 Trilochan Singh partner of the claimants" firm made a statement closing his evidence in affirmative and further stating that in case he felt any evidence to be adduced in rebuttal to that of the Respondents" evidence, he would seek opportunity accordingly. However, no such opportunity was availed of nor any such request was made to the Arbitrator. Thus, the blame can not be thrown upon the Arbitrator that he did not afford full opportunity to the claimants to adduce evidence. The party concerned is bound to be vigilant and take necessary steps for producing evidence. It is only those cases where on a request made by the party concerned if Arbitrator refuses an opportunity to adduce oral or documentary evidence, that it can be said that the Objector was not afforded due opportunity to prove his case. In the peculiar circumstances of the instant case this objection so raised by the claimant is also of no help to him and as such, is rejected.

20. In view of the discussion made above, the claimant has vehemently failed to prove issue-1 which accordingly is decided against him.

21. This issue pertains to the extension of time by the Arbitrator. Learned Counsel for the claimants has urged that Arbitrator was not empowered to extend time for making award A without interruption (sic) of the Court as has been done slow-motion in the instant case. The award has been made by the Arbitrator on September 24, 1985. Earlier the time was extended by the order of this Court dated May 2, 1980 until July 2, 1980. Thereafter, admittedly both parties continued participating in the proceedings before the Arbitrator. Learned Counsel for the claimants has fairly and squarely conceded that the reference was made to the Arbitrator in the year 1976 and he concluded his award on the above said date. He further admitted that parties throughout participated in the

proceedings before him. He also did not dispute that parties had been seeking extension of time on different occasions from the Court except on the last occasion.

22. The policy of law is that arbitration proceedings should be adjudicated upon speedily and they should not be undoubtedly (sic) prolonged. This is the reason that the time limit has been kept under the Act under Sub-section (2) of Section 28 of the Arbitration Act, the Arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the arbitration, the parties to the arbitration agreement consent to such enlargement of time. In view of the policy of law and in view of the fact that the parties in the instant case, had participated willingly in the proceedings before the Arbitrator without a demur and had all along been consenting to extend time and had also proceeded before the Arbitrator on that basis which is just and proper and ultimately had by consent extended the time till October 30, 1985, it can not be said that the Arbitrator in having made his award within the time so extended, has committed any illegality which amounts to an error on the face of the record or which makes the award otherwise invalid. The principle laid down is that where the Court finds that parties have participated willingly and without raising any objection to the proceedings before the Arbitrator, the Courts even after making the award as well can extend time and validate such award. This view is expressed in the case of Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao, , State of Punjab Vs. Hardyal, and Hari Krishna Wattal v. Vaikunth Nath Pandya 1973 S C 2479.

23. In view of the aforesaid well settled legal principles the Arbitrator, in the instant case, had acted strictly in accordance with law. Before making an award he by consent of the parties" counsel that is to say by recording statements of learned Counsel appearing on their behalf on 14-8-1985 had got the time of making the award extended up to October 30, 1985 and adjudicated upon the is pending before him even before the expiry of aforesaid time. Thus, this point having no substantial force in it, is also rejected. Issue No. 2 is decided accordingly.

24. In view of the discussion made above, the objection petition is dismissed with costs assessed at Rs. 1,000/- payable by the Petitioner to the Respondents.