

(2010) 06 DEL CK 0016
In the Delhi High Court
Case No : F.A.O. No. 57 of 1995

Shubhra Chit Fund (P) Ltd.

APPELLANT

Vs

Ram Kumar Shastri and Others

RESPONDENT

Date of Decision : 03-06-2010

Acts Referred:

Citation : (2010) 06 DEL CK 0016

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : A.K. Kohli and D.C. Thakur, for the Appellant; None, for the Respondent

Judgement

Rekha Sharma, J.—The facts giving rise to the present appeal are as under:

The appellant is running a chit fund business. Respondent No. 1 became member of two chits of Rs. 50,000/- each spread over in 40 months with the monthly subscription of Rs. 2500/- for both the chits less dividend as per the chit agreement executed between him and the appellant. Both the chits were prized at Rs. 30,000/- each and the prized money amounting to Rs. 60,000/- was paid to respondent No. 1. After receiving the prized chits, respondent No. 1 defaulted in making payment of the installments. Hence, a legal notice was sent to the respondents which evoked no response from them leaving the appellant with no option but to refer the matter to the sole arbitration of Shri S.P. Aggarwal, Advocate in terms of the agreement between the parties. The respondent initially appeared before the arbitrator but when the matter was at the final stage, he absented from the proceedings resulting in the passing of an ex-parte award dated January 04, 1991 whereby a sum of Rs. 93,820/- was awarded in favour of the appellant. The appellant did not move the Court for making the said award a rule of the court, as the respondent after the passing of the award agreed to make the payment of the awarded amount. He even made payment of a sum Rs. 22,250/- but thereafter made no further payment. This led the appellant to make yet another reference to the same arbitrator for claiming the balance amount.

Notices were sent by the arbitrator to the respondents and in response thereto, respondent No. 1 appeared before the arbitrator and he promised to deposit Rs. 22,000/- to 23,000/- but made no deposit as per the promise. In so far as the other respondents are concerned, they refused to accept the notice. The arbitrator consequently made another award dated May 22, 1992 and thereby awarded a sum of Rs. 80,377/- in favour of the appellant and against the respondents.

2. This time, the appellant moved the court of the District Judge for making the award a rule of the court. Respondent No. 1 filed objections to the award. The learned Additional District Judge vide order dated April 21, 1994 though dismissed all the objections raised by respondent No. 1 but declined to make the award a rule of the court. The learned Judge has held that as the earlier award made by the arbitrator dated January 04, 1991 was not superceded or quashed, another reference to the arbitrator on the same subject matter could not be made. Consequently, the award arising out of the second reference was set-aside.

3. Feeling aggrieved by the order of the learned Additional District Judge, dated April 21, 1994, the present appeal has been preferred by the appellant. The respondents have chosen not to contest the appeal.

4. The question which arises for consideration is, whether the learned Additional District Judge could go into the question of legality or validity of the second reference made to the arbitrator resulting in the award dated May 22, 1992?

5. What is of significance is that respondent No. 1 appeared before the arbitrator in response to notice of the second reference but raised no objection to the appointment of the arbitrator on the ground that the reference made was not valid. On the contrary, he promised to pay the sum of Rs. 22,000/- to 23,000/- but not only did he not keep the promise but also stopped appearing before the arbitrator resulting in the ex-parte award against him. What is further of significance is that even before the learned Additional District Judge, respondent No. 1 though challenged the award on number of grounds but raised no challenge to the legality or validity of the second reference. In this view of the matter, when respondent No. 1 himself had submitted to the jurisdiction of the arbitrator and had raised no challenge to the second reference either before the arbitrator or before the learned Additional District Judge, the learned Judge, in my view, erred in holding that the second reference was bad in law, more so, for the reason that the finding so given was given without notice to the parties, particularly, the appellant.

6. What also needs to be noticed is Clause 13 of the Agreement of Guarantee executed between the appellant and the respondents. As per this clause, "the agreement is irrevocable and shall continue to remain in force till the payment of the said amount either by the prized subscriber or by the guarantors." In view of this clause, the respondents having not made the payment, the second reference could be made notwithstanding the fact that the earlier award made by the

arbitrator was not got made a rule of the court. The default on the part of the respondents was a continuing default and the appellant, therefore, was well within its right to take recourse to a second reference.

7. For the foregoing reasons, the impugned order dated April 21, 1994 is set-aside and the award is made a rule of the court. Decree in terms of the award be drawn. The awarded amount shall carry interest @ 6% per annum from the date of the decree till realization.

8. The appeal is disposed of.