
(2017) 12 DEL CK 0264

In the Delhi High Court

Case No : First Appeal From Order (OS) (COMM) No. 99 Of 2017

Sidhi Industries & Ors.

APPELLANT

Vs

M/S Religare Finvest Limited And Ors

RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34, 37
Commercial Courts Act, 2015 — Section 13
Delhi High Court Act, 10

Citation : (2017) 12 DEL CK 0264

Hon'ble Judges : G.S.Sistani, J;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Ashish Virmani, Sarvpreet Singh, Ajay Uppal

Final Decision : Dismissed

Judgement

G.S.Sistani, J

1. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Arbitration Act") read with

Section 13 of the Commercial Courts Act, 2015 and Section 10 of the Delhi High Court Act by the appellant against the order passed by the learned

Single Judge dated 08.02.2017 whereby the objections filed by the appellant herein under Section 34 of the Arbitration Act against the Award dated

30.08.2014 rendered by the sole Arbitrator stand dismissed.

2. While issuing notice in this matter on 05.05.2017, the Predecessor of this Court had passed the following order:

1. The appellants are aggrieved by the order dated 08.02.2017 passed by the learned Single Judge in OMP (COMM) 6/2015, dismissing their

petition under Section 34 of the Arbitration and Conciliation Act, and upholding

the Award dated 30.08.2014 passed by the learned Sole Arbitrator.

2. Mr. Ashish Virmani, learned counsel for the appellants states that though no such plea was taken before the learned Single Judge on the aspect of failure on the part of the learned Arbitrator to disclose his interest to the parties at the commencement of the arbitral proceedings, it later on transpired that the same Sole Arbitrator was engaged by the respondents in several arbitration matters, over a period of three years, as would be apparent on a perusal of the order dated 30.01.2015, passed in OMP No.1038/2014 (Annexure A-2). He seeks to confine the scope of the present appeal only to the above ground.

3. Limited to the aforesaid aspect, issue notice to the respondents directly, as also through counsel appearing for them in OMP (COMM) 6/2015, on the appellants filing the process fee within one week, by ordinary process and speed post, returnable before the Registrar on 21.07.2017 for completion of service.

4. List in Court on 05.09.2017.

5. Counsel for the appellants states that he has elected not to file any application for seeking stay of the execution proceedings initiated by the respondents against the appellants. It is made clear that the Executing Court shall be at liberty to proceed further in the execution proceedings.

However, the amounts received by the respondents towards satisfaction of the decree shall be subject to a final decision in this appeal.â??

3. Reading of the order dated 05.05.2017 would show that notice was issued on a limited ground i.e. failure on the part of the arbitrator to disclose his interest to the parties. Learned counsel for the respondent has entered appearance. Counsel for the appellant has vehemently submitted that the learned Arbitrator did not follow the principles of natural justice. He did not make a fair disclosure that he was appointed as an Arbitrator by the respondent in as many as 43 cases prior to the present case. Learned counsel submits that serious prejudice has been caused to the rights of the appellants on account of this non-disclosure on the part of the learned Arbitrator. Learned counsel submits on this ground alone, the award rendered by the Arbitrator should be set aside.

4. Counsel for the appellant has also relied on a decision rendered by the same Single Judge in the case of Aditya Ganapa & Another vs. Religare

Finvest Limited, O.M.P.1038/2014. Learned counsel submits that the same Single Judge has taken this fact into account that the Arbitrator did not

disclose that he was an Arbitrator in 28 cases involving Religare Finvest Limited as claimants and in this view of the matter found Award to be

unsustainable in law.

5. Mr.Ajay Uppal, learned counsel for the respondents submits that the present petition is a gross abuse of the process of law. The appellant is a rank

defaulter as a loan in the sum of Rs.20 lakhs was taken by the appellant from the respondent. This loan was payable in 36 equal monthly installments

of Rs.75256/- each. It is further submitted that although a ground was taken by the appellant in the objections filed under Section 34 of the Arbitration

Act, however, the said ground was not urged as fairly admitted by counsel for the appellant and reflected in the order-sheet dated 05.05.2017. Counsel

submits that since the ground was not urged before the learned Single Judge, the learned Single Judge had no occasion and opportunity to test the

submissions, which are sought to be urged today. Mr.Uppal also contends that the appellant has suppressed material facts from this Court inasmuch as

a disclosure was also made by the Arbitrator in notice issued on 11.09.2013, a copy of which has been filed on record and also during the proceedings

which is reflected in the order dated 27.09.2013 so passed in the presence of the counsels representing the appellant.

6. Counsel for the appellant has explained that he could not disclose the factum of disclosure as he did not have copy of the proceedings. Mr.Uppal

has refuted the same stating that the entire record of the Arbitrator was filed before the learned Single Judge and thus, this submission is factually

incorrect.

7. We have heard learned counsels for the parties.

8. As noticed hereinabove, the only ground on which notice was issued was that the Arbitrator did not make a fair disclosure that he had been

appointed as an Arbitrator by the respondent in a number of cases. As noticed hereinabove, although this ground was taken as Ground No.(xi), which

reads as under:

â??xi. Further, the Respondent No.1 through its alleged notice dated 08.08.2013, unilaterally invoked the Arbitration clause provided under the Loan

Agreement, unilaterally, without seeking the consent of the Petitioner, appointed

Sh.Nitin Chadha, Advocate (Ld.Arbitrator) to be the sole Arbitrator

for adjudicating the alleged lis between the Petitioner and Respondent no.1. It may be noted that this arbitrator had been dealing with various recovery

cases of the Respondent no.1. It may be highlighted that some cases have even been set aside, inter-alia on the grounds of non-fulfillment of the

principles of natural justice.â??

9. But as fairly admitted by counsel for the appellant, this was not pressed before the learned Single Judge while hearing of the objections. It may also

be noticed that the Arbitrator had issued notice to the parties, a copy whereof was filed along with objections under Section 34 of the Arbitration Act.

A copy has also been placed on record of this appeal wherein it has been disclosed â??â??.currently adjudicating on multiple claims filed by the

claimant company.â?? The order-sheet dated 27.09.2013 reads as under:

â??27.09.2013

PRâ?!

Learned counsel for the claimant.

Learned counsel for the respondents.

I am appointed as a sole Arbitrator by the claimant company to arbitrate and settle the dispute between the above said parties having arbitration clause

under the agreement. It is pertinent to mention here that I never appeared as counsel/pleader/Advocate/legal adviser on behalf of the claimant

company and currently I am adjudicating in number of claims filed by the claimant company. I am not aware of any circumstance nor have any

interest that prevents me from arbitrating this matter. It is agreed between the parties that claimant will supply the copy of claim within two week.

Respondents will file their reply within four weeks from the date of receiving of documents/claim. It is clear to respondents that if they want to file

any documents in their support/defence they file it with reply. After that matter fix for final arguments.

Arbitration proceedings shall be conducted on the basis of documents and other material. Arbitration fees is 5500/-. Come up on 15.10.2013.

(NITIN CHADHA)

SOLE ARBITRATORâ??

The order-sheet also reflects that this hearing was attended by counsels for both

the parties.

10. We find no ground to interfere with the order passed by the learned Single Judge for two reasons i.e. (1) the ground urged before us today was

not urged before the learned Single Judge (2) the judgment sought to be relied upon by learned counsel for the appellant of the same Single Judge

where the respondent was also a party, in paragraph 13 has observed â??In the circumstances, in the instant case when he first entered upon

reference, it was incumbent on Mr. Chadha at the very outset to disclose his interest to the parties. There is nothing to show that he did so.â??

11. In the present case not only did the learned Arbitrator disclose at the time of issuing notice but he also disclosed the same during the proceeding,

which is evident from the reading of the order-sheet dated 27.09.2013.

12. Thus, we find no infirmity in the order passed by the learned Single Judge. We find no merit in the present appeal; the same is accordingly

dismissed.