

(2007) 05 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 20833 of 2007

Smt. Vinesh Anand and Others	Vs	APPELLANT
Smt. Kailashwati and Another		RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 30, 34, 37
Constitution of India, 1950 — Article 226

Citation : (2007) 6 AWC 5880

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Bala Krishna Narayana and Anay Kumar Srivastava, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri Bal Krishna Narain, learned Counsel for the Petitioner.

2. An application u/s 34 of the Arbitration and Conciliation Act, 1996, filed by Respondent No. 2 to set aside the arbitral award given by Shri Vijay Verma, Addl. Director (Training), Institute of Judicial Training and Research, U.P. Lucknow in place of Shri A. S. Srivastava, retired Judge of this Court by order dated 4.7.2003, made by the Arbitrator on 30.6.2004 making Respondent No. 2 entitled to recover Rs. 3,75,314.13 and Rs. 90,884.75 is pending in the Court of District Judge, Allahabad as Arbitration Case No. 33 of 2004.

3. The Petitioner has filed the objections in August 2005. The arbitration case came up for hearing on 19.5.2006 and then on 23.12.2006. On that day the District Judge, Allahabad, has framed four issues and directed the parties to file evidence by affidavit within a month, fixing 27.1.2007.

4. By this writ petition the Petitioner has challenged the order dated 19.5.2006 by which the District Judge, Allahabad has framed the issues. It is contended

that the proceedings u/s 34 of the Arbitration and Conciliation Act, 1996 (the new Act) for setting aside the award are summary in nature in which evidence is to be taken by affidavits and thus adopting the rigorous procedure under the Code of CPC by framing issues and taking evidence is not warranted in law and will delay the decision of the case.

5. Learned Counsel for the Petitioner contends that under the new Act the award can be set aside on limited grounds and the application u/s 34 of the new Act to be decided on the basis of material on which arbitrator has given award and not by inviting fresh evidence. It was not necessary to frame issues and to lead evidence as if proceedings were by way of regular suit. The Petitioner has relied upon Union of India (UOI) Vs. N.P. Singh, in submitting that the procedure u/s 34 under the old Act was summary in nature and that the same view must be followed for deciding matters under the new Act.

6. The new Act does not provide for the procedure to be followed in deciding applications for setting aside the arbitral award. This Section correspond to Section 34 of UNCITRAL Model Law and to Section 30 of the Arbitration Act, 1940. The grounds for setting aside the award are essentially borrowed from Article 5 of the New York convention 1958, which include lack of capacity of the parties to conclude an arbitration agreement or lack of valid arbitration agreement ; opportunity to defend ; the award dealing with matters not covered by arbitration clause or submission agreement ; jurisdiction of arbitral Tribunal ; incompetency ; the composition of the Tribunal ; or that arbitral procedure was not in accordance with the agreement or with the law of the country ; non-arbitrality of the subject-matter of the dispute ; and that the award is in conflict with the public policy of the State.

7. In McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, the Supreme Court said:

The 1996 Act makes provision for the supervisory role of Courts, for the review of the arbitral award only to ensure fairness. Intervention of the Court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. the Court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the Court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the Court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

We may consider the submissions of the learned Counsel for the parties on the basis of the broad principles which may be attracted in the instant case i.e. (i) whether the award is contrary to the terms of the contract and therefore, no arbitrable dispute arose between the parties ; (ii) whether the award is in any way violative of the public policy ; (iii) whether the award is contrary to the

substantive law in India viz., Sections 55 and 73 of the Indian Contract Act ; (iv) whether the reasons are vitiated by perversity in evidence in contract ; (v) whether adjudication of a claim has been made in respect whereof there was no dispute or difference ; or (vi) whether the award is vitiated by internal contradictions.

8. The arbitration by an agreement between the parties or on reference made by the Court is by way of an alternate dispute resolution. The rules of procedure are not strictly applicable to the proceedings. In case the provisions of Code of CPC are applied with their full vigour and content, the proceedings u/s 34 will take the shape of original suit, frustrating the entire object of the new Act of 1996. The procedure of necessity, therefore, has to be a summary procedure in which evidence may be taken on affidavits and unless it is absolutely necessary, the Court may not call the witness of fact or expert witness for cross-examination. At this stage the order passed by the District Judge is interlocutory order and that any interference with the order at this stage will also amount to interfering with the summary procedure, causing delay in deciding the case. The Petitioner has a right to go in appeal against the order u/s 37 of the Act of 1996 and may take ground to challenge the order including a ground that the Court did not follow proper procedure.

9. It was then contended that framing of issues requires finding on each of the issues after taking evidence. This argument is not valid, inasmuch as, even in summary procedures as in the case of suits under the Small Cause Court Act the Court may fix points for determination for writing judgment. The framing of issues may not necessarily require evidence to be taken in the manner as it is prescribed in the Code of CPC and to strictly follow the procedure prescribed in Code of Civil Procedure, after its amendment in the year 1999.

10. The writ petition as such is dismissed at this stage without expressing any opinion on merits.