
(2006) 01 MP CK 0006
In the Madhya Pradesh High Court

State of M.P. and Others

APPELLANT

Vs

Gwalior Rice Products and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 17, 22
State Financial Corporations Act, 1951 — Section 29

Citation : (2007) 1 MPLJ 191

Hon'ble Judges : P.K. Jaiswal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

This appeal is filed against the order dated 09.02.2000 passed by District Judge, Shivpuri in Civil Misc. Case No. 10/1988, whereby the learned District Judge allowed the application u/s 17 of the Arbitration Act, 1940 (hereinafter referred to as "the Act") and made the award rule of the court.

Brief facts of the case are that a plot admeasuring 23,805 sq.ft. was given on lease to the respondent for 99 years vide order dated 07.10.1978. Thereafter, lease deed was executed vide lease deed dated 26.10.1978 and possession of the land was given to the respondents. The respondents had established a factory known as Gwalior Rice Products after taking financial assistance of Rs. 2,08,000 from Madhya Pradesh Financial Corporation Limited. The respondents failed to make the payment of instalments on loan and interest and hence the Corporation took over all the building, plant and machinery in exercise of the power conferred u/s 29 of the State Financial Corporation Act, 1951. u/s 29 of the SFC Act, 1951 the Corporation has right to transfer (by way of lease or sale) and realize the property pledged or mortgaged, hypothecated or assigned to the Financial Corporation and in doing such transfer all rights in the property transferred shall vest in the transferee as if transfer is made by the owner thereof. The Financial Corporation sold the factory in favour of M/s. Anuj Rice

Products for a sum of Rs. 3.45 lacs and executed an agreement to sell on 29.08.1986. The Corporation after taking over the possession of the unit intimated the same to the General Manager, District Industries Centre Shivpuri and also pointed out that unit has been handed over to M/s. Rishi Oil Industries, Gwalior under an agreement to sell dated 29.08.1986 and requested to transfer the lease in favour of the purchaser. The respondent challenged the said action of the Corporation by filing Writ Petition (MP No. 376/1987). This Court by order dated 14.12.1995 held that the action taken by the Corporation in entering into an agreement with Anuj Rice Products, Shivpuri in accordance with Section 29 of SFC Act and while dismissing the petition gave opportunity to the respondents to seek remedy of redemption, if any, available under the law. Since the respondents failed to pay the mesne profit as per the terms and conditions of the lease deed then the Industries Department vide order dated 19.02.1987 terminated the lease deed (Ex. D.5) and transferred the lease in favour of M/s. Anuj Rice Products.

The respondents challenged the said action and vide letter dated 12.11.1987 requested the Director, Department of Industries to appoint the arbitrator. As per the terms of the lease deed, Director of Industries was appointed as arbitrator. Since the arbitrator failed to decide the dispute within a period of three months and as such respondents filed an application for removal of the arbitrator under Sections 11 and 12 of the Arbitration Act, 1940. The trial court vide order dated 14.05.1993 allowed the application and removed the Director to act as an arbitrator and directed the parties to appoint another arbitrator. The trial court with the consent of the parties vide order dated 18.09.1993 appointed Shri R.S. Gupta, retired District and Sessions Judge as arbitrator u/s 22 of the Arbitration Act. The appointment of the arbitrator was never challenged by the State by filing an appeal or revision before this Court nor they challenged the order dated 14.05.1993 passed by the trial court and as such the orders dated 14.05.1993 and 18.09.1993 attained finality.

The arbitrator decided the dispute and passed the award on 23.08.1996. By the said award, the learned arbitrator set aside the order of termination of lease dated 19.02.1987 by holding that no show cause notice was given to the petitioner before terminating the lease deed. It is also held by the arbitrator that by cancellation of lease the respondents were not going to suffer in any way and dismissed their claim for grant of damages. The arbitrator further held that on 29.08.1986 possession of the land, plant and machinery was handed over to M/s Anuj Rice Products and thereafter Industries Department vide lease deed dated 31.03.1990 transferred the lease in favour of the purchaser and held the following:

mijksDr foospu vuqlkj funsZ"k esa vafdr fookn ij esjk fu.kZ; vokMZ ;g gS fd m|ksx foHkkx us es- Xokfy;j jkbl izkMDVI ds Hkkxhnkj jkes"oj izlkn [k.Msyoky dks fn- 26-10-1978 dks Hkw[kaM dh yht nh Fkh] ml yht dks lekIr djus dk m|ksx foHkkx vkns"k voS/k gSA ij yht lekfIr ek= ls vkosnd dks dksbZ {kfr ugha gqbZ]

vr% vkosnd m|ksx foHkkx ls dksbZ {kfr /ku ikus dk ik= ugha gSA vukosnd i{k viuk O;; e;/LFkrk dk;Zokgh dk Lo;a ogu djs rFkk vkosnd dk bl dk;Zokgh dk O;; vukosnd nsosA vfHkHkk"kd "kqYd nks gtkj :i;k fu/kkZfjr dh tkrh gSA

The award was filed in the court on 23.08.1996. On 19.06.1996 the appellants filed their objection before the trial court. No objection to the award was filed by the respondents within a period of 30 days from the date of the award. The trial court by the impugned order dated 09.02.2000 passed the judgment and decree in terms of the award and rejected the objections raised by the appellants on the ground that arbitrator has not committed any jurisdictional error or misconduct in passing the award and held that lease deed was cancelled by the Industries Department without following the due process of law as no notice was given to the respondents before cancelling the lease as per Clause 19 of lease deed and Rule 21 of M.P. Udhyog Shed Allotment Rules, 1974 that it was free to pass the order afresh after giving opportunity of hearing to the respondents.

The learned Counsel for appellants challenged the judgment and decree made in terms of the award by the trial court vide order dated 09.02.2000 on the ground that learned trial court erred in rejecting the objection of the appellant. He further submitted that as per lease deed only the Director of Industries can be appointed as arbitrator and whole proceedings are wholly without jurisdiction. Learned Counsel for appellant submitted that arbitrator has committed misconduct in passing the award and exceeded its jurisdiction in deciding the fact that termination of lease deed was illegal. He submitted that as per Clause 19 of the lease deed if the industries remained closed for a period of more than 6 months then the lease deed can be terminated without assigning any reason. Learned Counsel for the appellant submitted that M.P.F.C. has taken action u/s 29 of SFC Act and had taken possession of the said industry on 18.07.1986. The said action was challenged by the respondents by filing Writ Petition No. 376/1987 which was dismissed on 14.12.1995. The transfer was made as per terms of the mortgage deed dated 26.03.1980 (Ex. D6) executed between the respondents and M.P.F.C. and later on the lease was cancelled and fresh lease deed was executed in favour of purchaser on 30.03.1990. In view of the above subsequent event no right is created in favour of the respondents and lower appellate court committed error in rejecting the objections and passing the judgment and decree in terms of the award. Learned Counsel for the appellants lastly submitted that learned trial court committed error in appointing another arbitrator and once the procedure is prescribed for appointment of arbitrator under Clause 13 of the lease deed, then no other arbitrator can be appointed and award passed by the arbitrator is wholly without jurisdiction and learned trial court committed an error in making the award rule of the court.

On the other hand, learned Counsel for respondents contended that as per Rule 3 of Schedule I of the Arbitration Act, 1940 the nominated arbitrator has to decide the dispute within a statutory period of three months. In any case he failed to decide the dispute referred by the respondents within the said period

the court was free to appoint another arbitrator and trial court has not committed any error in appointing another arbitrator and thus, the arbitrator has not committed any error nor exceeded its jurisdiction in deciding the dispute and trial court rightly rejected the objection of the appellants. It is not disputed by the appellants that the nominated arbitrator, i.e. Director of Industries, failed to decide the dispute within the period of three months. The respondents filed an application for removal of arbitrator under Sections 11 and 12 of the Act. The said application was allowed by the trial court vide order dated 14.05.1993 and the said order was never challenged by the appellants by filing a revision or appeal in the High Court and as such the said order attained finality. Thereafter trial court in compliance to the order dated 14.05.1993 asked the parties to give the proposed name of the arbitrator. The appellants gave the name of collector as an arbitrator on their behalf. The trial court after considering the same appointed the retired District Judge as an arbitrator by order dated 18.09.1993 u/s 22 of the Act with the consent of the parties and directed the learned arbitrator to pass the award within a period of six months. The said order was also not challenged by the appellants by filing an appeal or revision and as such the question regarding appointment of arbitrator attained finality and now at this stage after passing the award and after making the award rule of the court he cannot raise this objection.

Here in the instant case the arbitrator while deciding the dispute passed the well reasoned and detailed award referring various clauses of the lease agreement and effect thereof. Said award does not suffer from any infirmity. The award cannot be set aside merely because another view is possible thereat. The Hon'ble Apex Court in the case of Bharat Coking Coal Ltd. Vs. L.K. Ahuja, has held that scope of interference by the court is very limited. Once arbitrator has applied his mind to matter before him, court cannot re-appraise the matter as if it were an appeal, and even if two views are possible, view taken by arbitrator would prevail, so long as it is one that a reasonable person would take and it can interfere only when arbitrator exceeds terms of agreement or passes an award in absence of evidence, which is apparent on face of the record. Here in the instant case the arbitrator has not committed any error in passing the award and thus the order of the learned trial court by which he affirmed the award and passed the decree in terms of the award cannot be said that the arbitrator misconducted the proceedings or committed jurisdictional error in passing the award.

From the above facts and circumstances of the case no case for setting aside the judgment and decree of the trial court is made out.

Learned Counsel for the respondents contended that he partly aggrieved by the impugned order of the trial court by which learned trial court directed the Industries Department to decide the matter of cancellation of lease afresh after giving opportunity of hearing to the appellants. He also aggrieved by the action of the learned trial court by which learned trial court issued fresh direction to the respondents. On the other hand, learned Counsel for appellant opposed the said

cross-objection and submitted that cross-objection is not maintainable as no fresh direction was issued by the learned trial court. Since the order for cancellation of lease was set aside by the arbitrator, the learned trial court upheld the said order and directed to decide the matter of cancellation of lease afresh which is in accordance with the terms and conditions of the lease deed dated 26.10.1978. The learned arbitrator set aside the order of cancellation of lease deed dated 19.02.1987 only on the ground of principle of natural justice. Thus, the learned trial court has not committed any error in issuing direction that the respondent No. 2 is free to decide the matter of cancellation of lease afresh in accordance with law. The cross-objection of the respondent thus has no merit and is accordingly dismissed. The appeal fails and is dismissed but in the facts and circumstances of the case there shall be no order as to costs.