

(2002) 04 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 184/91

State of M.P. and Others

APPELLANT

Vs

Jaiswal Tractors

RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 30
Civil Procedure Code, 1908 (CPC) — Section 34
Limitation Act, 1963 — Article 119

Citation : (2002) ILR (MP) 663 : (2002) 5 MPHT 157 : (2002) 3 MPLJ 460

Hon'ble Judges : V.K. Agarwal, J

Bench : Single Bench

Advocate : Tanu Tandon, for the Appellant; P.K. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Agarwal, J.

This Misc. Appeal is directed against the order dated 12-11-1990 in Civil Suit No. 3-A/1982 by First Additional District Judge, Rewa, making the award of arbitrator Rule of the Court.

The relevant facts leading to the present appeal stated in brief are that the parties entered into an agreement, whereby the appellants had agreed to hire respondent's tractor on rental basis for carrying out some work undertaken by the Irrigation Department. A dispute arose between the parties regarding payment of rent, of the said tractor. As per agreement between the parties the matter was referred for decision by the sole arbitrator by the Trial Court by its order dated 31-8-84 and Shri Trilochan Singh, Advocate, Rewa was appointed as sole arbitrator. The arbitrator proceeded with the arbitration proceedings and filed his award dated 29-8-88 in the Lower Court.

Notices regarding the filing of award by the arbitrator were issued by the Lower Court to both the parties. On 15-11-88 the appellants' Counsel appeared in the

Lower Court and sought time to file objections u/s 30 of the Arbitration Act, 1940 (hereinafter referred to as "Act" for short). The learned Trial Court granted time to file objections within the time prescribed. An application u/s 30 of the Act, raising objections regarding arbitrator's award was filed on behalf of appellants on 20-1-89. An enquiry was made by the Lower Court regarding the said objections.

By the impugned order the said objections have been dismissed. The learned Lower Court held that the application u/s 30 of the Act was barred by limitation, as it was filed after the period of 30 days prescribed under Article 119 of the Limitation Act. It was therefore held that the objections being time barred could not be considered. Learned Lower Court also held that the objections raised on behalf of appellants that the award could not be filed by the arbitrator u/s 14 of the Act, without request of the party or direction of the Court was also not sustainable. It was further held that the appellants have failed to make out any ground for setting aside award u/s 30 of the Act.

Learned Counsel for appellants assailed the impugned order. It was submitted that the arbitrator passed the award ignoring material evidence placed on record. It was also submitted that the appellants filed their objections as per direction of the Trial Court. It was submitted that the said objections should not have been treated as barred by limitation. It was also urged that the arbitrator could not file the award suo motu. It has also been submitted that the learned arbitrator erred in awarding interest from the date of institution of proceedings.

It is not in dispute that the arbitrator was appointed by the Lower Court and had filed the award before the Lower Court on 19-9-1988. Notices regarding the award were issued to both the parties, by the Trial Court. On 15-11-1988 the appellants entered appearance through their Counsel and sought time for filing objections, presumably u/s 30 of the Act, regarding the award. As pointed out by the Lower Court, time for filing objections was granted to the appellants Counsel, with the direction that the same be filed within the period of limitation. Undisputably, the objections were filed on 20-1-1989.

It is clear from the above that, after the notices were issued the appellants entered appearance on 15-11-1988 and thus had knowledge of the award atleast from that date. Under Article 119 (b) of the Limitation Act, period of limitation for filing a suit for setting aside an award or getting an award remitted for reconsideration is 30 days and the period of limitation is to begin from the date of service of notice of filing of the award. As noticed earlier in the instant case, notice had already been served and the appellants have entered appearance in the Lower Court on 15-11-1988. Therefore the limitation started running from that date and was over on 15-12-1988. However, admittedly application u/s 30 of the Act was filed on behalf of appellants on 20-1-1989, i.e., much beyond the period of 30 days. Obviously, such an application and objections raised thereby were barred by limitation.

The finding of Trial Court in that regard is justified and calls for no interference. Consequently, the application raising objections by the appellants was barred by limitation and deserved rejection.

However, the other contentions raised in this appeal may also be considered briefly. It may be noticed that in *State of Madhya Pradesh Vs. Saith and Skelton (P) Ltd.,*). The Supreme Court referred and expressed its agreement to the observations with the pronouncement by the Nagpur High Court in *Narayan Bhawu V. Dewajibhawu* (AIR 1945 Nag 117) to the effect that there is nothing in Section 14(2) of the Act, which precludes the arbitrator from filing the award suo motu and it is not correct to say that the award should be filed only if the parties make a request to the arbitrator to file the award or make an application to the Court for that purpose. It was laid down that there is no prohibition in the Act against the arbitrator filing the award suo motu without the request of parties or direction of the Court in that regard. It has been observed that:-

"It is not correct to say that the award should be filed only if the parties make a request to the arbitirator to file the award or make an application to the Court for that purpose especially when there is no prohibition in the Act, particularly in Section 14(2) against the arbitrator filing suo motu his award in Court."

Therefore, the Lower Court appears to be fully justified in holding accordingly and contentions of learned Counsel for appellants in that regard cannot be accepted.

Learned Counsel for appellants has also challenged the award on its merits. It is clear that the award cannot be challenged on its merits. If the award is based on material and evidence placed on record, it cannot be interfered with, even if it is erroneous. Civil Court cannot sit as appellate forum to consider the correctness of the award. Unless grounds as specified u/s 30 of the Act are made out, the award cannot be interfered with. The learned Trial Court has therefore rightly held that the award did not call for any interference.

This leaves us with the last contention of the learned Counsel for appellant that interest could not have been awarded by the arbitrator.

It is noticed that the arbitrator has awarded interest from the date of filing of the suit. Thus, pendente lite interest has been awarded. In *Hindustan Construction Co. Ltd. Vs. State of Jammu and Kashmir,*) it has been held that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. It has further been held that while award of interest for the period prior to an arbitration entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of CPC provides both for awarding of interest pendente lite as well as for the post-decree period and the principle of Section 34 is applicable to proceedings before the arbitrator, though the section as such may not apply.

Similar proposition of law is laid down in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, It has been held therein that the arbitrator must also act and make his award in accordance with the general law of the land and the agreement. It has further been held that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. For doing complete justice between the parties, such power to grant interest pendente lite has always been inferred. The above proposition was also reiterated in State of M.P. V. M/s. Saith and Skelton (P) Ltd. and others (supra).

In view of above, the contention of learned Counsel for appellants that interest ought not to have been awarded by the arbitrator can also not be accepted.

Accordingly, this appeal has no merit and is hereby dismissed. Costs of this appeal, shall be borne by the parties.