
(2014) 04 RAJ CK 0137
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 1076/2002

State of Rajasthan

APPELLANT

Vs

M/s. Verma Construction Company and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Arbitration Act, 1940 — Section 17, 20, 30, 33, 37

Citation : (2014) 04 RAJ CK 0137

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : A.S. Khangarot, Advocate for the Appellant; S.C. Mittal, Advocate for the Respondent

Judgement

Alok Sharma, J.—This miscellaneous appeal u/s 37 of the Indian Arbitration Act, 1940 (hereinafter "the 1940 Act") has been filed against the order dated 6-3-2002 passed by the Additional District Judge No. 4, Kota (hereinafter the lower court"), whereby the objections filed by the appellant state of Rajasthan (hereinafter "the non claimant") u/s 30/33 of the 1940 Act have been dismissed, the application filed by the respondent-claimant (hereinafter "the claimant") u/s 17 of the 1940 Act for making the award dated 20-4-1993 the rule of court allowed and decree passed in terms thereof. The facts of the case are that the claimant and the non claimant entered into a contract for widening of the National Highway No. 12 Jaipur-Jabalpur of Kota Section in Km. 170 to 185 into two lanes and to make geometric improvement of the road. Work order was issued on 20-2-1986 and the claimant was required to execute the work for the consideration of Rs. 63,66,871.47. Disputes having arisen between the claimant and the non claimant relating to the contract in issue the claimant moved an application before the District Judge Kota u/s 20 of the 1940 Act for making reference of the dispute to the Arbitrator. Vide order dated 4-12-1992, the matter was referred to the sole arbitrator in terms of arbitration clause in the contract between the parties. The claimant filed 27 claims under various heads before the sole arbitrator. Notice having been served, reply to claim petition after

much shenanigans was filed as also documents in support thereof. On consideration of the matter by the sole arbitrator, award came to be passed on 20-4-1993 whereunder a sum of Rs. 26,35,146/- along with interest at the rate of 12% per annum from the date of award till the date of payment was allowed.

2. Aggrieved of the award dated 20-4-1993 passed by the sole arbitrator, the non claimant state of Rajasthan filed objections u/s 30/33 of the 1940 before the jurisdictional civil court. The only issue agitated was for finding misconduct against the sole arbitrator and setting aside of the award dated 20.04.1993 for the reason that the award was allegedly passed without any opportunity of hearing to the non claimants for defending the claims set up by the claimants to the non-claimant.

3. The court below on consideration of the matter found that the ground set up for the alleged misconduct of the sole arbitrator were absolutely false and contrary to the record. It was noted by the lower court that the whole case set up by the non claimant in its objections u/s 30/33 of the 1940 Act stood demolished from the recordings of the sole arbitrator in his award dated 20-4-1993, more particularly at page No. 21 thereof. Therefrom it was evident that on 18-1-1993 representative of the non claimant Mr. J.K. Bansal, Executive Engineer, PWD National Highway Division-II Kota was present before the arbitrator on notice of arbitration having been issued on behalf of the respondent State. Mr. Bansal however on his part filed an application before the Arbitrator stating therein that he had not received formal instructions to appear from the Chief Engineer and sought adjournment. In these circumstances the next date was fixed as 16-2-1993 in Arbitrator's chamber at RPS Office building RB Road, Kota. On 16-2-1993, instead of appearing before the Arbitrator, Mr. J.K. Bansal, who earlier appeared on behalf of the State sent a letter through his LDC stating that the State of Rajasthan was in the process of filing of review or revision/appeal in the high court against the order dated 4-12-1992 passed by the District Judge making reference to Arbitrator and as such he could not present himself before the sole Arbitrator. The Arbitrator rejected the request of Mr. Bansal for adjournment as the grounds proffered could not be considered as he had neither himself appeared nor submitted any stay order passed by a competent authority revoking the authority of the arbitrator. Therefore the non claimant was directed to participate in the proceedings under pain of ex-parte proceedings. The next date was fixed for 23-2-1993. On 23-2-1993 no one again appeared on behalf of the non claimant. In these circumstances the matter was fixed for 4-3-1993 for evidence of the claimant in support of his claim petition and arbitration proceedings were made ex-parte against the non-claimant. No one again appeared on behalf of the non claimant state on 4-3-1993 or subsequently on the next date on 17-3-1993. Similarly no one appeared on behalf of the state on 19-3-1993. However, on 27-3-1993, the non claimant State sent an application again through the LDC Ramraj Sahariya to the arbitrator requesting that ex-parte proceedings be set aside and the non claimant state be allowed to participate in the arbitration proceedings. The arbitrator however refused to accept the

application as it was neither presented by any authorised person of the non claimant state nor any affidavit had been filed along therewith in support stating the reasons as to why the ex-parte proceedings taken against the state deserved to be set aside. The application was rejected. On 2-4-1993, Mr. J.K. Bansal, the Officer-in-charge of the case finally appeared before the Arbitrator and filed afresh an application for setting aside the ex-parte order passed on 23-2-1993. Finding no good/sufficient ground for allowing the said application filed by Mr. Bansal, it was rejected by the Arbitrator. But it was clarified that in accordance with law the non claimant could take part in the proceedings from the stage at which they then were. But this would be without prejudice or affecting previous proceedings/orders passed. Thereupon the non claimant state took part in arbitration proceedings on 2-4-1993 and copy of the rejoinder filed by claimant to the reply earlier filed by the state to the claim petition was supplied. Even a request for filing written reply to the rejoinder filed by the non claimant state by 10-4-1993 was allowed. The reply by the non claimant state and supporting documents were taken on record by the Arbitrator. The matter heard and considered. The Arbitrator considering the pleadings and documents of the claimant as also of the non claimant state passed his award dated 20-4-1993.

4. Objections u/s 30/33 of the 1940 Act were filed by the non claimant state. The objections were based on the purported misconduct of the arbitrator in contravention of principles of the natural justice and not providing adequate opportunity of hearing to the non claimant state. Vide order dated 6-3-2002 the court below dismissed the objections and made the award dated 20-4-1993 rule of the court. Hence this appeal u/s 37 of the Act of 1940.

5. Heard learned counsel for the parties and perused the impugned order dated 6-3-2002 passed by the lower court as also the award dated 20-4-1993 passed by the sole Arbitrator.

6. It is trite that unless a patent illegality is made out in the order passed by the lower court while making the award the rule of court and dismissing objections thereto u/s 30/33 of the Act of 1940, the appellate power u/s 39 of the Act of 1940 cannot be exercised. The scope of interference by an appellate court in an award made the rule of the court and decreed has been stated by the Hon''ble Supreme court in the case of The Hindustan Construction Co. Ltd. Vs. Governor of Orissa and others, . It has been stated that the power u/s 39 of the Act of 1940 is not an appellate power and hence there cannot be any reappraisal of evidence to see whether the award could have even made the rule of the court. Aside of the above mentioned judgment, the Hon''ble Supreme Court has held that interference with an award under the Arbitration Act, 1940 can only be made where conditions of the contract have been overlooked by the Arbitrator, the award is beyond the reference made, it is vitiated by perversity, non-application of mind or is patently illegal. None of these grounds were invoked in the objections filed against the award dated 20-4-1993.

7. As detailed hereinabove the only ground for challenging the impugned award

dated 20-4-1993 passed by the Arbitrator was his purported misconduct in non compliance with the principles of natural justice. That ground to say the least on the face of it was completely misdirected and mechanically agitated when the non applicant itself was responsible for not participating in the arbitration proceedings in spite of service of notice and even appearance of its officer. The inevitable consequence was an ex-parte order. The reason for non participation, i.e. that the order dated 4-12-1992 appointing the arbitrator passed by the District Judge was to be challenged by a review or revision/appeal before the High Court was unsustainable as no stay of the order of appointing the arbitrator or of revocation of his authority was at any point of time at all produced before the arbitrator. The non claimant was thus through its non participation before the Arbitrator in the circumstances seeking to obstruct the due process of law and showed complete disregard to the administration of justice by absenting itself from the arbitration proceedings before an Arbitrator duly appointed by the court. Further Mr. J.K. Bansal the Executive Engineer only added insult to injury by communicating with the Arbitrator through a Lower Division Clerk for seeking adjournment without any justifiable reason. This state of affairs and obstructing the administration of justice could not be countenanced by the Arbitrator and rightly was not so. Thereafter the non claimant state finally participated in the proceedings. Its reply and documents in support thereof were filed before the Arbitrator. On consideration of the claim and defence thereto as also the documents relied upon by the contesting parties, the Arbitrator passed the award dated 20-4-1993.

8. The non claimant State then filed its objections to the award dated 20-4-1993 on the ground of this Arbitrator's misconduct in denying it opportunity to contest the claim. Overlooking the well considered award running into 66 pages it was also alleged that the award was vitiated for being unreasoned. No other ground of misconduct was agitated by the non claimant State before the lower court in its objections under Sections 30/33 of the 1940 Act. The court below found the objections completely misdirected and rooted neither in fact or law and woe fully short of any misconduct of the arbitrator as legally described by the courts on which alone the award could be set aside. In my considered opinion, the lower court has acted lawfully in dismissing the objections under sections 30/33 of the 1940 Act filed by the non claimant State and making the award dated 20-4-1993 the rule of the court and passing a decree in terms thereof. The allegations of the non claimant and the grounds of challenge in this appeal u/s 39 of the Act of 1940 are outlandished and palpably unsustainable. I find from the record that the non claimant had more than adequate opportunity to oppose the claim petition and after unjustifiable obstruction of the arbitration proceedings did file its counter to the claim and documents in support thereof. The Arbitrator has recorded his consideration of the non claimant's defence in the context of the claims before him and passed a detailed award running into 66 pages. In the circumstances, I also do not find any substance in the ground agitated this appeal that the award was an unreasoned one and was thus vitiated by the

Arbitrator's misconduct. It would also be in place to record that the Act of 1940 did not mandate a reasoned award. From the facts on record there is no patent illegality, perversity or misdirection in law either in the award dated 20-4-1993 passed by the sole Arbitrator or in the order dated 6-3-2002 passed by the lower court dismissing the objections of the non claimant, making the award dated 20-4-1993 the rule of the court and passing a decree in terms thereof.

9. Therefore, I find no force in the instant appeal and the same is dismissed with costs.

10. Cost in this case would be occasioned because of the cavalier approach of the non claimant State, which is the biggest litigant in courts, in filing an absolutely frivolous appeal. Such frivolous litigations in the court clogs the courts and causes delay in the administration of justice. In the instant case initially the non claimant appeared before the Arbitrator, but subsequently remained ex-parte unjustifiably. Adjournments were sought that too by sending a lower division clerk. The non claimant the Executive Engineer on better sense prevailing then appeared before the Arbitrator and participated in the arbitration whereafter the award was passed on consideration of the reply filed as also documents in support thereof. The impugned award dated 20-4-1993 was challenged setting up the false ground of violation of principles of natural justice. The objections u/s 30/33 of the Act of 1940 were dismissed vide order dated 6-3-2002 by the lower court. The award was made the rule of the court. Thereupon the instant miscellaneous appeal has been mechanically filed again on the false grounds negated ex facie by the record of the case showing that the award is not vitiated by contravention of natural justice. In Rameshwari Devi and Others Vs. Nirmala Devi and Others, the Hon''ble Supreme Court has observed that false averments of facts and untenable contentions are serious problems faced by court and the other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look and requires some time, at time years, before being able to see through, discern and reach the truth. Further in the case of A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc., the Hon''ble Supreme Court has held that once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs.

11. Therefore as the instant case exhibits a cavalier approach of the non claimant State in litigating on false and baseless grounds, I would impose costs of Rs. 25,000/- on the appellant non claimant State to be paid to the Rajasthan State Legal Services Authority, Jaipur within a period of ten weeks from today.

12. A copy of this order be sent to the Rajasthan State Legal Services Authority Jaipur. The Deputy Registrar (Judicial) is directed to ensure compliance of this order on costs of Rs. 25000/- to be paid to the Rajasthan State Legal Services Authority within a period of ten weeks. In case the amount of costs is not

deposited within a period of four weeks, the case be listed before this court for ensuring deposit of costs as directed.