
(2016) 04 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil First Appeal No. 41 of 1990

State of Rajasthan

APPELLANT

Vs

Ram Narayan

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Arbitration Act, 1940 — Section 39
Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2016) 3 RLW 2458

Hon'ble Judges : Mr. Goverdhan Bardhar, J.

Bench : Single Bench

Advocate : Mr. N.S. Rajpurohit, Advocate, for the Appellant; Mr. S.G. Ojha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Goverdhan Bardhar, J.—This appeal is filed by the State of Rajasthan under Section 96 CPC read with Section 39 of the Arbitration Act (10 of 1940) (hereinafter referred to as 'the Act 10 of 1940') challenging the judgment and decree dated 11.10.89 passed by the District Judge, Sriganganagar in Civil Misc. (Arbitration) Case No. 259/1982 (Ram Narayan v. State) whereby, the award passed by the Arbitrator was made rule of the Court, while deciding the objections of the State to the arbitration award in making rule of the Court.

2. Briefly stated the facts of the case are that in the matter of arbitration between Ram Narayan and State of Rajasthan for manufacturing & supplying of 45 lacs pucca tiles and 5 lacs pucca bricks at Kiln No.2 near R.D 262-L of Suratgarh Branch, Shri K.L. Bhatia was appointed as Sole Arbitrator under Section 8 (2) of the Arbitration Act to arbitrate the dispute and claims between Shri Ram Narayan and State of Rajasthan who after adjudication passed the final award dated 31.08.82. The Arbitrator after completion of arbitration proceedings submit an award in the court of District Judge, Sriganganagar for making the rule of Court against which objections were filed by the State of Rajasthan. However,

the learned District Judge, Sriganganagar rejected the objections raised by the State and passed an order dated 11.10.89 to make the award rule of the Court by way of decree in following terms :-

"11- vr% Jh HkkfV;k }kjk tkjh vokMZ fnukad 31-08-1982 ds vk/kkj ij o vkchZV~s"ku ,DV ds izko/kkuksa dks /;ku esa j[krs gqos fuEu fMdh nh tkrh gS%&

1- izkFkhZ jkeukjk;.k jkT; ljdkj ls ewy jkf"k ds :i esa 64]000@& :0 ikosxkA

2- izkFkhZ jkeukjk;.k ewy jkf"k ij fnukad 27-01-1979 ls vkt rd 9 izfr"kr okf"kZd nj ls C;kt ikus dk vf/kdkjh gSA fu.kZ; vkt fnukad 11-10-1989 dks [kqys U;k;ky; esa lquk;k x;kA"

3. The present appeal is filed challenging the said decree passed by the learned District Judge making the award rule of the Court. In the present appeal, the respondent has also filed cross objection under Order 41, Rule 22 CPC against the judgment and decree dated 11.10.89 with the prayer that interest may be awarded to the respondent at the rate of 15% since 27.01.79 till the date of recovery.

4. Learned counsel for the appellant argued that it is apparent from the award that the Arbitrator has not passed a speaking award though dealt with various items of claim but while accepting those items, he failed to give necessary details. It is further argued that the Arbitrator has not given necessary particulars nor he thrashed out the way and method on which he worked to arrive at the conclusion. Learned counsel for the appellant argued that learned District Judge has wrongly held that the Arbitrator was not obliged to give reasons and particulars in the award whereas, huge amount was involved and it becomes duty of the Arbitrator and the Court to give reasons for giving award and upholding the validity of the award. As per appellant, the Arbitrator was duty bound to assign reasons to each and every item for accepting the respondent's claim, however, neither the Arbitrator nor the learned District Judge has properly and legally discussed the claims in detail.

5. Learned counsel for the appellant further argued that in this matter, Mr. Bhatia was appointed as fresh Arbitrator but while deciding the case, no particular item was referred to him whereas, while referring a dispute to an Arbitrator a reference containing each item of dispute specifically is required to be made and therefore, the judgment and decree passed by the learned District Judge suffers from various infirmities.

6. Per contra, learned counsel for the respondent argued that while passing the decree making the award rule of the Court, learned District Judge has considered all the aspects and the objections raised by the State of Rajasthan in detail and the judgment and decree passed by the learned District Judge is based on settled principle of law. Learned counsel for the respondent while relying on a decision of this Court in the case of State of Rajasthan v. Nav Bharat Construction Co.

reported in AIR 2000 Rajasthan 180 submits that Arbitrator was not under an obligation to give reasons and Arbitrator cannot be held to have misconducted himself in giving a non-speaking award. He further argued that whether a particular claim was liable to be allowed or rejected is a decision within the competency of the Umpire/Arbitrator and since the parties have selected their own forum, the deciding forum must be conceded to the power of appraisal of evidence. The Umpire/Arbitrator is the sole Judge of the quality as well as the quantity of the evidence and it will not be for the Court to take upon itself the task of being a Judge on the evidence before the arbitrator or the Umpire.

7. Heard learned counsel for the parties. I have gone through record and considered the arguments advanced by learned counsels. It is not in dispute that the appellant State participated in the arbitration proceedings on each date of hearing. Both the parties were allowed to lead evidence and cross-examine the witnesses whose evidence and affidavits were produced on record. As per record, in the presence of the parties following issues were framed on the basis of claims and counter claims :-

"Issues

(C) 1. Whether the commencement of the work upto 01.03.1976 was delayed due to default of the Respondent as alleged in Para 1 of the claim, and if so, what is its effect on the case?

(C) 2. Whether there were interruptions in the supply of water at the kiln, as alleged in Para 7(a) of the statement of facts and claim and if so, with that result?

(C) 3. Whether the claimant manufactured and supplied to the respondent and the latter also took possession of 11,29,000 pucca tiles and 3,09,000 Nos. pucca bricks and that the claimant is entitled to the payment of Rs. 35,421/25p on 4,08,000 Nos. pucca tiles and 1,37,000 Nos. pucca bricks?

(C) 4. Whether the respondent is liable to pay Rs. 4,700/- to the claimant as cost of 47,000 Nos. bricks, not released to the claimant on his request, and carried to the work sites, as alleged in Para 8(a) in the statement of facts and claim?

(C) 5. Whether the claimant is entitled to payment by the respondent of Rs. 3,600/- towards transportation of katcha tiles/bricks for loading in the kiln trench through circuitous route, as alleged vide para 8(b) of the statement of facts and claim?

(C) 6. Whether the respondent is responsible for the breach of contract, as alleged vide para 13 of the statement of facts and claim?

(C) 7. Whether the claimant is entitled to recover, by way of damages, from the respondent Rs. 64,100/- or any other sum, as alleged vide item ?A? of para 14 of the statement of facts and claim?

(C) 8. Is the claimant entitled to recover Rs. 2584,34p from the respondent for unloading and carriage of coal, as alleged vide item No. ?B? of Para 14 of the

statement of facts and claim?

(C) 9. Whether the claimant is entitled to recover from the respondent a sum of Rs. 35,250/- by way of compensation / damages, as alleged vide para 14(C) of the statement of facts and claim?

(C) 10. Whether security deposit of Rs. 5,710/- was withheld from the running bills of the claimant and that whether the respondent can lawfully withhold its refund to the claimant?

(R) 11. Whether the respondent is entitled to recover from the claimant, by way of counterclaim, a sum of Rs. 1,34,473.70p or any other sum?

12. Whether the claimant/respondent is entitled to claim interest, if so at what rate and from which date?

13. Relief ?

8. In the award itself, the Arbitrator has duly mentioned that after hearing both the parties, considering the statement of both the parties, both oral and documentary evidence produced by each of the parties, the award is passed which reads as under :-

"After hearing, examining and considering statements of both the parties and the oral and documentary evidence produced before me by each of them, and having given due consideration to all the facts records documents and arguments with due care, I make my award as follows:-

Total amount/counter claimed

Amount allowed

1.

Claims submit by the claimant.

Rs. 1,51,365.69

64,000.00

2.

Counter claims submit by the respondent.

Rs. 1,34,473.30

Nil

This award dispose of the entire claim of the claimant and counterclaim of the respondent. The claimant will get interest @ 9% per annum from 27.01.1979 until decree.

The cost of proceedings shall be borne by each party itself. The stamp duty charges of Rs. 25/- payable in respect of this award shall be borne by the

claimant Sh. Ram Narain.

Given and signed by me at Chandigarh on this 31st day of August, 1982."

9. In the opinion of this Court, all the procedural requirements for conducting arbitration have been complied with and adequate opportunity of hearing had been given to both the parties to lead evidence and arguments have been duly considered by the Arbitrator. It is not the case of either of the parties that opportunity to produce evidence and documents was not given or the evidence on record was not considered or that the award was not pronounced within time and therefore, learned Arbitrator did not commit any error of law in awarding lumpsum amount assigning no reason either item wise or claim wise. The nonspeaking and lumpsum award is also valid and permissible in view of the decision rendered by the Hon^{ble} Supreme Court in the case of M/s. Sudarsan Trading Co. v. Government of Kerala and another reported in AIR 1989 SC 890 so also by this Court in the case of Nav Bharat Construction co. (supra) wherein it has been held that the finding of Arbitrator is based upon the material placed before him by both the parties and is a pure finding of fact and cannot be interfered with by the Court and thus, the impugned award though being lumpsum one is not vitiated by any error of law.

10. Hon^{ble} Supreme Court in the case of M/s. Sudarsan Trading Co. v. Government of Kerala (Supra) has held as under :-

"It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award.

Further more, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator."

11. In the cross objection filed by the respondent, the learned counsel for respondent has argued that learned Distt Judge has committed an error in awarding interest @ 9% per annum and the court should have awarded at least 15% interest to the respondent. In the opinion of this Court, the learned counsel for the respondent has failed to show that awarding interest @ 9% per annum is contrary to law. Thus, the learned court below has not committed any error in awarding interest @ 9% and same is just and proper.

12. In view of aforesaid discussion, no interference is called for in the impugned judgment and decree dated 11.10.1989 passed by the learned District Judge, Sriganganagar making the award passed by the Arbitrator dated 31.08.82 rule of law, hence, this first appeal so also the cross objection filed by the respondent is hereby dismissed.