
(2015) 05 UK CK 0005
In the Uttarakhand High Court
Case No : Appeal From Order No. 322 of 2014

Steel Fabs

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 11(6), 2(g), 85(2)

Citation : AIR 2015 Utt 119 : (2015) 5 ARBLR 586 : (2015) 3 UC 2326

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Judgement

S.K. Gupta, J—Having heard learned Counsel of the appellant as well as the learned State Counsel, it transpires that certain dispute cropped up as regards to the implementation of the terms of the agreement dated 12.7.1982 entered into between the parties. Resultantly, the Original Suit No. 37/1989 was launched by M/s. Steel Fabs, appellant herein. In due course, the matter came up before the High Court and under Section 11(6) of the Arbitration Act, 1996 (for short, the Act), an application was moved by the appellant for reference of the controversy to the Arbitrator. So, the Hon'ble the Chief Justice of this Court previously appointed Smt. Seema Sirohi on 29.2.2008 as the sole Arbitrator, who for some cause expressed her inability. So, she was succeeded by Smt. Monika Pant on 11.12.2009, who proceeded the matter between the parties and formulated a preliminary issue to the effect "Whether the claimant is real contractor with whom the department entered into the work contract and whether there was any contract, privity of contract between the parties to the arbitration? If so, whether the claimant was liable to complete the work in time as specified in the contract?" On the request of the parties duo, the learned Arbitrator thought it proper to adjudicate this preliminary issue first and the view opined was as under:

"There is no material on record to establish that Upendra Kumar Singhal who has initiated these proceedings as authorized signatory of Mukul Kumar Singhal

proprietor of M/s. Steel Fabs, Gali No. 6 Panchsheel Colony, Garh Road Meerut represents all legal heirs and representatives of Rajendra Kumar Singhal. Any cause of action on behalf of the firm, M/s. Steel Fabs, Gali No. 6 Panchsheel Colony, Garh Road Meerut whose proprietor was late Rajendra Kumar Singhal, which entered into contract agreement would have survived only to the legal representatives of the late Rajendra Kumar Singhal. For the foregoing reasons objection of the department is sustained by holding that Upendra Kumar Singhal has no right and authority under law to pursue any claim on behalf of original firm M/s. Steel Fabs, Gali No. 6 Panchsheel Colony, Garh Road Meerut whose proprietor was late Rajendra Kumar Singhal. The issue No. 1 is answered in negative against the claimant."

2. As a consequence, rest of the issues Nos. 2 to 16, which could have effectively adjudicated the controversy between the parties were decided against the claimant/appellant. When such decision of the Arbitrator was challenged before the Court of District Judge in Miscellaneous Case No. 15/2012, such case was decided in negative for the applicant/appellant herein and thus, the finding of the Arbitrator was sustained.

3. Feeling disgruntled, the appellant M/s. Steel Fabs has come up before this Court.

4. In order to appreciate the finding of the learned Arbitrator as sustained by the District Judge, better to narrate some background as under.

5. There was sole proprietorship firm owned by Mr. Rajendra Kumar Singhal in the name and style of M/s. Steel Fabs, Gali No. 6, Panchsheel Colony, Garh Road, Meerut. Mr. Rajendra Kumar Singhal passed away on 8.10.1988. So, his son Mr. Mukesh Singhal succeeded in his shoes and became the sole proprietor of the said firm. During his lifetime, Mr. Rajendra Kumar Singhal executed a power of attorney on 1.8.1986 in the name of his real brother Mr. Upendra Kumar Singhal in order to contest the litigation and other affairs of the firm, if any happen to arise. So, Mr. Upendra Kumar Singhal was pursuing the litigation as have been indicated above.

6. It is pertinent to mention that after the loss of life of Mr. Rajendra Kumar Singhal, his son Mukesh Singhal, who later succeeded in his shoes, ratified the same power of attorney and issued a fresh authorisation letter dated 4.9.2006 to that effect in favour of his real uncle Mr. Upendra Kumar Singhal.

7. The sole Arbitrator Smt. Monika Pant has based her finding on the premise that after the death of Mr. Rajendra Kumar Singhal, the cause of action on behalf of the firm which arose out of the contract/agreement dated 12.7.1982 had come to an end as a natural consequence and at the most, the same would have survived only to the legal representative of the late Rajendra Kumar Singhal. Since Mukesh Singhal himself was not pursuing the matter, so, there was no legal propriety to Upendra Kumar Singhal, much less any right or authority under the law, to pursue any claim on behalf of the original firm.

8. Learned Counsel of the appellant has taken this Court to the provisions of Section 2(g) and (h), which postulate as under:--

"Definitions.--(1) In this Part, unless the context otherwise requires,-

(g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;

(h) "party" means a party to an arbitration agreement."

9. Learned State Counsel has submitted that since the original agreement was entered between the parties on 12.7.1982, hence the Arbitration Act which came into force in 1996 will not be applicable in the controversy. Learned Counsel on behalf of the appellant has refuted this argument by again taking this Court to Section 85(2) of the Act, which contemplates that this Act shall apply in relation to the arbitral proceedings which commenced on or after this Act comes into force.

10. Obviously, the arbitral proceedings came into force when an application under Section 11 of the Act was moved by the firm to this Hon"ble Court in 2006. Needless to say that in such an event, the provisions of the Act No. 26 of 1996 shall be applicable disregard of any provision of the repealed Act of 1940.

11. Mr. Upendra Kumar Singhal was natural intermeddler, as has been envisaged by the provisions of Section 2(g) of the Act. So, there was no question of the arbitral proceedings coming to an end, as has been opined by the sole Arbitrator and sustenance of such opinion by the learned District Judge.

12. In view of what has been stated above, this Court sets aside the findings of the sole Arbitrator dated 2.6.2012 and the judgment of the District Judge dated 30.4.2014 as well, and directs the Arbitrator to adjudicate the controversy between the parties effectively with all speaking reasons and logic.

13. For the purpose, Mr. Kailash Chandra Tiwari, Advocate, practicing in the High Court, is appointed as a sole arbitrator. He will get total remuneration to the tune of Rs. 30,000/- (Rupees thirty thousand), which will be shared 50:50 percent by each of the parties. The arbitrator shall give his award within six weeks from the date of receiving the certified copy of the instant order. Needless to say that the pleadings and evidence of both the parties are already on the record. So, the learned Arbitrator, after rendering an opportunity of oral submissions to the respective counsel, will give his award.