
(1990) 04 DEL CK 0011
In the Delhi High Court
Case No : Suit No. 498A of 1984

Subhash Aggarwal Agency

APPELLANT

Vs

Bhilwara Synthetics Ltd. and Others

RESPONDENT

Date of Decision : 05-04-1990

Acts Referred:

Citation : (1990) 2 ARBLR 118 : (1990) 41 DLT 654

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : M.C. Sekharan, R.C. Garg and Arun Kumar, for the Appellant;

Judgement

C.L. Chaudhry, J.

(1) M/S. Subhash Aggarwal Agencies (hereinafter called the petitioner) claimed certain amounts from the respondent M/s. Bhilwara Synthetics Limited and others (hereinafter called the-respondents) on account of commission payable to the petitioner. The petitioner referred the disputes for the decision of Delhi Hindustani Mercantile Association (hereinafter called the Association) in accordance with the Rules and Regulations of the Association. The Association appointed Sh. Mohan Lal as the sole arbitrator to go into the disputes between the parties. The arbitrator entered upon the reference in September 1979 and directed that notice be issued to the parties for 4.9.1979. The respondents took up the plea that he was no longer a member of the Association and Therefore the Rules and Regulations of the Association did not apply to it, and as such the Arbitrator had no jurisdiction to proceed with the case. The respondents filed a petition u/s 33 read with Section 5 of the Arbitration Act (being O.M.P. 142/1979) in this court challenging the authority of the Arbitrator to proceed with the matter. The petition was dismissed by order dated 28.2.1980 with liberty to the respondents to take all points urged in the O.M.P. before the Arbitrator. Thereafter the respondents moved another petition being O.M.P. 37/1980 for revocation of the authority of the Arbitrator on the ground of bias. This petition was dismissed on 20.11.1981 subject to the direction that the arbitrator should

hear reference afresh after giving reasonable opportunity to the respondents and should make a reasoned award. Thereafter the respondent moved an application before the Arbitrator for setting aside the ex parte proceedings. The request of the respondent was allowed and the respondent participated in the arbitration proceedings. The Arbitrator made an award on 19.7.1983 and gave notice to the parties. On 16.8.1983 the petitioner filed a petition in this court u/s 14 of the Arbitration Act (i.e. No. 1243-A/1983) seeking directions to the arbitrator to file the award as well as arbitration proceedings in court.

(2) Pursuant to the directions given by this Court the arbitrator filed the award in Suit No. 1543-A/1283 on 11.1.1984. Notice of filing of the award was given to the parties. The award was assailed by both the parties by filing objections under Sections 30 & 33 of the Arbitration Act. The objection filed by the petitioner is 1. A. 2715/1984 whereas the objections filed on behalf of the respondents are by way of I, petition A. No. 2716/1984.

(3) However, the respondent on 17.8.1983 filed an appeal against the award delivered by Shri Mohan Lal sole arbitrator on 19.7.1983 before the Tribunal set up under the Bye-Laws of the Association. The Tribunal decided the matter on 24.2.1984 by which the appeal filed by the respondent was dismissed. Thereafter the petitioners filed another petition u/s 14 of the Arbitration Act being Suit No. 498A-1984 seeking direction to the appellate Tribunal of the association to file the award i.e. the appellate decision with the record of the proceedings. On a notice issued by this court the award of Appellate Tribunal Along with the arbitration proceedings were filed in this court on 26.3.1984. Notice of filing of the award was given to both the parties. The respondents assailed the award by filing objections being I.A. 3049/1985. However, the petitioner seems to have accepted the award. As the proceedings in the two suits i.e. S. No. 498-A/1984 and 1243-A/1984 (Sic 1243-A/1983) were going on side by side, this court by order dated 18.9.1985 observed as under :-

"One Mohan Lal gave the award originally which was appealed against by respondent No. 1; and respondent No. 3, Appellate Tribunal No. III, The Delhi Hindustani Mercantile Association (Regd.) gave the Appellate award. It is admitted by the learned counsel for both the parties that the original award now stands merged in the appellate award and that even though both the parties had filed objections against the original award, respondent No. 1 alone have now preferred objections against the appellate award which is the final award. The petitioner has not filed any objection against the appellate award. This petition has prayed for the filing of the original award, the appellate award together with the complete record of the arbitration proceedings. So now what is to be dealt with are the objections of respondent No. 1 against the appellate award. It is pointed out by Mr. Harnam Dass, Advocate for respondent No. I that respondent 2(a) is no longer the director of respondent No. I and is no longer interested in this award. Objections of respondent No. I against the appellate award are contained in I.A. No. 3049/85 which alone is to be decided."

(4) The objections filed by respondent No. I (I.A. 3049/85) are being contested on behalf of the petitioner. On the pleadings of the parties the following issues were framed :-

whether the objections of respondent No. I against the appellate award are barred by limitation ? 2 Whether the appellate award is liable to be set aside on the objections of respondent No. I ? 3. Relief. Parties were given opportunity to file affidavits in support of their respective contentions. The parties availed of this opportunity, and filed the affidavits in support of their contentions.

(5) I have heard the learned counsel for the parties and have gone through the record and have given my thoughtful consideration to the matter involved.

(6) My findings on the above issues are as under :

ISSUENO. 1 : The first contention on behalf of the respondent is that the objections filed on behalf of the respondent are not within time. I have perused the record. The petitioner filed an application u/s 14 (being Suit No. 498-A/1984) for appropriate direction to the Arbitrator to file the award. The application came up before the Registrar on "28.3.1984 and the direction was given to the arbitrator to file the award. On 28.5.1984 notice was issued to the respondent for 30.8.1984. Respondent was not served. On 28.2.1985 counsel for respondent No. 2(a) appeared and stated that notice of petition had been served on the respondents 1 & 2 but not of filing of the award. The Joint Registrar issued notice of filing of the award to the respondents for 30.4.1985. The objections were filed on 29.3.1985. I have seen the record. In fact notice of the filing of the award was served on the respondent on 18.3.1985. The period of 30 days is prescribed from the date of receipt of notice of filing of the award. The objections filed on 29.3.1985 cannot be said to be barred by time. This issue is decided against the petitioner and in favor of the respondent.

(7) Issue NO. 2 : The first objection on behalf of the respondent is that the Appellate Tribunal has not given a reasoned decision and had not dealt with various points raised and argued in the appeal. The award of the Appellate Tribunal is in direct contravention of the order dated 20.11.1981 of this court by which order the court directed the arbitrator to give a reasoned award. Neither the Tribunal nor the arbitrator has given a reasoned award. The award given by the Tribunal is the final award and it cannot be made rule of the Court as it is not a reasoned award. The Tribunal did not appreciate the documentary and the oral evidence led by the parties before the arbitrator. On the other hand on behalf of the petitioner it is contended that the award of the arbitrator is a reasoned award. It is further stated that the award was published by the sole arbitrator after taking into consideration the entire material placed before the Arbitrator. After considering the entire evidence on the record the Appellate Tribunal affirmed the award as published by the sole arbitrator. The decision of the Tribunal is in accordance with the provisions of law. I have considered the relevant contention of the parties. While disposing of O.M.p. 37/1980 this court

observed as under :-

"In the circumstances, I would, Therefore dismiss the petition subject however to the direction to the arbitrator in terms of the concession made on behalf of the Association and the Registrar, that the Arbitrator would hear the matter afresh, after giving reasonable opportunity to the petitioner of being heard and to make a reasoned award on the conclusion of the proceedings."

(8) The Association appointed Shri Mohan Lal to decide the matter. The Arbitrator made the award dated 19.7.1983 which is in the following terms:-

"I do hereby award a sum of Rs. 1,97,891.81 (Rupees one lakh ninety seven thousand eight hundred ninety one and paise eighty one only) against respondent No. 1 (M/s. Bhilwara Synthetic Limited, who are the principal respondents in this case, as agreed by themselves also) in favor of the claimant (M/s. Subhash Aggarwal Agencies). I further give my award that respondent is liable to pay interest at 18% P. A. on this awarded amount from this day to the date of making the whole payment by the respondent No. 1."

(9) The respondent filed an appeal against the award in terms of the Bye-Laws of the Association. The Tribunal was appointed by the Association to decide the appeal. The Tribunal by its decision disposed of the appeal on 24.2.1984 in the following terms :-

"We have heard arguments advanced on behalf of the parties and considered their objections. Appeal of the appellant is dismissed and the award of the arbitrator, Sh. Mohan Lal dated 19.7.1983 is upheld. The parties to bear their own costs."

(10) It is contended on behalf of the respondent that the award of the Tribunal is final award and this award has to be made a rule of the Court. There was a specific direction by this Hon'ble Court that the award should be a reasoned award. As the award given by the Tribunal is bereft of reasons, so it cannot be made a rule of the Court. In my opinion the contention of the respondent is well founded. I have perused the Bye-Laws of the Association. Clause (7) of Rule 37 of Delhi Hindustani Mercantile Association provides that in case any party is aggrieved of the decision of the arbitrator he can file an appeal within 30 days from the date of the decision. Clause (10) provides that in case any appeal is filed against the decision of the Arbitrator the same shall be laid before the Tribunal comprising of three members and the decision of the Tribunal shall be final. In my opinion the award given by the Tribunal is the final award and this award is to be made rule of the Court. When a reference is made to an Association for arbitration it very often happens that the Rules of the Association provide for an appeal with the Appeal Committee against the award of the arbitrator. Such an appeal though not contemplated by the Arbitration Act would nevertheless be permitted as the party will be deemed to have agreed to such a provision. The Appeal Committee is really fresh set of arbitrators called in by the parties and the contract in fact contains as if it were two submissions or a

submission within submission. The Bombay High Court had an occasion to deal with similar situation in the case of Fazalally Jivaji Raja Vs. Khimji Poonja and Co., . In that case the contracts between the parties were subject to the Rules and Bye-laws of the East India Cotton Association Limited. The Bye-Laws inter-alia provided that all disputes arising out of or in relation to contracts, whether forward or ready, or whether between members or between a member and a non-member, made subject to these Bye-Laws, would be referred to the arbitration of two dis-interested persons, one to be chosen by each party. The Bye-Laws further provided that the arbitrators would have power to appoint an umpire, and would do so if and when they differed as to their award. It further provided that the award of any two arbitrators or their umpire would be final and binding on the parties subject to a right of appeal to the Board within 10 days from the date of publication of the award. The Bye-laws further provided that if either party to the dispute refused to abide by and perform the decision of the arbitrator or the umpire or the Board as the case may be, the award will be filed in the High Court. Certain disputes arose between the parties and those were referred to the arbitration of the members of the Association. The arbitrators differed, whereupon the disputes were referred to an umpire. The umpire made his award in favor of the petitioner. The respondent filed an appeal against the said award to the Board of Directors of the Association. The award was filed in the High Court. The contention of the respondent was that the award given by the Board of Directors did not fall within the purview of the Indian Arbitration Act. In this situation the High Court repelled the contention and of the respondent observed as under :-

" UNDOUBTEDLY, Section II in terms does not apply to the award made on appeal by the board of directors; but if the decision of the board which is called an award under the bye-law, of the association which is filed under the Arbitration Act, is the final decision under the submission in accordance with the Act, then it would be an award made by the arbitrators under the submission between the parties. There is no definition of the term "arbitrators" or "umpire", or even of "arbitration". There is no doubt that these terms are used in a very wide sense."

(11) Similar view was taken by the Calcutta High Court in the case of Heeralal Agarwalla and Co. Vs. Joakim Nahapiet and Co. Ltd., wherein it was observed as under :-

" There's ,as indeed is recognised by the respondent nothing to prevent, the parties from agreeing to a submission such as is contained in the contract before us. In other words there is nothing to prevent the parties from agreeing to a submission containing in it a further submission to arbitration. No doubt in Section II of the Indian Arbitration Act, there is not to be found any reference to arbitration by a committee ; but in my view it does not matter in the slightest whether the committee is described as committee of appeal or whether they are described as a fresh set of arbitrators; the substance of the matter has got to be looked at, and giving to the Sections of the Indian Arbitration Act my very best

consideration I can find nothing in it which would prevent an award by a committee of the Calcutta Baled Jute Association, being the final award contemplated by parties in certain eventualities, being filed in this court. I think the contention put forward on behalf of the appellants is correct and that the committee are really a fresh set of arbitrators called in by the parties. In other words, the contract contains as it were two submissions or a submission within a submission."

(12) Russell on the Law of Arbitration also enunciates the same principle in these terms :

"An award made pursuant to a proper arbitration agreement is final, as between the parties, unless the agreement expresses a contrary intention. The agreement may provide for an appeal : thus it is not uncommon in certain commercial arbitrations to provide for an appeal from the umpire to an appeal committee, and where this is done the award of the appeal committee will be treated by the court as if it were an award of an ordinary umpire." (Vide Russell on Arbitration 20th Edition page 387).

(13) The award of the Appellate Tribunal is the final award which has to be filed and made a rule of the Court. I have perused the award published by the Appellate Tribunal. No reasons have been given at all. Only the conclusion has been stated. The award does not indicate as to how the arbitrators have arrived at the conclusion. The award of the Appellate Tribunal is directly in conflict with the direction given by this Court by order dated 20.11.1981 which specifically provided that the arbitrator should make a reasoned award. No reasons whatsoever have been assigned. This is the final award. It should have contained the reasons. Thus it cannot be legally sustained and has to be set aside. The issue is decided in favor of the respondent.

(14) RELIEF: In the result the objection petition succeeds and the award of the Appellate Tribunal dated 19.7.1983 is set aside and is remitted for re-consideration and for giving reasons. The Tribunal should make the award within 4 months from today. The parties are left to bear their own costs.