
(2013) 08 P&H CK 0106
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 2858 of 2002

Swaraj Mazda Ltd.

APPELLANT

Vs

Glass Palace

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 4 PLR 789

Hon'ble Judges : Laxmi Narain Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Laxmi Narain Mittal, J.—In this revision petition filed u/s 115 of the CPC (CPC), challenge is to judgment dated 13.10.2001 passed by the Lower Appellate Court. The petitioner had supplied some vehicles to respondents No. 1 and 2. Dispute arose between the parties regarding payment of price thereof because respondents No. 1 and 2 alleged that the vehicles were defective. The dispute was referred to respondent No. 3-Arbitrator, who gave award dated 17.07.1990 thereby awarding Rs. 1,46,174/- to be paid to the petitioner by respondents No. 1 and 2 within one month and thereupon the petitioner was to get no interest.

2. The petitioner filed application under Sections 14 and 17 of the Arbitration Act, 1940, for directing the Arbitrator to file the award in the Court and for making the award rule of the Court. Accordingly, the Arbitrator filed the award in the Court on 15.03.1991.

3. Respondents No. 1 and 2 filed objections against the award alleging that the Arbitrator did not refer to the evidence led by the objectors and the Arbitrator has misconducted myself. The award is beyond the scope of reference. Relevant record was not summoned from the petitioner. Some other pleas were also raised.

4. The petitioner filed reply and controverted the averments made in the objections.

5. Respondents No. 1 and 2 - objectors failed to lead any evidence in the trial Court in spite of numerous opportunities and, accordingly, their evidence was closed by Court order. Since there was no evidence to prove the objections filed by respondents No. 1 and 2, learned trial Court vide order dated 01.11.1994, dismissed the objections filed by respondents No. 1 and 2 against the award and made the award rule of the Court and also granted future interest on the awarded amount of Rs. 1,46,174/- @ 12% per annum from the date of decree till recovery.

6. However, first appeal preferred by respondents No. 1 and 2 has been allowed by learned Additional District Judge, vide judgment dated 13.10.2001 and thereby objections filed by respondents No. 1 and 2 herein have been allowed and application filed by the petitioner under Sections 14 and 17 of the Arbitration Act, 1940 has been dismissed and the Arbitrator's award has been set aside.

7. Feeling aggrieved, instant revision petition has been filed to challenge the aforesaid judgment of the Lower Appellate Court.

8. I have heard learned counsel for the parties and perused the case file including the files of the Courts below as well as file of the Arbitrator with their assistance.

9. Counsel for the petitioner contended that the lower Appellate Court has set aside the award on the ground that it was ante-dated and was actually passed after expiry of period for making the award although no such objection had even been raised by respondents No. 1 and 2 in their objection petition and, therefore, the award could not be set aside on this ground.

10. Counsel for respondents No. 1 and 2, on the other hand, contended that misconduct of the Arbitrator is manifest inasmuch as stamp papers for the award were put up before the Arbitrator vide Note dated 05.11.1990 by his Personal/Private Secretary (PS) and, therefore, the award was signed on or after 05.11.1990 but has been ante-dated as 17.07.1990 and, therefore, the award has been rightly set aside by the Lower Appellate Court.

11. I have carefully considered the rival contentions. Time for making the award stood extended till 18.07.1990 as admitted by counsel for the parties. Perusal of Arbitrator's file reveals that both parties were present before the Arbitrator on 17.07.1990. They were heard. Thereafter, the Arbitrator passed order dated 17.07.1990 in the presence of the parties awarding Rs. 1,46,174/- to the petitioner without interest if the amount was paid within one month from the said date. Said order was also announced by the Arbitrator in the presence of the parties on 17.07.1990 itself. The petitioner was directed to arrange requisite stamp papers for the award. The stamp papers were purchased on 19.07.1990. However, after typing of the award on the said stamp papers, same was put up before the Arbitrator by his Personal/Private Secretary vide note dated 05.11.1990 in the Arbitrator's file. The award was thus, signed on or after 05.11.1990 although it has been dated as 17.07.1990.

12. Practically and for all intents and purposes, the Arbitrator had made and announced the award on 17.07.1990 in the presence of both the parties and had even signed the same on the same date. It was only formal award that was typed later on on the stamp papers. Consequently, the award cannot be said to be defective and it cannot be said that the Arbitrator committed any legal misconduct on this ground so as to furnish ground for setting aside the award. If respondents No. 1 and 2 want to take benefit of this hyper technical circumstance, they are also liable to face music on similar technical ground that they had not raised this ground in their objections and consequently, Lower Appellate Court could not have made out a new case for them for setting aside the award on this ground. The aforesaid ground on which the award has been set aside by the lower Appellate Court is completely beyond the pleadings of the objectors (respondents No. 1 and 2) and, therefore, the award could not be set aside on this ground without even affording opportunity to the petitioner to meet the said new ground. Thus, examined from any angle, there was no sufficient ground to set aside the award of the Arbitrator.

13. On the other hand, respondents No. 1 and 2/Objectors failed to lead any evidence to substantiate their objections. Consequently, there is no ground to set aside the award. Resultantly, I find that impugned judgment passed by the Lower Appellate Court is illegal and erroneous and suffers from jurisdictional error. The revision petition is, accordingly, allowed. Impugned judgment dated 13.10.2001 passed by the Lower Appellate Court is set aside and objections filed by respondents No. 1 and 2 against the award of the Arbitrator are dismissed. Application filed by petitioner under Sections 14 and 17 of the Arbitration Act, 1940 is allowed and award dated 17.07.1990 passed by respondent No. 3-Arbitrator is made rule of the Court and, accordingly, decree is passed in favour of the petitioner for recovery of award amount of Rs. 1,46,174 against respondents No. 1 and 2. In accordance with award, if respondents No. 1 and 2 pay the aforesaid amount of Rs. 1,46,174/- to the petitioner within one month from today, the petitioner shall not be entitled to any interest, failing which, the petitioner shall be entitled to recover the decretal amount of Rs. 146174/- with interest @ 12% per annum w.e.f. 01.11.1994 i.e. the date of decree passed by the trial Court till recovery.