

(1999) 08 DEL CK 0081

In the Delhi High Court

Case No : I.As. 1696/96 and 8390/97 and S.No. 42A of 96

Swaran Arora and Another

APPELLANT

Vs

Sh. Shyam Lal Jain and Others

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Arbitration Act, 1940 — Section 11, 33

Citation : (1999) 5 AD 755 : AIR 1999 Delhi 343 : (2000) 84 DLT 363 : (1999) 50 DRJ 767

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. P.R. Thakur, Mr. G.S. Aneja and Ms. Hima Kohli, for the Appellant;

Judgement

Vikramajit Sen, J.—These Objections (being I.A. No. 1696/96) have been filed against the Award dated 10.12.1995 whereby an amount of Rs. 9,81,000/- together with interest at the rate of two per cent per month with effect from 2.6.1992 till the date of the Award was granted in favor of the Claimants and against Respondents 1 to 5. These Objections have been filed on behalf of Shri Shyam Lal Jain, who was respondent No.1 before the Arbitrator. The Arbitrator had accepted the case of the Claimants that the Respondents had taken a friendly loan of Rs. 9,81,000/- and had also signed the Arbitration Agreement dated 15.6.1993. In these Objections Shyam Lal Jain i.e. Respondent No.1 in the arbitration proceedings has assailed the Award on a number of grounds. The following grounds were pressed at the time of arguments.

- (i) That the Arbitration Agreement is forged.
- (ii) That the petitioner had not consented to refer to the disputes to arbitration.
- (iii) That the receipt on which reliance was placed by the claimants and which was accepted by the Arbitrator was fabricated, forged and manipulated.
- (iv) That the request for changing the venue of the arbitration proceedings

because of an alleged attack on the Objector at one of the hearings, was not acceded to by the Arbitrator and, Therefore, he had misconducted himself and the proceedings.

(v) That the learned Arbitrator had not given any opportunity to the Objector to cross-examine the witnesses of the claimants.

(vi) That the conspiracy has been hatched between the respondents and the Arbitrator for which a complaint has been filed against him before the Registrar Indian Council of Arbitrator.

2. As regards the factum of the existence of Arbitration Agreement the objection which are now being raised after the passing of Award appear to be mala fide and without substance. The Objector could have approached the Court u/s 33 of the Arbitration Act, 1940 and challenged the existence or validity of the Arbitration Agreement. Having failed to do so the Award is now not open to challenge on this ground. Similarly the Court also have been approached for the removal of the Arbitrator u/s 11 of the Arbitration Act, 1940. After the passing of the Award objections on these grounds should not be entertained. If the Objector had in fact been assaulted by the petitioner and if the Arbitrator had in any way acquiesced or ignored this assault this would have also been a sufficient ground to remove the Arbitrator and/or shift the venue of the arbitration proceedings. The Arbitration Agreement is in existence and apparently bears the signature of the Objector.

3. My attention has been drawn to exhibit CW-1/8 which is a letter addressed to the Arbitrator by the Objector. In this letter the Objector has stated that "whole of the amount together with interest occurred thereupon have been paid to Smt. Swaran Arora in the month of 18th and 29th December, 1994. She has given a receipt for having received the total amount from my brothers in the presence of her husband Sh. S.C. Arora. That receipt is duly written by hand and witness by the husband of Smt. Swaran Arora." Production of the said receipt would have put an end to the matter. But this receipt has not seen the light of the day, at least in the arbitration proceedings and before this Court.

4. To countenance such Objections after the Award has been made would defeat the object and provisions of the Arbitration Act. The grounds for setting aside the Award are contemplated by Section 30 of the Arbitration Act, 1940. Sub-section (a) of which states that an Award may be set aside where an Arbitration has misconducted himself or the proceedings. Failure to permit the Objector to cross-examine witnesses would fall within the ambit of these provisions.

5. My attention was drawn to the arbitration proceedings wherein it was recorded that Shri. S.S. Sisodia, Advocate had declined to cross-examine the witnesses as he had been assaulted by claimant No. 2. It cannot, Therefore, be gainsaid that the Objector was not permitted to cross-examine the witnesses since an opportunity was given but was declined. It would be expected that immediately after the incident of assault the Court would have been approached for the

removal of the Arbitrator. This has not been done which sufficiently belies the contentions now being raised in these Objections. This ground is also, Therefore, rejected.

6. I do not find any merit in the Objections. I.A. 1696/96 is, Therefore, dismissed with Rs. 2000/- as costs.

I.A. 8390/97

7. These Objections have also been filed by Respondents 2 to 5 against the Award dated 10.12.1995 whereby an amount of Rs. 9,81,000/- together with interest at the rate of two per cent per month with effect from 2.6.1992 till the date of the Award was granted in favor of the Claimants and against Respondents 1 to 5. The Arbitrator had accepted the case of the Claimants that the Respondents had taken a friendly loan of Rs. 9,81,000/-. Learned counsel appearing on behalf of Objectors states that neither the Receipt nor the Arbitration Agreement has been signed by any of the Objectors. She further pointed out that a notice dated 1.8.1995 was addressed to the Arbitrator by the Advocate of the Objectors wherein it was categorically stated that these Objectors, namely, S/Shri O.P. Singhal, Gopi Chand Jain, Madan Lal Jain and J.C. Jain had not taken any loan and that these persons did not know anything about what happened between the Claimants and Shri Shyam Lal Jain, Respondent No.1.8. In the face of these arguments Shri P.R. Thakur, learned counsel appearing on behalf of Claimants conceded that he has no objection if the Award is set aside in relation to these Objectors. 9. In view of the above, Objections I.A. 8390/97 being the objections of Respondents, is allowed and it is ordered that the impugned Award dated 10.12.1995 shall not operate against Respondents 2 to 5. There shall be no order as to costs. S. No. 42A of 199610. The Objections filed by Respondent No. 1 have been dismissed and there is no reason either to remit or set aside the Award. The Award dated 10.12.1995 is made rule of the Court.11. Decree sheet be prepared accordingly.