

(2015) 06 CAL CK 0040
In the Calcutta High Court
Case No : AP No. 1677 of 2014

Tonganagaon Tea Company Private Limited	APPELLANT
Vs	
Associated Tea Industries	RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2015) 06 CAL CK 0040

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Ratnanko Banerji, Senior Advocate, Rangabati Sen and Sanjay Jhunjhunwala, for the Appellant; Ranjan Bachawat, Sr. Adv., Debnath Ghosh, Shounak Sengupta and Rajesh Upadhaya, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.

1. The challenge to the arbitral award in the present proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 is primarily on the ground that the arbitrator did not take into account the material before him that the claim of the respondent herein stood satisfied upon the supply of tea effected by the petitioner company.

2. The facts as are relevant for the present purpose may be culled out from the impugned award of July 4, 2014. The parties apparently entered into an agreement on April 1, 2005 under which a sum of Rs. 65 lakh advanced by the respondent to the petitioner was to be adjusted against the supply of green tea by the petitioner to the respondent. For the three financial years of 2005-06, 2006-07 and 2007-08, the petitioner herein was to supply green tea leaves of value of Rs. 15 lakh each; and, in course of the financial year 2008-09, the petitioner was to supply green tea leaves of value of Rs. 20 lakh. The respondent claimed in the reference that the petitioner neither supplied the tea nor repaid

the amount despite demands.

3. The respondent relied on a cheque for Rs. 71,50,000/- apparently issued by the petitioner in its favour and claimed that such cheque was dishonoured upon presentation and it was evident that the respondent's claim was undisputed. For reasons not necessary to be gone into herein, the arbitrator disregarded the dishonoured cheque. However, the arbitrator proceeded on the claim under the agreement of April 1, 2005 and the petitioner's defence thereto.

4. The petitioner submits that it was the petitioner's specific case before the arbitrator that the petitioner had effected supply of green tea leaves to the respondent, at least between April and October, 2005; but the respondent did not acknowledge the same or give any credit to the petitioner on such account. The petitioner complains that even the respondent's witness acknowledged that supplies were received by the respondent from the petitioner's tea garden during the relevant period, but the arbitrator failed to take such matter into account while deciding the claim. The petitioner says that the award contradicts itself in it referring to the documents adduced in evidence by the petitioner in support of its assertion that substantial supplies were effected by the petitioner to the respondent, but in the later part of the award it being recorded that there was no material in support of the petitioner's assertion of repayment or adjustment of the dues.

5. The petitioner refers to paragraph 16 of the statement of claim filed before the arbitrator to indicate the substance of the claim. Paragraph 4(h) of the counter statement is placed where the petitioner had asserted that it had supplied 11,36,729 kg of tea upto October, 2005, aggregating to a value of Rs. 90,93,832/-. The respondent's denial of such assertion at paragraph 6 of its rejoinder has also been read out. The petitioner suggests that a blatantly untenable claim was carried by the respondent to the reference and, when the respondent's witness was confronted with documents that demonstrated that substantial supplies of green tea leaves were made by the petitioner to the respondent till October 2005, a specious excuse of mistake was proffered by the witness. The petitioner is aggrieved by the arbitrator's failure to see through such testimony and infer that the claim was bogus as the advance made by the respondent stood adjusted against the supplies made by the petitioner herein.

6. The arbitrator has recorded the rival cases of the parties and referred to the oral evidence adduced in course of the reference. The key questions put to the claimant's witness in cross-examination have been reproduced in the award. The arbitrator has understood the claimant's witness to have said that certain supplies may have been effected during the period March to October, 2005 from the petitioner's tea garden, but such tea was purchased by the respondent from one Shankar Traders; and, the supply was neither made by the petitioner herein nor was it in discharge of the petitioner's obligation under the agreement of April 1, 2005. What is evident from the award and appears clearly therefrom is that in response to the petitioner's assertion that green tea leaves were supplied from

its garden to the respondent between March and October 2005, the respondent's witness acknowledged that some of the tea received by the respondent may have been the produce of the petitioner's garden but such tea had been supplied by the petitioner herein to Shankar Traders and Shankar Traders, in turn, sold it to the respondent. The arbitrator agreed with the witness that if the respondent had to purchase the tea, notwithstanding it being produced in the petitioner's garden, from Shankar Traders, such supply could not be in discharge of the petitioner's debt to the respondent.

7. That the petitioner herein was obliged under the agreement of April 1, 2005 to repay the sum of Rs. 65 lakh with interest at the agreed rate or supply green tea leaves of the agreed amount, is beyond question. It was then, on the state of such facts, for the petitioner herein to demonstrate how it had discharged its obligation. All that the petitioner herein produced in course of the reference to discredit the claim of the respondent were some weighment certificates and challans, which apparently showed that tea of some quantity had been obtained by the respondent herein from the petitioner's tea garden. At the highest, the petitioner attempted to demonstrate in course of the reference that there may have been some supplies made by the petitioner to the respondent in discharge of the petitioner's obligation to supply tea in lieu of the advance obtained from the respondent.

8. It would not make commercial or business sense that a party discharging a part of its debt to another would not have a clearer acknowledgment of the part discharge than the documents relied upon before the arbitrator by the petitioner herein. The cloud of doubt that was sought to be raised by the petitioner herein in respect of the claim appears to have been adequately dispelled by the respondent's witness that the supplies pertaining to the weighment certificates and challans produced by the petitioner herein were, in fact, supplies obtained by the respondent from Shankar Traders against payments made to Shankar Traders. It was asserted by the respondent in its rejoinder that during the relevant period 11,35,325 kg of green tea leaves were obtained by the respondent from Shankar Traders against payment and corroborated by the respondent's witness in course of his testimony. On the state of the facts and the evidence before the arbitrator, it was apparent that the debt due from the petitioner to the respondent had not been demonstrated by the petitioner to have been discharged.

9. Ordinarily, a court presiding over a challenge to an arbitral award is not called upon to look into the evidence or reappraise the same. However, since the relevant oral evidence on such aspect of the matter has been quoted in the award and such evidence appearing from the award itself has been made the basis for the challenge, the same has been looked into.

10. There is no infirmity in the inference drawn by the arbitrator from the material before him. Indeed, it may have been the only conclusion possible on the basis of the evidence adduced in course of the reference. At any rate, even if

the arbitrator inferred incorrectly or made a mistake, it was a mistake within the jurisdiction of the arbitrator and not an error of jurisdiction.

11. Apart from the fact that there does not appear to be any error of judgment on the part of the arbitrator, even if it is assumed for argument's sake that it was a mistake committed by the arbitrator, it is incapable of correction in this jurisdiction. If a view that was possible to be taken on a set of facts has been expressed in an award, the court in seisin of a challenge to such award will not supplant its view for the arbitrator's.

12. It is elementary that a challenge to an arbitral award is not treated as an appeal and the limited scope of interference does not permit the court to correct an error within the bounds of the arbitrator's authority, unless the error is apparent on the face of the award and results in manifest miscarriage of justice.

13. There is no merit to the challenge. AP No. 1677 of 2014 is dismissed.

14. There will be order as to costs.

15. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.