

(2001) 10 KAR CK 0013

In the Karnataka High Court

Case No : Civil Revision Petition No. 2589 of 2000

Union of India and Another

APPELLANT

Vs

Rao Constructions, Bangalore and Another

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Arbitration Act, 1940 — Section 30, 31 (4), 33, 39

Citation : (2002) 1 KarLJ 114

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Ashok Haranahalli, for the Appellant; G. Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. This civil revision petition had been heard earlier and order had been dictated as on 6-10-2001 indicating as to what could be the outcome of this petition and had been adjourned to 12-10-2001 at the request of the learned Counsel for the petitioner for the limited purpose of ascertaining as to where exactly the original award was available and to make a submission to this Court as to the further developments that might have taken place before the Madras High Court in the subsequent O.P. No. 365 of 1998 which was a petition filed by the present petitioner seeking permission of that Court to file the original award before the High Court of Judicature at Madras subsequent to the dismissal of the earlier O.P. No. 579 of 1996 which was also for a similar relief and had come to be released as on 15-4-1996.

2. The order dictated on 6-10-2001 is as under:-

"This revision petition by the Union of India and Chief Engineer, Madras Zone, is directed against the judgment and decree dated 25-9-1999 passed in A.C. No. 20 of 1996 on the file of the VI Additional City Civil Judge, Bangalore, making the

award dated 15-3-1996 passed by the 2nd respondent-Arbitrator, upon the dispute between the parties, a rule of the Court.

2. The revision petitioner contended that the City Civil Court, Bangalore, lacks jurisdiction having regard to the fact that the petitioner had filed the original petition in O.P. No. 579 of 1996 before the High Court of Judicature at Madras, praying for a direction to the Arbitrator to file the original award before that Court and to set aside the same. The other ground urged in support of the revision petition is that when the original award is not before the Court, the lower Court could not have passed the judgment and decree.

3. Mr. Subba Rao, learned Counsel for the first respondent has pointed out that the proceedings culminating in judgment and decree cannot be revised in this revision petition. He further contended that respondent had filed an application on 8-4-1996, whereas the O.P. No. 579 of 1996 was filed before the High Court of Judicature at Madras on 15-4-1996 and as such the question of want of jurisdiction for the Court, which has made the award a rule of the Court, does not arise in the light of the provisions of Section 31(4) of the Arbitration Act, 1940 (in short "the Act").

4. With regard to the other contentions that the original award was not before the Court, the learned Counsel for the respondent submitted that the Arbitrator who passed the award had sent the original award to the petitioner itself and a signed copy had been furnished to the respondent. The petitioner was holding on to the award, notwithstanding, the directions issued by the lower Court in the arbitration proceedings, calling upon the Arbitrator to file the award before the Court.

5. Ms. Rashmi Deshpande, the learned Counsel for the petitioner submitted that she is not in a position to submit to this Court where exactly the original award is now available and seeks further time to get instructions from her client, as to the developments in the Madras High Court with respect to their original application and also further application said to have been filed by the Arbitrator.

6. Only for this limited purpose, this revision petition is adjourned for further hearing to Friday, i.e., 12-10-2001. Otherwise, prime facie, there appears to be no merit in the revision petition".

3. Learned Counsel for the petitioner is not in a position to make further submissions before the Court as to the outcome of the proceedings before the Madras High Court in O.P. No. 365 of 1998 or as to where exactly the original award is now available.

4. This may not make much difference for the purpose of disposal of the present civil revision petition. The undisputed facts are that the award dated 15-3-1996 was passed by the Arbitrator in respect of certain disputes between the parties. The respondent herein filed an application in A.C. No. 20 of 1996 under Sections 8, 14 and 17 of the Arbitration Act, 1940 (hereinafter referred to as "the Act" for

short) and the said application had come to be filed before the City Civil Court on 8-4-1996. The said proceedings culminated in the judgment and decree dated 25-9-1999 making the award of the Arbitrator a rule of the Court. It is this judgment and decree dated 25-9-1999 which has come to be challenged by filing the present civil revision petition.

5. The main ground of attack in the civil revision petition, as submitted by the learned Counsel for the petitioner is that the City Civil Court at Bangalore lacked jurisdiction to make this award a rule of the Court or a decree of the Court for two reasons, one is that the award in question had already been filed before the High Court of Judicature at Madras in O.P. No. 579 of 1996 and as such the City Civil Court lacked jurisdiction to pass a decree in respect of an award which has been filed before the Madras High Court and the other ground urged in support of the civil revision petition, as submitted by the learned Counsel for the petitioner is that, the City Civil Court could not have passed a decree in the absence of the original award being before the Court.

6. Sri Subba Rao, learned Counsel for the petitioner has brought to the notice of the Court that O.P. No. 579 of 1996 which in fact had been filed before the Madras High Court as on 15-4-1996 had come to be dismissed and the petitioner had filed O.P. No. 365 of 1998 for the second time and in fact on either occasion the original award had not been placed before the Court. It is the submission of the learned Counsel for the respondent that the original award continues to lie in the office of the petitioners who have deliberately withheld the same by not placing the same before the Court either at Madras or at Bangalore with a view to defeat the rights of the respondent. Apart from the dispute relating to the award being with the petitioner or its officials and as to whether it was filed before the High Court of Judicature at Madras or not, the fact is that the proceedings under Sections 8 and 14 of the Act had been instituted by the present respondent before the City Civil Court at Bangalore by filing A.C. No. 20 of 1996 as on 8-4-1996. The proceeding on which reliance is placed by the petitioners which they have claimed to have instituted before the High Court of Judicature at Madras is subsequent to this date, the earlier petition which did come to be rejected was filed on 15-4-1996 and the second O.P. in fact has been filed two years thereafter. In any event, the proceedings instituted by the petitioners before the High Court of Judicature at Madras are subsequent in point of time and therefore as per the provisions of Section 31(4) of the Act it is that Court wherein proceedings have been initiated at the earliest point of time under this Act, which alone will have jurisdiction to the exclusion of all other Courts which have jurisdiction. In view of Section 31(4) of the Act, it is the City Civil Court which has jurisdiction to pass a decree in respect of the award in question and institution or even pendency of the proceedings before the High Court of Judicature at Madras is of no consequence in law, being a proceeding before a Court without jurisdiction.

7. Insofar as the other submission made by the learned Counsel for the

petitioners that the original award was not before the City Civil Court at Bangalore, Sri Subba Rao has submitted that a copy of the award which had been signed by the Arbitrator had been furnished to the respondent and the respondent had placed that copy before the City Civil Court and it is based on this copy of the award, the City Civil Court has proceeded to pass the judgment and decree. The petitioners do not dispute that a copy which has been placed before the City Civil Court is the same as of original and the contents are same. Even otherwise, as per the provisions of Section 14(2) of the Act, the arbitrator or any person claiming to have any interest in the award passed by the Arbitrator, can place either the award or a signed copy of it before the Court and the competent Court may proceed further on the basis of such an award. In the instant case, a copy of the award having been placed before the City Civil Court at Bangalore, I do not find any impediment for the Court to proceed in the matter to issue notice to either side. Though the respondents in fact entered appearance, did not choose to file objections within the time permitted by law. The only objection that was sought to be raised before the City Civil Court at Bangalore was that the proceedings had already been instituted by them before the High Court of Judicature at Madras and therefore the Court should not proceed with the matter any further. As already discussed above, this is not a contention tenable in law and there was no impediment for the Court to proceed further in the matter. The only remedy that was available to the petitioners before the City Civil Court was to file objections to the award being made a rule of the Court as provided u/s 30 of the Act on the grounds enumerated therein read with Sections 30 and 33 of the Act. The petitioners having failed to take such a step, there was no other course open to the Court but to make the award a rule of the Court. Accordingly, I do not find any error of jurisdiction or illegality committed by the Court below in making the award a decree of the Court.

8. The first petitioner-institution, without filing an appeal as is provided u/s 39 of the Act, which was the remedy available in the event of an award being made a decree of the Court, have chosen to file the present CRP urging baseless and untenable grounds. The CRP is prima facie not maintainable in law and is without any merits at all and on the other hand is a frivolous and vexatious one.

9. Notwithstanding this, CRP is entertained by the Court for the reason that the petitioners had not raised any objections before the Court below for making the award a rule of the Court nor had sought for setting aside the award. Under such circumstances, petitioners cannot maintain an appeal u/s 39 of the Act. As an appeal u/s 39 of the Act was not maintainable in the facts of the present case, I have looked into the merits of the petition and has considered the submissions made by the learned Counsels for the parties.

10. The outcome is that I have no hesitation in-rejecting this CRP. The recalcitrant manner in which the first petitioner and its officials have gone about in protecting the interest of the Union of India, is only to be deprecated to say the least.

11. This civil revision petition is rejected awarding cost of Rs. 5,000/-in favour of the respondent.