
(1996) 11 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.A. No. 318 of 1996 (G)

Union of India

APPELLANT

Vs

Bhagwati Enterprises and Another

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Arbitration Act, 1940 — Section 14, 30

Citation : (1997) 2 MPJR 123

Hon'ble Judges : A.S. Tripathi, J

Bench : Single Bench

Advocate : V.K. Sharma, for the Appellant; S.O. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Tripathi, J.

By order dated 7th of August, 1996, the trial Court had accepted the award filed by the arbitrator, appointed through Court, and directed that the same be made rule of the Court u/s 14 of the Arbitration Act.

In accordance with the award, an amount of Rs. 35335.15 paise was directed to be recovered from the appellant with interest at the rate of 12 per cent per annum from 27.9.1989 to 14.11.1995 and there after from 15.11.1995 till 30.4.1996 same rate of interest was allowed. Again additional claim of Rs. 24. 650 was allowed with same rate of interest from 27.9.1989 till 14.11.1995 and from 15.11.1995 to 30.4.1996. An amount of Rs. 7800/- towards costs of the award has also been allowed by the arbitrator and accepted by the Court.

The respondent No. 1 was a contractor, doing contract work on the directions of the appellant and respondent No. 2. During contract work sonic dispute arose in respect of a part of the work left over by the respondent No. I. The matter of dispute had taken the shape of a litigation. The matter came up before the High Court, and the High Court in Writ Petition No. 499/93 on 21.8.1995 directed that the Chief Engineer of the Jabalpur Zone shall be the sole arbitrator in this matter,

who is respondent No. 2 before this Court. The arbitrator had proceeded with the arbitration proceedings. Parties were called upon to lead evidence. After the parties led evidence, the arbitrator heard both the parties and had given award to the trial Court, as directed by the High Court, and the same was accepted by the trial Court and was made rule of the Court.

In this appeal, learned counsel for the appellant urged that the arbitrator had not taken note of the terms of the agreement between the parties in respect of the contract work. Further the interest has been allowed on higher side.

The trial Court considered these points and held that no ground for setting aside the award has been made out u/s 30 of the Arbitration Act (hereinafter referred to as the "Act"). Further the rate of interest allowed by the arbitrator at the rate of 12 per cent per annum was found to be reasonable. With these findings the award was made rule of the Court.

In this appeal, the attention of the Court was drawn to Section 30 of the Act. Section 30 is quoted below :-

Grounds for setting aside award - An award shall not be set aside except on one or more of the following grounds, namely -

- (a) that an arbitrator or umpire has misconducted himself or the proceedings;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35;
- (c) that an award has been improperly procured or is otherwise invalid.

The award can be set aside only on any of the grounds mentioned in Section 30 of the Act as quoted above, or the same has become invalid in accordance with the provisions of Section 35 of the Act.

The provisions of Section 35 of the Act are quoted below :-

Effect of legal proceedings on arbitration -

(1) No reference nor award shall be rendered invalid by reason only of the commencement of legal proceedings upon the subject matter of the reference, but when legal proceedings upon the whole of the subject matter of the reference have been commenced between all the parties to the reference and a notice thereof has been given to the arbitrators or umpire, all further proceedings in a pending reference shall unless a stay of proceedings is granted u/s 34 be invalid

(2) In this section the expression "parties to the reference" includes any persons claiming under anything the parties and litigating under the same title.

The specific provision in this Section is that no award shall be rendered invalid by reason only of the commencement of legal proceedings before any Court, unless

the Court has directed suppression of the arbitration proceedings. Nothing has been done in this particular Case by any Court superseding the arbitration proceedings, rather the arbitration proceedings were stalled on the direction of the High Court and has ended in submitting the award.

No doubt, an appellant lies u/s 30 of the Act against an order making the award rule of the Court, but the grounds for setting aside the same have to be justified as mentioned in Section 30 and 35 of the Act. None of the grounds provided u/ss 30 or 35 of the Act is available to the appellant in this appeal. No misconduct on the part of the arbitrator has been alleged. No other legal proceedings was pending superseding the arbitration proceedings. Further mere allegation that the arbitrator did not look into the terms of the agreement is not sufficient to make out a case of misconduct.

In these circumstances. I do not find any reason to interfere with the order of the trial Court making the award rule of the Court, which is otherwise valid.

Counsel for the appellant placed reliance on the Supreme Court's decision reported as *Dandasi Sahu Vs. State of Orissa*, . In this case the Supreme Court had held that the Arbitrator is not bound to disclose as to what interpretation he has made or inferred or derived from the documentary evidence, but he is bound to refer in the award that he had considered all the documents placed before him.

That has already been done by the Arbitrator in this case. The award speaks that after considering the evidence produced by the parties oral and documentary, the award was given. Therefore, there is nothing to indicate that the guidelines laid down by the Supreme Court in the abovesaid case were not followed by the arbitrator in this case.

The result is that this appeal is without any merit and is dismissed. However the parties are left to bear their own costs of this appeal.