

(1996) 01 DEL CK 0034
In the Delhi High Court
Case No : EFA (OS) No.1 of 1995

Union of India

APPELLANT

Vs

M/s. Jagat Ram Trehan and Sons.

RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Citation : (1996) 61 DLT 779 : (1996) 113 PLR 24

Hon'ble Judges : M. Jagannadha Rao, C.J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : Rakesh Tikku, for the Appellant; Harish Malhotra, for the Respondent

Judgement

M. Jagannadha Rao, C. J.

1. The question raised in the appeal is with regard to the powers of the executing Court u/s 47, C.P.C. to declare the decree as null and void on the ground that the award was null and void.

2. This appeal is filed by the Union of India against the order passed by the learned Single Judge on the Original Side of this Court dismissing Ex. No. 37/94 dated 4-1-1994 and directing recovery of the amount covered by the award-decree by way of attachment.

3. The facts of the case are as follows:

Pursuant to a contract entered into by the respondent contractor with the Union of India (appellant-judgment debtor), an arbitrator was appointed on 2-5-1988 to adjudicate upon the disputes. The person so appointed was Shri N. H. Chandwani who was then on deputation as Arbitrator in the Ministry of Urban Development. In fact, Shri Chandwani was appointed in place of Shri J. D. Chopra who was working as Arbitrator earlier and who had resigned. Shri Chandwani passed the award on 5-12-1990 and the award was made a rule of Court on 3-8-1993 as no objections were filed by the Union of India.

4. In the execution proceedings, the Union of India raised objection by filing this

EA contending that the award dated 5-12-1990 and the decree dated 3-8-1993 were nullities because Shri Chandwani who passed the award had already relinquished his office as Arbitrator on 30-11-1990 before he passed the award on 5-12-1990 and that he had no jurisdiction to pass the award.

5. It may be noted that a proceeding dated 20-11-1990 was issued by the Union of India stating that the reference was made to Shri N. H. Chandwani

"at present on deputation as Arbitrator".

and he would be released from those duties prospectively w.e.f. 30-11-1990 AN as per the orders of the Ministry dated 5-11-1990. He was directed to report to duty thereafter as Appropriate Authority, Income Tax Department, Calcutta, It was also stated that he could dispose of pending cases in 10 days i.e. by 30-11-1990. In fact, Shri N. H. Chandwani had himself given a certificate to the effect that he had relinquished office as arbitrator on 30-11-1990.

6. If the arbitrator had rendered an award before 30-11-1990, there would have been no possibility for a contention by the Union of India that he rendered the award on 5-12-1990, after relinquishment of office as Arbitrator. But inasmuch as the award was given after 30-11-1990, the Union of India contends in execution proceedings u/s 47, C.P.C. that the award and decree are nullities.

7. A preliminary objection was raised by the learned counsel for the contractor-respondent that this appeal is not maintainable under Order 43, Rule 1, C.P.C. as Section 47 is not included in the definition of decree. Appeal is not maintainable under any other provision, it is contended.

8. The following questions arise for consideration :

(1) Whether this appeal u/s 10 of the Delhi High Court Act or Letters Patent (Lahore) is maintainable?

(2) Whether the reference to Mr. N. H. Chandwani was because of his status and posting as an Arbitrator on deputation in the Urban Development Ministry and if so whether upon ceasing to function as Arbitrator in that post, w.e.f. 30-11-1990, he could have passed an Award on 5-12-1990?

(3) Whether it was open to the Union of India, as a judgment-debtor, to raise the question that the award and decree were nullities, in an application u/s 47, C.P.C. ?

(4) Whether the fact that the Union of India did not file objections to the award nor filed an appeal nor an application under Sections 17, 30 or 33 is a bar to this application filed u/s 47 ?

Before advertng to the above points, we have to mention that Mr. Chandwani is stated to have passed more than 60 awards after 30-11-1990 the date on which he ceased to be an arbitrator. The question raised is, Therefore, very important so far as the Union of India is concerned.

Point 1

9. This appeal is filed u/s 10 of the Delhi High Court (Act?). The Letters Patent (Lah) is also applicable.

10. Question is whether this appeal is maintainable against an order by the executing Court refusing to declare that the award and decree are nullities on the ground that the arbitrator, Mr. N. H. Chandwani ceased to be an arbitrator by 30-11-1990 and that he had no jurisdiction to pass the award on 5-12-1990. In other words, the appeal is against an order overruling objections to execution and directing recovery of the decial amount.

11. In our opinion, the preliminary objection in regard to maintainability of the appeal has no force. A contention that on the date when the award was passed on 5-12-1990, Mr. Chandwani was no longer an arbitrator, he having admittedly relinquished office on 30-11-1990 and consequently the decree passed on the basis of such an award is a nullity, goes to the root of the matter. It is true that an adjudication by the learned single Judge on such an issue in the present EA may not amount to a "decree" because of the deletion of Section 47 from the definition of decree in Section 2(2), C.P.C. But the real question is whether the "order" passed by the learned single Judge in this EA amounts to a "judgment" within the meaning of Section 10 of the Delhi High and also "judgment" under the Letters Patent (Lahore) as applicable to Delhi High Court. The matter before us has arisen from the Original Side of this Court.

12. The leading judgment of the Supreme Court in this behalf is the one in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . It was laid down therein that the internal appeals within the High Court are not restricted to Order 43, Rule 1, C.P.C. and that the remedies provided by the provisions of Letters Patent do apply. The Supreme Court in that case laid down various principles. In our view, clause (14) of para 120 of Shah Babulal Khimji's case is a complete answer to the preliminary objection raised by the respondent. It was there clearly observed that even an order refusing stay of execution of decree and directing recovery of decretal amount is a "Judgment" and appealable. We held, Therefore, that the impugned order overruling the objection to the execution of the decree and ordering execution is clearly a "judgment" and this appeal is maintainable. It is also to be noticed that in Shri Radhey Shyam Vs. Shyam Behari Singh, it was held that an order passed under Order 21, Rule 90, C.P.C. amounted to a "judgment" as it touched upon valuable rights of parties. As regards position u/s 10, Delhi High Court Act and Letters Patent (Lahore), in Jugal Kishore Paliwal Vs. S. Sat Jit Singh and Another, , the Supreme Court had occasion to apply Shah Babulal Khimji Vs. Jayaben D. Kania and Another, to this Court and it overruled an earlier Full Bench decision of this Court in University of Delhi v. Hafiz (AIR 1972 Del 102) (FB). Hence this appeal is clearly maintainable. Point I is held accordingly.

Point 2

13. It is not in dispute that Mr. Chandwani was brought on deputation and appointed in a specified post called "arbitrator" in the Ministry of Urban Development. This is clear from the order dated 20-11-1990 prospectively releasing him as arbitrator w.e.f. 30-11-1990. The office order reads as follows:

"In pursuance of the orders issued in this Ministry office order No. 150112/50 Ed. dated 5th November, 1990. Shri N. H. Chandwani at present on deputation as Arbitrator in this Ministry is released on his duties on the afternoon of 30th November, 1990 with instructions to report for duty as Member, Appropriate Authority, Income Tax Department, Calcutta immediately."

2. It has also been decided that in respect of arbitration cases which have been heard and are ripe for giving award Shri Chandwani should give awards within 10 days. In respect of cases where such awards cannot be given within 10 days and other cases, Shri Chandwani should resign as Arbitrator immediately under intimation to all concerned."

Mr. Chandwani has also given a certificate and that is on record. He clearly says, he relinquished office on 30-11-1990.

14. The arbitration clause in the contract also says that the arbitration shall cease upon the person (who is appointed arbitrator)

"being transferred or vacating his office"

These provisions of the arbitration clause also show that the arbitration is by a person holding office as "arbitrator" in the department.

15. In the face of the above factual position, we are clearly of the opinion that upon relinquishment of office on 30-11-1990, as "arbitrator" Mr. Chandwani could not have passed any award as he did on 5-12-1990. We are of the view that the award was null and void as he lacked inherent jurisdiction.

16. A contention was no doubt raised by the respondents' counsel that there is a difference between want of jurisdiction and exercise of jurisdiction vested. It is true there is in law such a distinction but the case in hand clearly fall in the former category. Point 2 is held accordingly.

Points 3, 4

17. That question is whether a plea that the award is void can be raised in execution proceedings. On this question "respondent contended that the award must have been objected to under Sections 17, 30 and 33 or by appeal against, the order rejecting objections and if that was not done, it was not open to raise the question in execution proceedings. This contention, in our view, is not correct. That Section 47 applies to execution proceedings taken pursuant to a decree making an award a rule of Court cannot be doubted. The decided cases, referred to below, also hold it is open to the executing Court u/s 47 to declare that the award is passed without jurisdiction and that Therefore the decree passed thereupon is also null and void and not executable. (See in this

connection : Ran Singh Vs. The Gandhar Agricultural Co-operative Service Society, Gandhar, ; Sabawwa Hanmappa v. Basappa Andanappa ILR 1955 Bom 386; E. D. Sasson and Co. Ltd. v. Shivji Ram -- Devi Das AIR 1929 Lah 228; Gopi Ram Jaithu Ram v. Rami Das Sri Kishan AIR 1934 Lah 48 and Donald Graham & Co. v. Kewalram AIR 1921 Sind 132. We have Therefore no hesitation in holding that this EA is maintainable u/s 47 to declare the award and the consequent decree as nullities.

18. Learned counsel for the respondent has cited certain rulings - Madan Lal Vs. Sunderlal and Another, ; Guntupalli Rama Subbayya Vs. Guntupalli Rajamma, ; Masomat Narmada Devi and Another Vs. Ram Nandan Singh and Others, ; Mohammad Aleem v. Maqsood Alam (AIR 1979 Raj 43); Ram Sarup Vs. Food Corporation of India, Patiala and Another, ; and Union of India Vs. M/s. Ajit Mehta and Associates, Pune and Others, but we find that they do not deal with this question. The rulings relied upon by us, on the other hand, are direct.

19. The other objection that there was a remedy for direct attack by means of objections under Sections 17, 30 or 33 is or by an appeal against the order rejecting objection, in our view, is not tenable. A judgment and decree can be directly attacked by the procedure prescribed, namely, by filing objections thereto or by appealing against the order rejecting the objections. But that does not preclude a collateral attack of the award and decree in execution proceedings. The proposition that a Judgment debtor may claim the decree to be a nullity in execution proceedings and that the decree is void is too well settled. A collateral attack is not barred because an opportunity to raise the same question by direct attack was not availed. This is a well settled principle applicable to civil Courts executing decrees.

20. For the aforesaid reasons, the appeal by Union of India is allowed, the award passed by Mr. Chandwani on 5-12-1990 after he relinquished office as Arbitrator on 30-11-1990 is declared void and consequently the decree is also declared void. It will be open to the Competent authority to refer the matter to any other person as per Clause 25 of the contract between the parties.

21. We have gone into the matter in detail because the same person Mr. Chandwani has, it appears, passed more than 60 awards after he relinquished office as arbitrator on 30-11-1990.

22. Appeal allowed and disposed of accordingly.

23. Appeal allowed.