

(1994) 12 DEL CK 0056
In the Delhi High Court
Case No : Suit No. 1801 of 1989

Union of India

APPELLANT

Vs

Sohan Singh Sethi and Sons

RESPONDENT

Date of Decision : 12-12-1994

Acts Referred:

Citation : (1995) 1 AD 268 : (1995) 1 ARBLR 153 : (1995) 32 DRJ 99

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : Man Mohan and Jagjit Singh, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) These are the proceedings u/s 14 of the Arbitration Act, 1940, (hereinafter Act, for short) for making an award a rule of the court. Objections have been filed on behalf of the respondent. The petitioner has not preferred any objections. The learned counsel for the respondent has insisted on issues being framed and case being posted for recording evidence, may be by way of affidavits, without which he submits that the objections cannot be decided.

(2) The learned counsel for the respondent has relied on Section 33 of the Act, which reads as under :- Section 33. Arbitration agreement or award to be contested by application Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the court and the court shall decide the question on affidavits. Provided that where the court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

(3) Section 33 is permissive in character. Ordinarily a civil court has to decide all questions arising before it for adjudication by recording evidence. Section 33 excludes the necessity of viva voce examination of the witnesses. It mandates

the court to decide the questions on affidavits. The proviso appended to Section 33 provides that in spite of the court having been mandated to decide the question by affidavits only, if deemed just and expedient, it may hear other evidence also that is evidence other than by way of affidavits.

(4) An award published by an Arbitrator and filed before the court is capable of being called into question by reference to three provisions, namely. Sections 15, 16 and 30 of the Arbitration Act.

4.1 Section 15 contemplates an award being modified or corrected on the following three grounds :- (i) where a part of the award is upon a matter not referred to arbitration; (ii) where the award is imperfect in form, or contains any obvious error; (iii) where the award contains clerical mistake or an error arising from an accidental slip or omission. 4.2 Section 16 contemplates an award being remitted to the Arbitrator or umpire in the following contingencies:- (i) when it has left any of the matters referred to arbitration undetermined; (ii) where it determines any matter not referred to arbitration; (iii) where the award is so indefinite as to be incapable of execution. (iv) where objection to the legality of the award is apparent upon the face of it. 4.3 Section 30 contemplates an award being set aside on any of the following grounds:- (i) when the arbitrator or umpire has misconducted himself; (ii) when the arbitrator or umpire has misconducted the proceedings; (iii) when the award has been made after the arbitration was suspended; (iv) when the award has been made after the proceedings became invalid u/s 35; (v) when the award was improperly procured; (vi) when the award was otherwise invalid.

(5) When the legality of an award is challenged on the ground of misconduct the misconduct may be a misconduct in fact, such as when there is a charge of corruption against the arbitrator or there may be misconduct in legal sense only that is amounting to legal misconduct

(6) A bare perusal of the several grounds on which an award may be liable to be tampered with by the court discloses that in so far as the grounds contemplated by Sections 15 and 16 are concerned, objections to the validity or correctness of an award are capable of being substantiated merely by a look at the award and if necessary, at the record of the arbitration proceedings. So is the case with some of the grounds contemplated by Section 30 of the Act. It is only u/s 30 when the (objections raised are not capable of being substantiated by reference to the award or the arbitration proceedings then the court may think of the necessity of framing issues and recording evidence by affidavits or by calling the witnesses and if necessary by directing discovery and particulars as it may do in a suit.

(7) It cannot be lost sight of that the proceedings are summary in nature and though the petition is registered as a suit and the provisions of CPC are applicable, yet the objections are not required to be adjudicated upon through the procedure of a long-drawn trial.

(8) Presumption attaches to the correctness of the proceedings and record made by an arbitrator unless there is a specific challenge laid to it. In all such cases where the truthfulness or correctness of the record of the proceedings made "by the arbitrator is not under challenge, it is not necessary to record any evidence. The objections preferred by either party if capable of being substantiated by reference to record of the proceedings made by an arbitrator and/or the award made by him, the court may straightaway proceed to hear the objections dispensing with the necessity of recording any evidence even by way of affidavits.

(9) Any other view taken would result indeed less waste of public time and money requiring the court to record the evidence, receiving in evidence such documents which already form part of the record of the arbitrator and as to which the arbitrator might have already recorded evidence. It will be a sheer duplication, needless too.

(10) For the foregoing reasons, the prayer made by the learned counsel for the respondent is refused. Let it be placed on record that the correctness of the proceedings recorded by the arbitrator is not under "challenge. All the objections raised by the respondent are capable of being substantiated by reference to the record of the arbitration proceedings and the award.

(11) "NO issue is required to be framed as there are objections set out in the objection petition which are to be heard and disposed of.

(12) The objection petition is set .down for hearing as a short cause on 24.4.1995.