
(1988) 01 BOM CK 0017

In the Bombay High Court

Case No : Appeal No's. 479 and 580 of 1987

Union of India (UOI) and Another

APPELLANT

Vs

Great Eastern Shipping Co. Ltd.

RESPONDENT

Date of Decision : 14-01-1988

Acts Referred:

Arbitration Act, 1940 — Section 31(1), 31(4)

Citation : (1988) 3 BomCR 485 : (1988) 90 BOMLR 54 : (1989) MhLj 964

Hon'ble Judges : S.P. Bharucha, J;M.P. Kenia, J

Bench : Division Bench

Advocate : H.J. Advani and A.H. Advani, instructed by H. Nagindas and Co, for the Appellant; G.K. Mukerjee, instructed by Bhatt and Saldhana, for the Respondent

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—These two appeals arise on orders made by the Single Judge on petitions to set aside two awards. The only difference between the two appeals is that in the first the award is for the sum of Rs. 3.46,236/- and covers the vessel "Jag Shakti" and in the second the award is for the sum of Rs. 2,68,457/- and concerns the vessel "Jag Doot".

2. Both vessels are owned by the respondents. They were chartered to the appellants to transport cargoes of wheat from Australia to Vishakapatnam in 1982. The charter parties contained the usual arbitration clause. Disputes having arisen, references were made to arbitrators as provided by the arbitration clause. The arbitrators disagreed and the references were heard by the umpire. On 12th September, 1985 the umpire made the awards.

3. The appellants were informed of the awards by letters written by the respondents, wherewith photostat copies of the awards were enclosed. The appellants thereupon filed petitions in the Court of the 1st Additional Subordinate Judge. Vishakapatnam, for setting aside the awards on various grounds.

4. On 7th April, 1986 the appellants received from this Court a notice intimating to them that awards had been filed here. The appellants, therefore filed the petitions praying for the setting aside of the awards and, in the alternative, for such orders as were deemed fit and proper. In the petitions the appellants submitted that, in view of the fact that they had already filed petitions to set aside the awards in the Court at Vishakapatnam, which was a competent Court, the filing of the award in this Court was without jurisdiction. The petitions also challenged the awards on the ground of misconduct and on merits.

5. The learned Single Judge rejected the submissions made on behalf of the appellants and dismissed the petitions with costs. Hence these appeals.

6. The first question to which we must apply our minds is about the jurisdiction of this Court. The provisions of section 31 of the Arbitration Act must be set out.

"31(1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been or, may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference, and the arbitration proceedings shall be made in that Court and in no other Court".

7. In *Kumbha Mawji Vs. Union of India (UOI)*, the provisions of sub-section (4) of section 31 were explained. It was said that it not merely cast on the party concerned an obligation to file all applications regarding the conduct of arbitration or otherwise arising out of such proceedings in one Court but vested exclusive jurisdiction for such applications in the Court in which the first application had been made. A Single Court was clothed with such exclusive jurisdiction to avoid conflict and scramble. This was essential whether the question arose before the arbitration, during its pendency or after it was completed.

8. Mr. Advani, learned Counsel for the appellants, drew our attention to the reasoning of the learned Single Judge on the aspect of jurisdiction. The learned Judge observed that in order to oust the jurisdiction of another competent

Court. i.e., the Court, such applications had to be valid applications which were permissible in law. The learned Judge found the appellant's applications before the Vishakapatnam Court not to be such because the awards had not been filed in that Court. Mr. Advani submitted that the learned Judge's approach was, having regard to the phraseology of sub-section (4), erroneous.

9. Mr. Mukerjee, learned Counsel for the respondents, submitted that the relevant words used in sub-section (4) were "any application under this Act has been made in a Court competent to entertain it" . He submitted that these words entitled the learned Judge to see whether the Vishakapatnam Court was *prima facie*, competent to entertain the applications made by the appellants and, finding they were not, to assume jurisdiction. In this behalf, our attention was invited by Mr. Mukerjee, to a judgment of Chagla, C.J. in *Kurbanhussein Mohammadalli v. Husseinbhai Nithabai* AIR 1948 Bom. 101. It was there held that an application to set aside an award was not maintainable if the award had not been filed in Court. Mr. Mukerjee also referred to the judgment of this Court in *Union of India v. Nesare Lalji Brothers*, delivered on 19th August, 1983 in A.S. Writ Petition No. 1910 of 1983 by Dharmadhikari, J. The learned Judge interpreted the word "jurisdiction" used in section 9(a) of the CPC to include the aspect of the abatement of a suit.

10. We must construe the plain words of section 31. Under sub-section (1), an award may be filed in any Court having jurisdiction in the matter to which the reference relates. There can be no doubt that, in that sense, both the Court at Vishakapatnam and this Court have jurisdiction.

11. Sub-section (4) provides that "where in any reference an application under the Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings."What this Court must, therefore, ascertain is whether in the references in question (a) applications under the Act had been made in the Vishakapatnam Court and (b) whether they have been made in a Court competent to entertain them.

12. Applications to set aside awards are applications under the Act.

13. The competence that must be ascertained is the competence of the Vishakapatnam Court to entertain and try the applications. The requirement of sub-section (4) is not that the applications should be competent or maintainable or such that the Court will grant them.

14. It was, we think, not open to the learned Judge to go into any aspect of the maintainability or competence of the applications that were made by the applicants before the Vishakapatnam Court. That is a Court competent to entertain the application is not questioned.

15. In the circumstances, we must set aside the judgments and orders under appeal and, holding that this Court has no jurisdiction to receive the awards, directed that they be removed from its files. The umpire may take appropriate

action to file the awards I the proper Court.

16. We note that we heard Mr. Advani on the allegations of mis-conduct and on merits. Having regard tour finding on jurisdiction, we express no views thereon.

17. The appeals are allowed.

18. That awards shall be removed from the file of the Court.

19. No order as to costs.