

(2010) 02 DEL CK 0052
In the Delhi High Court
Case No : FAO (OS) 401 of 2009

Union of India (UOI) and Others

APPELLANT

Vs

Foresight Shipping Co.

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Citation : (2010) 167 DLT 292 : (2011) 7 RCR(Civil) 958

Hon'ble Judges : A.P. Shah, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Parag P. Tripathi, ASG, Anup Bhandari and Deepak Dewan, for the Appellant; Vijay Kishan, Sanjeev Sharma and Vikram Jetley, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This appeal u/s 39 of the Arbitration Act, 1940 has been preferred against the order dated 4th May, 2009 of the learned Single Judge dismissing the objections preferred by the appellant - Union of India to the arbitral award dated 22nd October, 1993. The respondent, a shipping company registered in Cyprus had preferred a claim for US\$ 2,40,087.04 before the arbitral tribunal against the appellant.

2. The Arbitral Tribunal published a non speaking award for US\$ 1,65,826.00 or its rupee equivalent to be converted at the rate of exchange ruling on the date of the award with interest at 11% per annum from 29th March, 1989 to the date of payment or decree whichever is earlier in favour of the respondent and against the appellant. The respondent was also awarded costs of arbitration quantified at US\$ 1300.00 or its rupee equivalent converted at the rate of exchange ruling on the date of the award.

3. One of the arbitrators applied u/s 14(2) of the Act for filing the award in the Court and for making the same rule of the court. The appellant preferred objections under Sections 30 & 33 of the Act challenging inter alia the territorial jurisdiction of this Court to entertain the application u/s 14(2) of the Act and also contending that the award was vitiated by misconduct; that the arbitrators had

not rendered a speaking award inspite of specific request made by the appellant in the appointment letter and making other challenged on the merits of the award; objection was also raised to award of interest at 11% per annum.

4. The learned Single Judge has vide order impugned in this appeal negated the contention of the appellant that the arbitrator could not have filed the award in this Court or that the arbitrator exceeded his jurisdiction in doing so. Vis-?-vis the other objections, the learned Single Judge held that the award being a non speaking award, no objections with respect thereto could be entertained. It was also held that since the arbitration clause did not require the arbitrator to give reasons for the award, merely because the appellant had in the letter appointing the arbitrator required the arbitrator to make a speaking award, did not require the arbitrator to give a speaking award. No case of misconduct by the arbitrator was also found. The learned Single Judge also did not deem it proper to modify the rate of interest awarded by the arbitrator and did not find the same to be on the higher side. The award was accordingly made rule of the Court.

5. This Court while issuing notice of the appeal directed the appellant to deposit the awarded amount in the Court. A sum of Rs. 1,69,44,888/- has been deposited pursuant to the said direction.

6. The ASG contends that the learned Single Judge did not deal with the application filed by the appellant under Order 7 Rule 11 of the CPC. It is urged that after the filing of reply by the respondent to the objections preferred by the appellant under Sections 30 & 33 of the Act, the appellant verified and learnt that the respondent company no longer exists; that the award was thus not legally enforceable and could not be made rule of the Court.

7. However, in the memo of appeal of the appellant itself, it is stated that on aforesaid objection being taken by the appellant, the counsel for the respondent produced a photocopy of certificate of good standing issued by the Registrar of Companies, Cyprus indicating that the respondent company is still in existence. Not only so, in the memo of appeal it is further stated that even after the order of the learned Single Judge, the appellant took up the matter with the Government of Cyprus, in which country the respondent company is registered to verify the genuineness of the certificate of good standing furnished by the counsel for the respondent and learnt that the respondent company is still in existence.

8. The learned ASG however contended that the reply to the objections was signed and verified by the solicitor in India of the respondent and under power of attorney executed by one of the Directors of the respondent company. It is urged that no resolution of the respondent company authorizing the said Director to further authorize the Solicitor in India has been filed. It is further contended that till date no resolution of the respondent company has been filed before this Court.

9. On enquiry, the learned ASG fairly concedes that no objections in this regard were taken before the learned Single Judge. We are afraid, the same cannot be

permitted in appeal, especially when the objection which was taken before the learned Single Judge of the respondent company having ceased to exist is now belied from the admissions of the appellant in the memo of appeal itself. We may also, note that it was not as if the respondent company had approached this Court for making the award rule of the court and which petitions as per the rules are registered as a suit. The award as aforesaid was filed by the Arbitrator in this Court for being made rule of the Court. Thus, it cannot be said that there was any defect in institution of the suit before the learned Single Judge. Thus, no case of any defective institution is also made out. Moreover, when the appellant itself admits that the person who had given the authority to the Solicitor who had filed the reply to the objections was a Director of the respondent company, there is sufficient evidence to show that the proceedings are being contested on behalf of the respondent and not by a proxy.

10. The learned ASG relies upon S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . However, in that case, it was found that the person who had obtained the decree from the Court had relinquished his rights in the property and it was in these circumstances that it was held that a case of fraud having been played upon the Court was made out thus vitiating the decree. It is not the case here that before the Arbitrator, it was not the respondent who was duly represented or that the respondent had lost the right to make a claim. The reliance on the said judgment is therefore misconceived.

11. The learned ASG next expressed apprehension that persons not authorized by the respondent company may receive payment in execution of the decree. That does not concern us in this appeal. If that be so, it will be open to the appellant to take the said objection in execution.

12. The learned ASG next contended that the interest awarded by the Arbitrator at the rate of 11% per annum is on the higher side. Reliance is placed on McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, , where the Supreme Court reduced the rate of interest from 11% to 7½%. Prayer for reduction of interest similarly in the present case is also made.

13. The counsel for the respondent has vehemently opposed the prayer for reduction of interest. He has contended that the award though in US Dollars permitted payment in Indian rupees at the equivalent rate prevailing on the date of the award. It is contended that owing thereto the respondent has already suffered sufficient loss and should not be deprived of the interest as awarded, specially since the proceedings for making the award the rule of the Court have been pending for the last about 16 years. He also refers to:

(i) Manalal Prabhudayal Vs. Oriental Insurance Co. Ltd., , laying down that the award of interest is in the discretion of the Court and normally when interest is granted, appellate court would not interfere with exercise of discretion unless the discretion has been exercise arbitrarily and capriciously.

(ii) Bihar Sponge Iron Ltd. (Bsil) v. Rail India Technical and Economic Services

Ltd. 2006 IX AD (Delhi) 570 where the Division Bench had refused to interfere with the award of interest at 12% per annum.

(iii) MMTC Ltd. v. Sineximco Pte. Ltd. 2009 V AD (Delhi) 748, where the Division Bench of this Court had refused to interfere with the rate of interest of 12% per annum.

(iv) Union of India (UOI) Vs. Saraswat Trading Agency and Others, , where the award for interest at 18% per annum was upheld.

(v) Sayeed Ahmed and Co. Vs. State of U.P. and Others, , where the order of the High Court reducing the rate of interest to 6%, from 18%, 14% & 21% on different counts awarded by the Arbitrator was set aside by the Supreme Court and the interest awarded by the Arbitrators restored. It was held that unless the award of interest is found to be unwarranted for reasons to be recorded, the court should not alter the rate of interest awarded by the Arbitrator.

14. The learned ASG has contended that over the years rates of interest have been falling specially internationally and there is no justification for award of interest at 11% per annum and it would be just for the rate of interest to be reduced to 7 1/2%.

15. However, following the dicta in the judgments aforesaid, we are unable to state any reason for interfering with the award to that extent also. We find that recently in Indian Hume Pipe Co. Ltd. Vs. State of Rajasthan, it has been reiterated that a person deprived of use of money which he is legitimately entitled to has a right to be compensated for the deprivation, call it by any name, it may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference; this principle of Section 34 of the CPC applies in the case of the arbitrator also. It was further held that if the amount has been withheld wrongly and without any justification then of course the aggrieved party would be fully justified in claiming interest, the arbitrators are bound to make the award in accordance with law and if there is no embargo or legal hurdle in awarding interest then there cannot be any justifiable reason to deny the same.

16. We may however add that the proceedings being under the 1940 Act, the Arbitral Tribunal was empowered to award interest only till the date of the decree. Interest from the date of the decree and till the payment, u/s 29 of the Act is in the discretion of the Court. The learned Single Judge has not made any direction in that regard. We, in the exercise of the said discretion, award the interest on the principal amount from the date of the decree till the date of payment to 7 1/2% per annum.

17. As aforesaid, a sum of Rs. 1,69,44,888/- is lying deposited in this Court. The respondent company shall be entitled to release of the said amount after satisfying the Registrar General of this Court that the said payment is being

received by the respondent in whose favour the award/decreed is and after giving an opportunity of being heard to the appellant.

18. With the aforesaid directions/clarifications, the appeal is disposed of.