

(2003) 09 DEL CK 0080

In the Delhi High Court

Case No : FAO No. 488 of 2001 and CM No. 892 of 2001

Union of India (UOI)

APPELLANT

Vs

Jullundhur Engineering Company and Another

RESPONDENT

Date of Decision : 08-09-2003

Acts Referred:

Arbitration Act, 1940 — Section 17, 30, 33, 39

Citation : (2003) 8 AD 41 : (2003) 3 ARBLR 472 : (2004) 109 DLT 260 : (2003) 71 DRJ 435 : (2004) 1 RAJ 195

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Poonam, for the Appellant; P.N. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.—In the matter of disputes between the parties, the matter was referred to Arbitration. The arbitrator after hearing the parties made and published his award on 29.7.1999. This award was filed in Court. On receiving notice of filing of the award in Court, the appellant filed objections under Sections 30 and 33 of the Arbitration Act for setting aside the award on the ground that the arbitrator had misconducted himself and the proceedings. These objections were dismissed by the learned Additional District Judge by the impugned order dated 25th July, 2001. After dismissing objections, the court made the award a rule of the Court and decree in terms of the award was passed. The impugned order dismissing objections to the award has now been challenged by the appellant by filing this appeal.

2. A preliminary objection is taken by the respondent to the maintainability of the appeal on the ground that after a decree has been passed by the trial court in terms of Section 17 of the Arbitration Act, 1940, no appeal lies. In support of this contention learned counsel for the respondent has relied upon the judgment of this Court reported as Union of India Vs. P.K. Ghai 1991 (1) A L R 278.

3. u/s 17 of the Act, where the Court finds no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the court shall, after the time for making an application to set aside the award had expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award and a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award. A bare reading of Section 17 of the Act shows that no appeal lies against a decree that follows after either the objections are dismissed or no objections are filed to the award within the time prescribed by the statute. However, the question to be examined by the court is whether appeal lies against an order dismissing the objections filed by the party under Sections 30 and 33 of the Arbitration Act and the court refuses to set aside the award on the basis of the objections so filed by the party. u/s 39 of the Act, an appeal shall lie from an order of the Court setting aside or refusing to set aside an award. A reading of Section 39 of the Act shows that where the court refuses to set aside the award, the appeal will lie against such an order. If the contention of learned counsel for the respondent is accepted, the provision of Section 39(1)(vi) shall become redundant as in every case where the court refuses to set aside the award, decree follows. While interpreting a statute, the court must ensure that no part of the statute is made otiose or redundant and meaning have to be given to every word used in the statute. Since the statute has specifically provided an appeal against an order refusing to set aside an award, it is not understood as to how the present appeal will not be maintainable.

4. In Union of India Vs. P.K. Ghai (supra), the judgment referred to by learned counsel for the respondent there is no mention as to whether any objections were filed by the party who had filed the appeal and what had happened to those objections. The judgment does not give facts of the case and the entire judgment reads as under: -

" There is no dispute between counsel for the parties that the award as it is has been made a rule of the Court and the decree has been passed in terms thereof by the trial court. It has not been shown that such a decree is in excess of or not in accordance with the award. Under these circumstances, the appeal u/s 17 of the Arbitration Act is not maintainable and is accordingly dismissed."

5. A perusal of this judgment shows that the court was concerned only with the question whether an appeal lies against the decree passed in accordance with the award. The court was not concerned with the question whether an appeal lies against an order refusing to set aside the award. This judgment, in my view, will not be of any assistance to learned counsel for the respondent. Since a bare reading of Section 39 of the Act shows that an appeal lies against an order refusing to set aside the award and by the impugned order, the trial court has refused to set aside the award, in my opinion, the present appeal is maintainable. I, Therefore, do not find any merits in the preliminary objection raised by learned counsel for the respondent and the same is, accordingly,

rejected.