

(1987) 12 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 60 of 1981

Union of India (UOI)

APPELLANT

Vs

Prithipal Singh and Co., Nagpur

RESPONDENT

Date of Decision : 07-12-1987

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 29, 30, 33
Limitation Act, 1963 — Article 119

Citation : AIR 1988 MP 191 : (1989) ILR (MP) 365 : (1988) JLJ 331 : (1988) MPLJ 385

Hon'ble Judges : Rampal Singh, J; B.C. Varma, J

Bench : Division Bench

Advocate : B.K. Rawat, for the Appellant; R.P. Varma, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.

Pursuant to a contract executed on 5-4-1977 for construction of Central School building, Amla between the respondent contractor and the appellant, the respondent executed the work and completed it on 1-11-1978. In so doing, some extra work was also done for which the contractor laid a claim with the appellant. However, since the respondent wanted of amount shown in the final bill, he had to withdraw the claim for the extra work done. This withdrawal, according to him, was under coercion. The respondent then invoked the arbitration clause in the agreement and the dispute was referred to the sole arbitrator before whom another claim for Rs. 96,000/- was made by the respondent. In all, before the arbitrator, the respondent's claim was for Rs. 2,16,000/-. Before the arbitrator, statements were filed and evidence -- both documentary and oral -- was tendered. After hearing the parties, the arbitrator delivered the award on 15-5-1980 whereunder the respondent's claim for Rs. 1,74,629.96 paise was accepted. Interest at six per cent per annum has also been awarded on this sum from 90 days after the making of the award until payment. On 16-6-1980, the

respondent moved an application before the Court along with a copy of the award duly signed by the arbitrator for making it rule of the Court and for a decree in terms thereof. Notice of this application was served upon the appellant on 21-6-1980. This case was registered as Miscellaneous Judicial Case No. 2 of 1980, in the Court of Additional District Judge, Betul. After the service of this notice upon the appellant as aforesaid, an application on its behalf was filed on 26-6-1980 for getting the award filed by the arbitrator. This application was registered as Miscellaneous Judicial Case No. 3 of the 1980 and notice of this application was served on the appellant on 7-7-1980. Both these cases were then taken up together by the Court and on 5-8-1980, the appellant filed objections to the award. The objections related to the admissibility of claims against various items in favour of the respondent contractor. The respondent then filed a reply to this objection. Apart from justifying the claim on merits, the objection filed by the appellant was said to be barred by time being filed beyond 30 days of 21-6-1980 on which date notice of the filing of the award in Miscellaneous Judicial Case, No. 2 of 1980 was served on the appellant. On pleadings, the Court framed issues and permitted the parties to adduce such evidence as they desired. By judgment dated 29-11-1980 passed in Miscellaneous Judicial Case No. 3 of 1980, the Court upheld the respondent's contention and held the objection filed by the appellant as barred by time. It also held that the arbitrator neither misconducted the proceedings nor himself nor could the award be said to be otherwise invalid. The award was, therefore, upheld and made the rule of Court. Rs. 1720/- have been saddled on the appellant as costs of arbitration. From the date of the order passed by the learned Additional District Judge, the appellant has been directed to pay interest at nine per cent annum until realisation of the amount. This appeal u/s 39 of the Arbitration Act has been directed against this judgment and consequent decree passed by the learned Additional District Judge.

We shall first take up the issue relating to limitation. From the facts narrated above, it is clear that if the award is taken to be filed on 16-6-1980 and the notice of the filing of this award is taken as served on 21-6-1980, the objection filed u/s 33 of the Arbitration Act on 5-8-1980 must be held to be barred by time as the period prescribed admittedly for filing such objection is 30 days (under Article 119 of the Limitation Act, 1963) from the date of filing of the award in Court. To resolve this issue, two things have to be determined : (i) the date of filing of the award in Court by the arbitrator, and (ii) the service of the notice of such filing of the award upon the appellant. Relevant provisions are contained in Section 14(2) of the Arbitration Act which must, therefore, be quoted :

"(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall

thereupon give notice to the parties of the filing of the award."

The requirement in terms of Section 14(2), therefore, is that the arbitrator or the umpire shall cause the award or a signed copy of it together with depositions and documents to be filed in Court. When the award is so filed, the Court shall give notice to the parties of the filing of the award. The requirement is not that the award should be filed by the arbitrator himself. It is not necessary that he should taken the award to the Court himself. At the same time, no formality is required for this purpose. It is just enough that the award is produced in Court and no leave or permission of the Court is necessary for that purpose. What is necessary is that the act of the filing of the award must be that of the arbitrator himself. The award may be filed by him or on his behalf. If an arbitrator delivers the award or a signed copy thereof to some other person with the direction to file it in Court and if such person files that award in Court under the direction of the arbitrator, the act of the filing of the award in Court shall be on behalf of the arbitrator and the requirement of Section 14(2) in this regard shall be satisfied. However, if the arbitrator simply hands over an award or a copy thereof to other person without any direction to be filed in Court, then notwithstanding that the arbitrator may have reason to believe that it may be filed in Court, and if the award is filed by that person in Court, the act of filing of the award shall not be by or on behalf of the arbitrator. This will be so because of want of express authorisation by the arbitrator to file the award in Court and it cannot be said that the arbitrator caused the award to be filed. In *Kumbha Mawji Vs. Union of India (UOI)*, where the award was filed by a party in Court but without any authority from the arbitrator in that behalf, it was held that the award was not filed in Court by the arbitrator. As a corollary it follows that when the arbitrator delivers an award or a signed copy of it to some other person to be filed in Court, it must be held as filed by or on behalf of the arbitrator and the provisions of Section 14(2) are duly complied. A Division Bench of the Allahabad High Court, in *Amod Kumar v. Hari Prasad* AIR 1958 A11720, has also taken a similar view and we find ourselves in complete agreement with the view so taken. In a case, where there are more arbitrators than one and none of them is umpire, filing of the award by any one of those arbitrators must be held to be sufficient for the purpose of Section 14(2). It is not necessary that in such a case all the arbitrators should join in causing the award to be filed in Court. (See : AIR 1949 349 (Nagpur) .

The arbitrator u/s 14(2) of the Act is to act upon at the request of any party under the arbitration agreement or any person claiming under such party or so directed by the Court. What is to be filed in Court is the award or a signed copy of it. When what is filed is copy of award, it is enough if it is signed by the arbitrator or umpire, as the case may be, and it is not necessary to endorse it as "certified true copy". Signing only means writing one's name on some document or paper. It has, therefore, been held in *Hindustan Construction Company Ltd. Vs. Union of India (UOI)*., that so long as there is signature of arbitrator or umpire on copy of award filed in Court and it shows that the person signing

authenticated accuracy or correctness of copy, the document would be signed copy of award within the meaning of expression used in Section 14(2) of the Act, and it would be immaterial whether arbitrator or umpire puts down words "certified to be true copy" above his signature.

The further requirement of Section 14(2), as we have noticed above, is that the Court shall give notice to the parties of the filing of the award. Obvious purpose of giving of such notice is to enable the parties to file objections to the award within the prescribed period of limitation, i.e. 30 days. Such notice by a Court need not be in writing. There can even be an oral notice. Precisely for this reason, notice need not be served on the party in any formal manner. In *Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others*, it was held that the communication of the information to the Pleader of the party that an award has been filed is sufficient compliance with the requirements of Sub-section (2) of Section 14 with respect to the giving of the notice to the parties concerned about the filing of the award. If a proceeding is initiated by either of the parties calling upon the arbitrator to file the award and if in such a proceeding when both the parties are represented by counsel and the arbitrator files the award in Court to the knowledge of the respective counsel, notice u/s 14(2), thereafter, may not be necessary. If, however, where one of the parties objects to the filing of the award for want of compliance u/s 14(2) and requests the Court to pass an order deciding the issue, and the Court orders notice of filing of award to be issued to the parties, it is such notice which shall be material and the limitation for filing objection shall commence from the date the notice is served on the parties. (See : *Engineering Construction Corporation, Ltd. Vs. Madras Port Trust, Madras and Another*, . A Division Bench of the Nagpur High Court, in *Kawalsingh v. Baldeosingh* AIR 1957 Nag 57 speaking on the requirement of notice u/s 14(2), observed that it contemplates a case where arbitrators or umpire file an award in Court in absence of the parties. It is for this reason that Sub-section (2) of Section 14 requires issuance of notice of the filing of the award. There is no prescribed procedure for service of notice. When a party who is already cognizant of the filing of the award applies for leave to examine the award and for time to file objections, no service of a separate notice would be necessary and limitation for filing the objection shall start running from the date when the party entered appearance in the proceedings. It was, however, cautioned that ordinarily the Court would not presume a party to be aware of the filing of the award unless the matter is beyond controversy. A learned single Judge (V. B. Raju, J.) of the Gujarat High Court, in *Hasanalli Abdulalli Malabari Vs. Shantilal Bhaidas Marfatia and Others*, after referring to the aforesaid decision of the Nagpur High Court, observed that where parties have otherwise knowledge of the filing of the award and also the notices u/s 14(2) of the Arbitration Act were directed to be issued to them, the service of notice shall be the date of starting point of limitation. However, if there is no written notice, then the date on which oral or informal or constructive intimation was given to the parties by the court of the fact that the award was filed would be the strating

point for limitation. From the aforesaid decisions, it can, therefore, be legitimately inferred that after the award is filed in Court as required by Section 14(2) of the Arbitration Act, and if the parties have not caused appearance or are not represented in Court where the award is filed, notice of the filing of the award has to be issued to the parties. The date of service of such notice shall be the date of starting point of limitation for the purpose of Article 119 of the Limitation Act, 1963. A notice in writing is not necessary even to the pleader of a party representing that party in Court. A constructive or informal notice is also included. When, therefore, parties are present in Court or are represented by their pleaders, even an oral intimation to them of the filing of the award would be enough compliance with the provisions of Section 14(2) of the Arbitration Act. If, however, in spite of such informal information or otherwise knowledge to a party of the filing of the award, the Court chooses to issue a notice to be served upon the parties, it is the date of the service of notice which shall be the starting point of limitation.

While narrating facts of the case, we have shown that on 16-6-1980 the respondent filed an application purported to be u/s 14(2) and Section 17 of the Arbitration Act along with the photostat copy of award containing the signature of the arbitrator received by him from the arbitrator. There is averment in the application that the arbitrator has authorised one Captain B.D. Tatawawadi A.G.E. (MES) Amla to file the original award in Court. Photostat copy of this award has also been delivered to the parties for similar purpose. Notice of this filing of the award was issued by the Court and served upon the appellant on 21-6-1980. On behalf of the appellant a reply to that application was filed on 5-8-1980. In this reply the appellant has not questioned the authority of the respondent to file the signed copy of the award nor is there any objection that the award is not duly signed by the arbitrator. That being so, it has to be held that the award was duly filed as required by Section 14(2) on 16-6-1980 a notice of which was served upon the appellant on 21-6-1980. Therefore, the objection filed by the appellant on 5-8-1980 has rightly been held to be barred by limitation under Article 119 of the Limitation Act, 1963 which is similar to Article 158 of the Limitation Act, 1908. The finding of the lower Court in this behalf is correct and is hereby upheld.

Learned counsel for the appellant also urged that having accepted the payment of the final bill and having withdrawn the claims made before the department, the respondent should be deemed to have waived any claim arising out of that contract. In our opinion, this contention has no force. It is not disputed that the reference to arbitrator authorised him to decide all the disputes between the parties relating to and arising out of the contract. The withdrawal of the claims by the respondent while accepting the payment of the final bill without protest does not amount to substitution of the original contract by any new contract. The respondent has alleged that he was made to withdraw the objections under coercion even before the amount against undisputed claims could be paid to it. Thus, the question before the arbitrator was whether in fact there had been final settlement of the respondent's claim arising out of that contract. This was the

matter which had to be decided by the arbitrator being a question arising from and in relation to and in connection with the contract. In *The Union of India Vs. Kishorilal Gupta and Bros.*, the view taken is that the question whether there was a full payment in final settlement of the final bill to the contractor was a matter which had to be decided by the arbitrator being a question arising from and in relation to the contract. Following this decision of the Supreme Court in *Kishorilal's case (supra)*, a Division Bench of this Court in *Ramasharan and Ramdayal Dau Co. v. Hindustan Steel Ltd.* Bhilai 1980 MP LJ 722 held that the arbitration clause in the original contract between the parties was not put an end to by the plea of payment in full and final settlement which settlement was disputed by the contractor. The facts of that case were more or less similar to the ones in hand. In that case, under a contract signed by the parties for construction of certain quarters, there was an arbitration clause providing for arbitration to resolve any question, difference or dispute upon or in relation to or in connection with the contract. The contractor gave a receipt to the effect that the accounts had been taken, and nothing was outstanding from the other party against the work excepting the refund of security deposit. Later, the contractor raised a dispute making certain claims including excess royalty charged and amounts on account of extra items of work. When the matter was agitated before the arbitrator, a question was raised whether in spite of settlement of the final bill, the arbitration clause in the agreement could be invoked and whether the arbitrator still retained jurisdiction to entertain the dispute. This Court, in that case, returned an answer in favour of the contractor and held that there was no substitution of the original contract by any fresh contract and that the question whether there was in fact payment in full and final settlement binding on the contractor was a matter which had to be decided by the arbitrators. We are in full agreement with the view so taken in *Ramsharan's case (supra)*, and applying the principles stated therein to the facts of the present case, hold that the arbitrator did not lose jurisdiction to decide the disputes raised before the arbitrator.

Learned counsel for the appellant, speaking on the merits of the case, submitted that the contractor should not have been held entitled to an amount of Rs. 80,000/- on account of alleged loss of working hours, Rs. 90,000/- for construction of two extra rooms, Rs. 18,000/- on account of overlapping in steel plates and Rs. 4829/- on account of internal cement plastering. While adjudicating upon the correctness or otherwise of award of the arbitrator, one has to bear in mind that under the law, the arbitrator is made the final arbitrator of the dispute between the parties. The award is not open to challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate facts and evidence. In *Hindustan Tea Co. Vs. K. Sashikant Co. and Another*, it was held that when a reasoned award by the arbitrator was challenged on the ground that the arbitrator acted contrary to the provisions of S. 70 of the Contract Act, the same could not be set aside on that count, With the narrow scope of interference with the award of an arbitrator as provided in

Section 30 of the Arbitration Act, it is not open to the Court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. Applying the decision in *Champsey Bhara and Co. v. Jivraj Balloo* AIR 1923 PC 66, the Supreme Court, in *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, held that on the assumption that the arbitrator must have arrived at his conclusion by a certain process of reasoning, the Court cannot proceed to determine whether the conclusion is right or wrong. It is not open to the Court to attempt to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of his award. (See also : *Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI)*, After referring to various decisions of the Supreme Court, and the one reported in *Champsey Bhara v. Jivraj Balloo* 1923 All ER Rep 235 this Court in *Umrao Singh and Co., Mahanagar, Lucknow (U.P.) Vs. The State of Madhya Pradesh and Others*, held that it cannot be said that there was any error apparent on the face of the award unless on the face of it the arbitrator has tied himself down to some legal proposition which on being examined is found to be unsound. Similarly, an award of the arbitrator cannot be said to contain an error apparent on the face of it relating to the construction of a clause or any aof the terms of the contract unless the award itself contains a reference to the clause or term and a finding as to its meaning. When there is absolutely no reference in the award to the term or any clause of the agreement nor has it any reference to law when it proceeds to award a definite sum against each item of claim, and when the award contained no reason, it cannot be held that there is an error apparent on the face of the award. It is also the settled principles that a Court before which the award is filed and is questioned, does not deal with it as a Court of appeal and absence of reasons for the award is no error of law on the face of the award. It is only when the arbitrator proceeds to give reasons or to lay down the principles on which he has arrived at his decision, that the Court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award (See : *State of M.P. v. M. B. Gharpuray* 1986 MPLJ 591).

Bearing in mind the aforesaid principles relating to the scope of interference by a Court with the award of the arbitrator, we feel that the appellant cannot be heard to dispute the aforesaid four items of claim allowed to the respondent by the arbitrator. A perusal of the award discloses that arbitrator has assigned no reason for allowing this claim to the respondent. The award only says that the claims are established and admitted. No reference has even been made to any clause in the arbitration agreement or to the law on the subject. That being the position, the award even in respect of the aforesaid four items is not assailable.

The last contention raised on behalf of the appellant relates to the award of interest. The arbitrator allowed a period of 90 days after making the award for payment to the appellant the amount adjudged and allowed to the respondent. Interest at six per cent per annum has been awarded after this period of 90 days up to the date of payment or the date of the decree by the Court whichever is

earlier. The Court which has upheld the award and made it a rule of the Court has awarded interest at nine per cent from the date of the order and decree until realisation. We do not find any legitimate objection to the award of this interest by the arbitrator and by the Court. It will appear from the award of the arbitrator that the question of award of interest was also referred to the arbitrator and was agitated before him. That is why we find that the arbitrator has dealt with the question of award of interest as a separate item of claim (Item No. 17(b)). That being so, the arbitrator must be held to have authority to award interest on the principles of Section 34, Code of Civil Procedure, although that section in terms does not apply to the arbitration proceedings. This view finds support from the decision of the Supreme Court in Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd., followed by this Court in State of M.P. v. M. B. Gharpuray's case (1986 MPLJ 591) (supra). Although the claim for interest before the arbitrator was at nine per cent per annum, the arbitrator has very justly reduced it to six per cent per annum. This award of interest has been maintained by the Court and we see no reason to interfere. Regarding award of interest at nine per cent per annum from the date of the decree, suffice it to say that the Court does have power and jurisdiction u/s 29 of the Arbitration Act which expressly authorises award of interest from the date of the decree when the award relates to payment of money. The Court has been given a discretion to decree interest at the rate which the Court deems reasonable. In the present case, the interest has been awarded at nine per cent per annum and nothing has been demonstrated to show that award of interest at this rate of nine per cent per annum is in any way unreasonable. We uphold that part of the impugned decree also.

No other point was urged. The appeal fails and is dismissed with costs. Counsel's fee Rs. 500/-, if certified.