
(2003) 03 AHC CK 0031
In the Allahabad High Court
Case No : Civil Revision No. 47 of 1997

Universal Construction Co.	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Arbitration Act, 1940 — Section 20, 21, 30, 33, 34
Civil Procedure Code Amendment Act, 1999 — Section 32(1)
Civil Procedure Code, 1908 (CPC) — Section 115, 15

Citation : (2003) 6 AWC 5312

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : G.N. Srivastava and P.N. Mathur, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

N.K. Mehrotra, J.—This is a revision u/s 15 of the CPC against the judgment and order dated 18.3.1997 passed by the 2nd Additional District Judge, Sitapur in F.A.F.O. No. 29 of 1992, State of U.P. v. Universal Construction Company, passed in appeal u/s 39 of the Arbitration Act, 1940.

2. There is an agreement dated 7.4.1973 between the parties and it contains an arbitration clause. A dispute arose and according to the Arbitration Clause, Superintending Engineer, XII Circle, Lucknow, was appointed as an arbitrator and he pronounced the final award on 21.2.1984. The award was filed in the Court of Civil Judge, Sitapur on 17.7.1984. The State Government through the District Government Counsel (Civil), Sitapur filed objection against the award u/s 30/33 of the Arbitration Act, 1940, assailing the award on the point of facts and rate of interest. The main objection of the revisionist before the Court of Civil Judge was that the award being a non-speaking one, it could not be challenged on facts and the arbitrator had every power to allow 12% interest on the awarded amount from the date of reference to the date of the award and 6% interest on the

awarded amount from the date of the award to the date of the decree or payment, whichever is earlier. Besides, those objections two other objections, namely, the D.G.C. (Civil) had no authority to file objection and secondly about the deficiency of court fees were also taken by the revisionist. The Civil Judge, Sitapur made the said award rule of the Court after rejecting the objections.

3. Opposite party filed appeal u/s 39 of the Arbitration Act in this Court in F.A.F.O. No. 29 of 1992 but after the amendment in the CPC it was sent to the Court of District Judge, Sitapur which was later on transferred to the Court of I Ind Additional District Judge, Sitapur who passed the impugned order on 18.3.1997 allowing the appeal of the opposite party.

4. It is against this order that the instant revision has been filed. The main contention of the revisionist before this Court is that it is a non-speaking award and the arbitrator's mind could not be probed as to how he reached to a decision and it is not open to the appellate court to re-appreciate the evidence and arrive at a fresh finding. It is also contended that the arbitrator is competent to decide the question both of law and fact when they are referred to him. In the present case, the matter regarding the coal, etc. and claims in regard to the same, were specifically referred to the arbitrator and he had awarded on account of excess consumption of coal and the amount for the transportation of coal. Therefore, the questions regarding the evidence placed before the arbitrator could not be agitated neither in the objections under Sections 30 and 33 of the Arbitration Act, 1940, nor in appeal u/s 39 of the said Act. It has also been argued that the court below could not reduce the interest as was awarded by the learned arbitrator.

5. I have heard the learned Counsel for the parties.

6. The main objection against the revision, by the learned standing counsel is two folds. Firstly, the revision is not maintainable against the order passed in appeal by the District Judge u/s 39 of the Arbitration Act, 1940 and; secondly there is no illegality in the finding recorded by the appellate court.

7. The learned standing counsel has filed counter-affidavit alongwith the Civil Misc. Application No. 58 of 2002 in which there was a prayer for dismissal of the revision on the ground of non-maintainability. This application was heard by this Court and vide order dated 24.1.2002, this application was rejected on the ground that it is apparently misconceived.

8. Learned Counsel for the opposite party has raised objections about the maintainability of the revision again at the time of final hearing of the revision and in support of his contention, he has referred the judgment of Full Bench of this Court in Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others, . In this Full Bench judgment, this Court had interpreted the phrase used in the provision of the said Amendment in Section 115 of Code of Civil Procedure. In 1970, Section 115 of the CPC was amended by the U.P. State Legislature and the relevant phrase which was used by the State Legislature in Section 115, CPC is

as follows : "The High Court in cases arising out of the original suits or other proceedings" of the value exceeding one lac rupees or such higher amount not exceeding 5 lacs may call for the record of any case which has been decided by any court subordinate to such High Court or District Court as the case may be...."

9. The aforesaid underlined phrase continue in Section 115, CPC after its amendment in 1972 as well as in 1973. In 1972, Amendment by the State Legislature in response to the jurisdiction conferred on the district court, the phrase used was "in any other case". The Full Bench of this Court after interpreting both these phrases held that both the phrases do not include the cases arising out of the decision on an appeal or revision and held that the decision on an appeal or revision by district court was outside the purview of the revisional powers conferred by Section 115, CPC but now the CPC has been amended by the CPC (Amendment) Act, 1999, with effect from 1.7.2002. Section 32(1) of the CPC Amendment Act, 1999, has repealed all the amendments made or provision inserted in the Principal Act by a State Legislature or High Court before the commencement of this Act which are in consistence with the provision of the Principal Act as amended. The U.P. Act No. 31/78 as amended by U.P. Act No. 17/91 substituted Section 115 in its application to Uttar Pradesh and in that amendment also the aforesaid phrase "in cases arising out of the original suits or other proceedings" was used but after the enforcement of the CPC Amendment Act, 1999, all these amendments of the State Legislature have been repealed and now in the provision of Section 115, CPC after the amendment by the CPC Act, 1999, the provision is as follows :

"115. Revision.-(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears :

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit :

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.-In this section, the expression "any case which has been decided"

includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

10. The aforesaid provision makes it clear that there is no such phrase "In cases arising out of the original suit or other proceedings" used in Section 115 of the Code of Civil Procedure, therefore, the judgment of the Full Bench in *M/s. Jupiter Chit Fund Pvt. Ltd. v. Dwarka Diesh Dayal and others*, is of no help to support the contention of the learned standing counsel.

11. Learned standing counsel has also referred the judgment in *Har Prasad Singh and Others Vs. Ram Swarup and Others*, , *Ganga Saran v. Civil Judge, Hapur Ghaziabad and others* 1991 (1) AWC 213 : 1991 All LJ 159 , *Vishesh Kumar Vs. Shanti Prasad, Vishnu Awatar Vs. Shiv Autar and Others*, and *Radhey Shyam v. Ram Niranjana and Anr.* 1993 (11) LCD 954, in support of his contention but in view of the amendment by CPC Amendment Act, 1999, all these decisions are of no help to support the argument of the learned standing counsel.

12. On the other hand, the learned Counsel for the revisionist has referred a decision of the Hon'ble Supreme Court in *Shyam Sunder Agarwal and Co. Vs. Union of India*, , in which it was held that revision against the order u/s 39 of the Arbitration Act, is maintainable. The relevant portion of the judgment of the Hon'ble Supreme Court is as follows : "A revision application before the High Court against an appellate order passed u/s 39 of the Arbitration Act is maintainable. There is no express provision in the Arbitration Act putting an embargo against filing a revisional application against appellate order u/s 39 of the Act. The Arbitration Act has put an embargo on filing any second appeal from appellate order u/s 39 of the Act. The Arbitration Act is a special statute having limited application relating to matters governed by the said Act. Such special statute, therefore, must have its application as provided for in the said statute. The revisional jurisdiction of the High Court under the CPC or under any other statute therefore shall not stand suspended under the Arbitration Act if the Act does not contain any express bar against exercise of revisional power by the High Court provided exercise of such revisional power does not mitigate against giving effect to the provisions of the Arbitration Act. Even if a special statute expressly attaches finality to an appellate order passed under that statute, such provision of finality will not take away revisional powers of the High Court u/s 115 of the CPC Code. There is also no such express provision in the Arbitration Act attaching finality to the appellate order u/s 39."

13. In view of the aforesaid decision of the Hon'ble Supreme Court, I find that the revision against the impugned order passed u/s 39 of the Arbitration Act, 1940, is maintainable u/s 115, C.P.C.

14. The Additional District Judge has substituted his own findings after appreciating the evidence on certain claim regarding the consumption of coal. The question is whether such findings can be substituted by the appellate court in the matter of non-speaking award and whether the non-speaking award

amounts to misconduct.

15. In Raipur Development Authority, etc. etc. v. Chokhamal Contractors etc. etc. AIR 1990 SC 1426, a Constitution Bench of Hon''ble Supreme Court held that : "An award passed under the Arbitration Act is not liable to be remitted or set aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an order made by the Court such as the one u/s 20 or Section 21 or Section 34 of the Act or the statute governing the arbitration requires that the arbitrator or the umpire should give reasons for the award."

16. In State of Andhra Pradesh and another, etc. Vs. R.V. Rayanim etc., , a three Judges Bench of the Hon''ble Supreme Court held that:

Only in a speaking award, the Court can look into the reasoning of the award. It is not open to the Court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion.

17. Further in Paradeep Port Trust and Ors. v. Unique Builders (2001) 2 SCC 860, it was held that non-speaking award for lumpsum amount cannot be judged by the Court on the basis of the speculation so it is not open to the Courts to guess or speculate about the reasons for such award nor can Court substitute their own views. It was also held by the Hon''ble Supreme Court that arbitrator''s award is final on facts as well as law and there is no appeal therefrom.

18. It is not the case of the opposite party that the arbitrator has pronounced the award on any claim which was not referred to him, so it is not a case of misconduct.

19. Learned Counsel for the revisionist has placed reliance on Sudarsan Trading Co. Vs. Government of Kerala and Another, , S.S. Jatley v. College of Vocatina Studies and The Hindustan Construction Co. Ltd. Vs. Governor of Orissa and others, . In all these three cases, the same view has been taken by the Hon''ble Supreme Court that the judicial review of the award would be possible only when the arbitrator gives reasons in support of his conclusions. Since in the instant case, it is non-speaking award and as argued by the learned Counsel for the revisionist, the appellate court could not interfere in the findings of fact recorded by the learned arbitrator.

20. So far as the question of payment of interest is concerned, the learned arbitrator has awarded pendente lite interest @ 12% per annum from the date of reference to the date of award and @ 6% per annum from the date of the award to the date of the decree but the learned appellate court has reduced the rate of pendent lite interest from 12% to 6% per annum.

21. In my opinion, the arbitrator has not committed any illegality in awarding the pendent lite interest @ 12% interest per annum.

22. In the State of Orissa Vs. B.N. Agarwalla, etc., , it was held that the arbitrator was fully justified in awarding the interest pendente lite. So it was within the jurisdiction of the arbitrator to award the pendente lite interest under the Arbitration Act, 1940 as amended by the State of U.P., there is only restriction on the rate of interest from the date of award to the date of decree and the learned arbitrator has not awarded the future interest in violation of the provision of interest as provided in the Act. Therefore, the impugned order reducing the rate of pendente lite interest cannot be upheld.

23. In view of the discussions above, the revision is allowed and the impugned order dated 18.3.1997, passed in Appeal No. 29 of 1992 , State of U.P. v. Universal Construction Co., is set aside.