

(2015) 09 DEL CK 0302

In the Delhi High Court

Case No : F.A.O. No. 110/2005 and C.M. No. 6330/2014

UOI

APPELLANT

Vs

Texmaco Ltd.

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2015) 09 DEL CK 0302

Hon'ble Judges : V.K. Shali, J.

Bench : Single Bench

Advocate : Ashwani Bhardwaj, Advocate, for the Appellant; Gaurav Mitra, Pratik Malik, Advocates and Rajesh Dudani, AR, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This order shall dispose of an application filed by the appellant bearing No. 6330/2014 for restoration of the appeal. Reply to the application has been filed and the learned counsel for the respondent has opposed the application for restoration vehemently.

2. Before dealing with the reasons for opposition of this application by the respondent, it may be pertinent here to mention that the respondent was a fabricator and supplier of the stores to the appellant for the purpose of 2000 sets comprising of 1126 sets of switches and 874 sets of Crossings at an agreed rate and terms and conditions to the Railways. It was alleged that subsequent to the contract entered into between the appellant/Union of India and the respondent, the rates had fallen down considerably for the new contract which was awarded and on account of slow pace in delivery of the supplies; the respondent was granted extension of time for supply of goods at the earlier rates.

3. The respondent on account of reduction in rate and by imposition of conditions of delivery had raised disputes with the appellant which were referred to the sole arbitration for adjudication. The learned arbitrator, after going through the

statement of claim, the defence and after permitting the parties to adduce their respective evidence, passed an award in favour of the respondent/claimant on 17.11.2003 granting a sum of Rs. 17,92,657/- to be paid to the respondent by the appellant within 60 days. In default of payment, it was to carry an interest @ 9 per cent per annum.

4. The appellant aggrieved by the aforesaid award, filed objections under Section 34 of the Arbitration & Conciliation Act bearing No. 93/2004 in the court of the learned Additional District Judge on 16.2.2004. These objections were contested and rejected by the court on 27.10.2004. The appellant feeling aggrieved by the rejection of their objections, preferred an appeal bearing F.A.O. No. 110/2005 titled Union of India vs. M/s. Texmaco Ltd. against the said judgment. The aforesaid appeal came to be listed before the High Court which is pending before this court since 25.4.2005. I have been informed that the amount of Rs. 19 lacs which is purported to have been deposited by the appellant in court has already been released to the respondents. So far as the present appeal is concerned, this has been pending before this court for the last 11 years without any sincere effort being made on the part of the Union of India to argue the matter. The present appeal was dismissed in default on 6.2.2004 by passing the following order :-

"There is no appearance on behalf of the appellant/UOI. On the last date of hearing also, there was no appearance on behalf of the appellant. A perusal of the order sheets show that earlier also, Union of India was not represented on various dates and the appeal has been dismissed for non- prosecution on three occasions, i.e. on 24.5.2005, 21.7.2008 and 4.8.2010. It seems that Union of India is not interested in pursuing the appeal.

Keeping in view the aforesaid facts, the appeal is dismissed for non-prosecution. No application for restoration be entertained without the appellant depositing a sum of Rs. 50,000/- with the Delhi High Court Legal Services Committee."

5. Subsequent to this, an application bearing C.M. No. 6330/2014 has been filed by virtue of which the pre-condition of imposition of cost of Rs. 50,000/- was sought to be dispensed with, for the purpose of considering the application for restoration. Keeping in view the averments made in the application, the aforesaid cost of Rs. 50,000/- was reduced to Rs. 10,000/- which is stated to have been deposited by the appellant. That is how the application was entertained and arguments have been heard on the said application.

6. I have heard the learned counsel for the appellant as well as the learned counsel for the respondent. It has been contended by the learned counsel for the appellant that the counsel could not appear on 6.2.2014, when the appeal was dismissed for non-prosecution on account of the fact that on the previous date, the clerk of the counsel had failed to note the date of the case in the diary. For the purpose of supporting his submissions, the counsel has filed his own affidavit as well as the photocopies of his diaries.

7. The learned counsel for the respondent has contended that the appellant is not serious in prosecuting the matter and is unnecessarily keeping the pot boiling. It has also been contended that the explanation which has been furnished by the learned counsel for the appellant for non-appearance on 6.2.2014 is not correct and genuine one. It has been stated that earlier also, the appeal has been dismissed on three occasions and thereafter got restored by the appellant. It has been contended that first time the appeal was dismissed for non-prosecution on 24.5.2005 and it was got restored by the appellant on 15.9.2005. On second occasion, the appeal was dismissed for non-prosecution on 21.7.2008 and got restored by the appellant on 9.3.2010. Third time, the appeal was dismissed for non-prosecution on 4.8.2010 and restored on 15.2.2011. On more than one occasion, this very plea has been taken by the appellant that the learned counsel could not appear in the matter on the date fixed on account of the correct date not being noted in the diary. This time also, the learned counsel for the appellant is stated to have taken the plea that the date was not noted correctly by the clerk of the counsel in the diary because of which this confusion has been created and had resulted in non-appearance.

8. The learned counsel for the respondent has pointed out that this is a false plea inasmuch as the learned counsel for the appellant himself has attached photocopies of the diaries when the matter was listed which shows that on 23.10.2013 the matter was adjourned to 2.12.2013. Yet on 2.12.2013, nobody appeared on behalf of the appellant and consequently, the matter was got adjourned to a later date, that is, on 6.2.2014.

9. All these facts clearly shows that the plea which has been taken by the appellant is totally false as the photocopy of the page of the diary of the appellant shows that correct date was noted by the clerk in the diary itself as 2.12.2013 yet the learned counsel did not appear. It has been stated by the learned counsel that a party more so, when it is a Union of India, is expected to tell the truth even if it has committed a genuine mistake. But in case a party tries to take a false plea only with a view to get the matter restored, such a practice should be curbed by the court with a heavy hand.

10. I have carefully considered the rival contentions and have gone through the record. I feel that there is a considerable merit in the submission made by the learned counsel for the respondent opposing restoration of the appeal by the appellant. It may be pertinent here to mention that the appellant or its counsel have not been prosecuting the matter in its right perspective and that is why such a small matter has been kept pending for the last more than eleven years. The dockets of courts are already full yet the Union of India being one of the biggest litigants in court is not taking interest in getting the pendency reduced.

11. The explanation which has been furnished by the counsel is certainly not acceptable because it seems that they harbour some kind of impression that being a Government body or a Government itself, the court will be taking a liberal view. The law of limitation and the applicability of general principles of law

are to be done with an even hand and not in a discriminatory manner. In the instant case, the appeal having been dismissed earlier on three occasions clearly shows that the appellant was grossly negligent in prosecuting the matter. By restoring the matter to its original number on as many as three occasions yet not making any sincere effort to argue the matter finally shows that the appellants are not serious in prosecuting the matter.

12. For the reasons mentioned above, I feel that as the appellant has been deliberately keeping the pot boiling when the appeal has already been dismissed in default or for non-prosecution on as many as three occasions, they could not be permitted to take undue advantage by getting the appeal restored.

13. I, accordingly, disbelieve the appellant for its non-appearance on 6.2.2014 and reject the application bearing No. 6330/2014 for restoration. Since the application for restoration has been dismissed, therefore, the main appeal itself also stands dismissed.