Union of India

Vs

M/S Orient Engg. & Commercial Co. Ltd. and Another

Civil Appeal No. 1296 Of 1977

(V. R. Krishna Iyer, Jaswant Singh, D. A. Desai JJ)

07.10.1977

ORDER

KRISHNA IYER, -

1. We live and learn from Counsel's arguments each day and in this case we were asked to unlearn.

2. Counsel for the appellant has objected, in this appeal, to the examination, as a witness, of an arbitrator who has given his award on a dispute between the appellant and respondent 1. His contention is that, of broad principle and public policy, it is highly obnoxious to summon an arbitrator or other adjudicating body to give evidence in vindication of his award. This is a wholesome principal as is evident from Section 121 of the Indian Evidence Act. That provision states that no Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate or as to anything which came to his knowledge in Court as such Judge or Magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting. Of course, this section does not apply proprio vigore to the situation present here. But it is certainly proper for the Court to bear in mind the reason behind this rule when invited to issue summons to an arbitrator. Indeed, it will be very embarrassing and, in many cases, objectionable if every quasi-judicial authority or tribunal were put to the necessity of getting into the witness box and testify as to what weighed in his mind in reaching his verdict. We agree with the observations of Walsh, A.C.J., in Khub Lal v. Bishambhar Sahai (AIR 1925 All 103) where the learned Judge has pointed out that the slightest attempt to get to the materials of his decision, to get back to his mind and to examine him as to why and how he arrived at a particular decision should be immediately and ruthlessly excluded as undesirable.

3. In this case, a list of witnesses was furnished by respondent 1 and the Registrar of the High Court, in the routine course, granted summons, perhaps not adverting as to why the arbitrator himself was being summoned. That was more or less mechanical is evident from the fact that the reason given for citing the arbitrator is the omnibus purpose of proving the case of the party - not the specific ground to be made out. We should expect application of the mind of the Registrar to the particular facts to be established by a witness before the coercive process of the Court is used. It is seen that the learned Judge before whom objection was taken under Section 151, CPC to the summons to the arbitrator dismissed the petition on the score that he saw no ground to refuse to summon the arbitrator as a witness. The approach should have been the other way round. When an arbitrator has given an award, if grounds justifying his being called as a witness are affirmatively made out, the Court may exercise its power, otherwise not. It is not right that every one who is included in the witness list is automatically summoned; but the true rule is that, if grounds are made out for

summoning a witness he will be called : not if the demand is belated, vexatious or frivolous. Thus the Court also has not approached the question from the proper perspective. If arbitrators are summoned mindlessly whenever applications for setting aside the award are enquired into, there will be few to undertake the job. The same principle holds good even if the prayer is for modification or for remission of the award. The short point is that the Court must realise that its process should be used sparingly and after careful deliberation, if the arbitrator should be brought into the witness box. In no case can he be summoned merely to show how he arrived at the conclusion he did. In the present case, we have been told that the arbitrator had gone wrong in his calculation and this had to be extracted from his mouth by being examined or cross-examined. We do not think that every Munsif and every Judge, every Commissioner and every arbitrator has to undergo a cross-examination before his judgement or award can be upheld by the appellate Court. How vicious such an approach would be is apparent on the slightest reflection.

4. Of course, if a party has a case of mala fides and makes out prima facie that it is not a frivolous charge or has other reasonably relevant matters to be brought out the Court may, in given circumstances, exercise its power to summon even an arbitrator, because nobody is beyond the reach of truth or trial by Court. In the present case, after having heard Counsel on both sides, we are not satisfied that on the present material there is justification for the examination of the arbitrator. We therefore set aside the order.

5. However, we make it clear that if the Court is convinced, after hearing the respondent on a fresh application stating why he wants to examine the arbitrator, it is still open to it to issue the necessary process. Such a step must be a deliberate step and not a routine summons. With these observations, we allow the appeal. There will be no order as to costs.

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