

State of West Bengal

Vs

Sree Sree Ma Engineering and Another

Civil Appeal No. 2190 of 1987

(Sabyasachi Mukharji, G. L. Oza JJ)

08.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted.

2. This is an appeal challenging the decision of the High Court of Calcutta upholding the decision of the learned Single Judge of that court whereby the award of the arbitrator was set aside and new arbitrator was appointed. In order to appreciate the position it is necessary to state that in the year 1964 the Executive Engineer had invited competitive sealed tenders in respect of "Silt Clearance of River Peali from Utterbhag Canning Road Bridge up to Hobon Sluice". Shri D. P. Chatterjee entered upon the reference soon thereafter and the award was made in November 1966. It appears that thereafter the respondent asked for the award amount in full and final settlement which the Executive Engineer turned down. The respondent herein was paid by the appellant a sum of Rs. 32,525.62 in terms of the award and which sum was received and acknowledged by respondent 1. Then the true copy of the award was forwarded to the court by the Chief Executive Engineer and the application was filed by respondent 1 in 1981 in the High Court of Calcutta under Sections 14, 15, and 30 of the Arbitration Act, 1940 for setting aside the award dated November 19, 1966. The High Court after hearing the parties dismissed that application on May 10, 1982. The High Court was thereafter pleased to pass judgment in terms of the award. The respondent herein preferred an appeal against the judgment dated May 10, 1982. The Division Bench allowed the appeal of the appellant. The appellant's advocate did not notice that the matter appeared in the daily list dated April 26, 1985 of the learned Single Judge for judgment and as such he did not know the result of the judgment. Thereafter the matter again appeared in the list of the learned Single Judge and the respondent had made an application before the learned Single Judge for setting aside the previous order. The learned Single Judge on March 18, 1986 rejected the application of the appellant and allowed the application of the respondent herein under Sections 5, 11 and 12 of the Arbitration Act and appointed a retired Judge of the High Court as the arbitrator and thereafter revoked the authority of the said arbitrator from acting as the arbitrator and appointed a lawyer of the High Court as the arbitrator. The appellant preferred an appeal against the said order dated December 3, 1985 before the Division Bench of the High Court of Calcutta.

3. Two points were raised before the learned Single Judge, firstly that the award was beyond time and secondly, the learned arbitrator had not signed the award. The Division Bench found that as there was an extension of time in making the award and the award having been filed within the extended time, expressed the view that there was no force in the first point. The Division Bench, however, was unable to accept unsigned award being made the rule of the court.

4. It is true that an unsigned award cannot be made the rule of the court. But it is only a formal defect. It appears that the award was handed over to the parties and a letter was sent to the parties concerned and award bore no signature of the arbitrator. The parties had acted upon the award. It is true that under the law the mandatory rule is that the award should be signed by the arbitrator. But law must subserve justice and endeavor to serve the purpose of law. The court can in such circumstances extend time for making the award and direct curing of the formal defect in the award. So much time and effort should not be allowed to go waste.

5. In the situation of this nature the proper order in the interest of justice would be to remit the award under Section 16 of the Arbitration Act, 1940 for enabling the arbitrator named therein for signing the award and for that purpose if it is necessary under Section 28 of the Arbitration Act, 1940, the court has the power to extend the time to the arbitrator for making the award final. We did so. We extend the time by four months from today and direct the award be remitted to the arbitrator for signature.

6. The appeal is disposed of accordingly.

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