

M/s Koch Navigation Inc

Vs

M/s Hindustan Petroleum Corporation Ltd.

Civil Appeal No. 3838 of 1989

(Sabyasachi Kukhrji, B. C. Ray JJ)

07.09.1989

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Special leave granted.

2. This is an appeal from the judgment and order dated October 12, 1987 of the Division Bench of the High Court of Bombay. The appellant had chartered their vessel 'KRISTEL' to the respondent for carrying oil from Arabian Gulf to India under a charter party, dated November 30, 1979. Clause 40(a) of the charter party provided that the charter shall be construed and the relations between the parties shall be determined in accordance with the English law. Clause 40(b) of the charter party provide that any dispute arising under the charter party shall be decided by the English courts but that either party may elect, in writing to have the dispute referred to the arbitration of a single arbitrator in London in accordance with the (English) Arbitration Act, 1950.

3. Disputes and differences arose between the parties, and they appointed one Mr. Robert William Reed of the Baltic Exchange and of 28, Reddons Road, Beckenham, Kent BR 3 ILZ to be the sole arbitrator. The parties appeared before the arbitrator represented by their respective solicitors and counsel. The arbitrator made his award on July 28, 1982 which contained, inter alia, as follows :

"I AWARD AND ADJUDGE that the Characters do forthwith pay the Owners the sum of U.S.\$ 291,822 (United States dollars two hundred and ninety-one thousand eight hundred and twenty-one only) together with interest at the rate of 15 per cent annum as from June 20, 1980, to the date of this my Final Award in full and final settlement of the matters at issue in the Reference.

I FURTHER AWARD AND ADJUDGE that the Character do bear and pay their own and the Owners' costs of the Reference (the latter to be taxed in the event of disagreement) and that the Characters do bear and pay the cost of this my Final Award which I hereby tax and settle at 4684 including my disbursements. Provided always that if in the first instance the Owners shall have paid the said cost of this my Award, then they shall be entitled to an immediate refund from the Characters of the sum of paid."

4. As mentioned hereinabove, the arbitrator awarded the cost of reference to be taxed in the event of disagreement. The respondent paid only the principal sum and failed and neglected to pay any interest on it and the appellant's cost of reference to arbitration and the cost of the award. Pursuant

to Section 20 of the English Arbitration Act, 1950 a sum directed to be paid by the award shall carry interest as from the date of the award at the same rate as the judgment date (sic debt). It appears that from June 8, 1982 the interest rate on judgment debt in England was 14 per cent per annum.

5. The award is enforceable under the Foreign Awards (Recognition & Enforcement) Act, 1961 (hereinafter called 'the Act'). The appellant filed an application under the Act in the High Court of Bombay, inter alia, contending for the judgment to be pronounced and a decree to be passed according to the award in favour of the appellant. The learned Single Judge of the High Court by his judgment and order dated February 21, 1983 decreed in favour of the appellant and directed the respondent to pay interest and costs of the award so awarded by the arbitrator and also cost of the petition. The learned Judge, however, rejected the appellant's prayer for the cost of reference to arbitration, and also rejected the applicant's prayer that in the alternative liberty should be reserved in respect of the said prayer. The said prayer was made orally but was refused by the learned Single Judge because as he observed that he saw no reason to reserve such liberty, as the appellant had not taken any steps.

6. Aggrieved by the said judgment and order dated February 21, 1983 the appellant preferred an appeal before the Division Bench of the High Court. During the pendency of the said appeal in the High Court the appellant's costs of reference to arbitration as awarded by the arbitrator were taxed because of the failure of the parties to agree and the taxed amount was pounds 10,901.45 by the Taxing Master of the Supreme Court of Judicature, England. A taxation certificate dated December 19, 1984 was issued and the same was produced at the time of hearing of the appeal before the Division Bench. Before the Division Bench, cross-objections had been filed on behalf of the respondent. By judgment dated October 12, 1987, the Division Bench of the High Court dismissed the respondent's cross-objections, and held that the only point related to the refusal of the learned Single Judge to grant liberty to the appellant to file a separate petition upon the costs of the reference to arbitration being quantified. The Division Bench held that at the time when the petition was filed, there had been no agreement upon or reference for taxing of such costs, and as such it appears that the application to have the costs fixed was made only after the appeal was filed. No order could be made directing the respondent to make payment to the appellant of the costs so taxed. The Division Bench held that if the appellant was entitled to file a fresh petition for such costs, it might adopt such proceedings.

7. Aggrieved thereby, the appellant has come up before this Court. We are unable to uphold the views of the Division Bench of the Bombay High Court that no order could have been made by the Division Bench directing the respondents to make payment to the appellant's costs so taxed. Foreign awards, as it manifests, are executable in this country under the provisions of the Act. The Act in question was passed to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitrator's Award. Section 6 of the Act is as follows :

"6. Enforcement of foreign award. - (1) Where the court is satisfied that the Foreign award is enforceable under this Act, the court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced, a decree shall follow and no appeal shall lie from such decree except insofar as the decree is in excess of or not in accordance with the award."

8. This foreign award is enforceable in India. In such a case the court is obliged to direct that the

award be filed and proceed to pronounce judgment according to the award. And upon the judgment so pronounced a decree shall follow. This Court had occasion to examine the purpose and terms of the Act in *Renusagar Power Co. Ltd., v. General Electric Co.* ((1964) 4 SCC 679 : (1985) 1 SCR432 : AIR 1985 SC 1156) This Court held referring to the objects that the Act seeks to achieve speedy settlement of disputes arising from international trade through arbitration. The Act was enacted to give effect to the New York International Convention on the Recognition and Enforcement of Foreign Awards to which India was a party. This Court noted that it is obvious that since the Act was calculated and designed to subserve the cause of facilitating international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration, any expression or phrase occurring therein should receive, consistent with its literal and grammatical sense, a liberal construction.

9. The judgment has been pronounced in terms of the aforesaid and a decree has followed. The award enjoins, inter alia, that the Charterers do pay and bear their own costs and the owner's costs of reference (the latter to be taxed in the event of disagreement). The judgment and decree which was pronounced in terms of the award did not direct any cost taxed or quantified of the reference to be paid. Indubitably, the costs of reference have been awarded. The award, read properly, means, so far as costs of the reference are concerned, that it was an award upon certain condition, i.e., the award stipulated that the costs of reference will be paid. The costs of such reference were, however, directed to be determined either by agreement between the parties and in the case there was no agreement or disagreement, to be taxed. The parties have not been able to agree. It appears from the averments made in the pleadings before the High Court, there was no agreement as to costs, and the steps were taken after the appeal was filed before the Division Bench to have the costs taxed. But there is no evidence of any delay or laches on the part of the appellant, as such, which would disentitle the appellant to such costs. In that view of the matter this award can legitimately be considered as an award directing payment of costs upon the condition that these will be taxed on the failure of agreement or disagreement between the parties. The parties have failed to agree. The costs have been taxed and certified. There is no dispute as to the costs taxed or certified.

10. We are of the opinion that law, justice and equity in the facts and the circumstances of this case, enjoin that the appellant should have such costs. The appellant has taken all possible steps that could be taken in the situation contemplated by the award. The appellant has written for agreement about the cost of reference. The respondent did not agree. The appellant took steps to have the costs taxed in London, and the costs have been taxed.

11. On behalf of the respondent, several contentions were urged mainly on the ground that there is no scope for addition to the award and the award had to be executed as it was and the costs of reference had not been awarded. We are in agreement with Mr. Ganesh that the award must be executed as it is and there is no scope for any addition to any award in executing a foreign award to be executed must be properly construed and given effect to. If the award is ambiguous, the court has jurisdiction to determine what it means. In this case, the award is not ambiguous. It is clear that the costs of reference should be paid by the respondent, and that such costs could be paid as are determined by agreement between the parties and in case of failure of the agreement by the taxation, such costs have been taxed and were placed before the Division Bench before it pronounced its judgment. Our attention was drawn to the decision in *Re Becker, Shillan & Co. and Barry Bros.* (1920 All ER Rep 64 : (1921) 1 KB 391 : 1920 WN 366) where it was held that where an umpire in making his award dealt with the costs of the award including the expenses of the hire of the room for the award shorthand notes, but made no order as to the general costs of the parties to the reference, the court would not presume that he has exercised his discretion to make no order as to

costs or that he has left them to be borne by the parties who incurred them, but will conclude that the question of costs has not been dealt with at all and, therefore, should remit the award to him for reconsideration.

12. In our opinion, the said decision has no application to the facts of this case. The instant appeal before us is not a case where the award has not dealt with the costs of reference, rather it has specifically dealt with the same. It has categorically provided that cost of reference is to be paid by the respondent. The award has stated that such cost should be agreed between the parties and in case there was no agreement, cost should be taxed. The award is clear and unambiguous and does not leave this question undecided. In the circumstances, there is no scope of remission of this award or not enforcing what the arbitrator has awarded. Under the Act, if an application is filed for decree in terms of the award, the court in upholding the award ought to grant a decree in terms of the award and not subtract any portion thereof. Since the award directed costs of appellant's reference to be paid as is mutually agreed upon or as taxed, the Division Bench ought to have passed an order costs as taxed.

13. We, therefore, direct that the award be enforced and the costs as mentioned hereinbefore should also be payable by the respondent. The judgment and order of High Court are modified to that extent. In the facts and the circumstances of the case, we do not make any order as to costs of this appeal.

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