B. V. Radha Krishna

Vs

Sponge Iron India Ltd

Civil Appeals Nos. 1745-46 of 1997

(CJI A. M. Ahmadi, K. Venkataswami JJ)

04.03.1997

JUDGMENT

K. VENKATASWAMI, J.

1. Leave granted.

2. Heard learned counsel for the parties. The short question that arises for our consideration is whether the High Court was justified in interfering with the award by reducing the amount for the work done as well as allowing the interest only from the date of notice demanding the amount.

3. The appellant contractor undertook the work of transportation of waste and finished products within the plant of the respondent Company commencing from 16-4-1982 to 31-3-1983. The agreement in respect of that contract was executed by both the parties on 8-6-1982. As certain disputes arose between the parties in respect of transportation work the appellant issued notices to the respondent calling upon them to settle the bills and claims raised by him. As the respondent failed to settle the bills, the appellant moved the City Civil Court, Hyderabad under Section 20 of the Arbitration Act (hereinafter referred to as "the Act") for appointment of a sole Arbitrator to adjudicate upon the dispute between the parties. Mr. Justice K. Punnayya (retired Judge of the High Court of Andhra Pradesh) was appointed as sole Arbitrator by order dated 31-10-1985. The learned Arbitrator by the award dated 1-8-1986, after giving opportunity to both the parties, determined the amount of Rs. 5,29,864.55 as payable by the respondent Company to the appellant. In addition to that the Arbitrator also awarded interest at the rate of 18 per cent per annum on the said amount from 1-4-1983 till the date of award being made the rule of court.

4. The appellant moved the City Civil Court, Hyderabad by filing OS No. 1027 of 1986 for making the award of the Arbitrator as rule of the court and also prayed for the grant of interest at the rate of 21 per cent per annum from the date of decree till the date of realisation of the amount. The respondent Company, on the other hand, filed OP No. 349 of 1986 challenging the award. The learned Judge, City Civil Court by a common judgment dated 30-8-1988 decreed the suit filed by the appellant for making the award as rule of the court by awarding 20% interest from the date of decree till the date of realisation of the amount and dismissed the OP filed by the respondent challenging the award.

5. Aggrieved by the common judgment and order of the City Civil Court, the respondent Company moved the High Court in CMA No. 1277 of 1988 and CRP No. 3695 of 1988 against OP No. 349 of 1986 and OS No. 1027 of 1986 respectively.

6. The Division Bench of the High Court, by a common judgment dated 29-9-1995, partly allowed the appeal as well as the revision petition by reducing the amount from Rs. 5,29,864.55 to Rs. 1,72,347 and interest at 18% from 14-6-1984 instead of from 1-4-1983. The appellant is aggrieved by the said judgment of the High Court.

7. Mr. K. Madhava Reddy, learned Senior Counsel appearing for the appellant, submitted that the High Court exceeded its jurisdiction in interfering with the well-considered award of the Arbitrator by examining the matter as a regular appellate court. The learned counsel also invited our attention to the discussion made by the Arbitrator as well as by the High Court regarding the relevant clause in the agreement and in particular to the expression "one kilometre lead". We find from the Award that the Arbitrator has taken into account the oral evidence of both the parties and also the documentary evidence placed before him to come to the conclusion that the version of the respondent Company "one kilometre lead" means "one kilometre by one side" is not correct by way of understanding it.

8. This finding of the Arbitrator was upset by the High Court by going into the question as if sitting in appeal to render a contrary view. This, according to the learned counsel, is not the jurisdiction of the High Court as this is not an error apparent on the face of the record. He further argued that it is settled law that the Court while exercising power under Section 30 of the Arbitration Act cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. In support of this contention he placed reliance on Hindustan Construction Co. Ltd. v. Governor of Orissa [(1995) 3 SCC 8].

9. The learned counsel for the respondent however strenuously argued supporting the judgment of the High Court. According to him the High Court has placed a correct interpretation on the clause in the agreement in question by referring to various dictionary and other technical meanings to be given to the word "lead" occurring in the clause. He also submitted that the High Court has explained the oral evidence of RW 5 and therefore, the view taken by the High Court should be accepted in preference to the view taken by the Arbitrator.

10. We are afraid we cannot accept the contention of the learned counsel appearing for the respondent Company. We are of the view that the learned counsel for the appellant is right in contending that the High Court exceeded its jurisdiction under Section 30 of the Arbitration Act by dealing with the issue as an appellate court. Regarding the issue in question, the Arbitrator has observed as follows :

> "The next point that requires consideration is whether RW 1's contention that one kilometre lead mentioned in Ex. R-1 means one kilometre by one side but not to and fro as contended by the claimant, is acceptable ?
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> RW 1 asserts in his evidence that in all transport contracts it would be mentioned only as lead which would mean 'by one side'. ... In fact, RW 1's version that 'one kilometre lead' means 'one kilometre by one side' is contradicted by their own witness RW 5, to whom a part of PW 1's present contract was given under the work order Ex. R-8 dated 14-3-1983. RW 5 deposed that one kilometre lead includes to and fro. He further clarified that though the word 'lead' does not mention the word 'to and fro', it is meant or understood as to and fro. RW 5's evidence that the lead of 1 kilometre means one kilometre to and fro falsifies RW 1's version in this regard. PW

1's evidence on this aspect is that in the case of internal transport, the word 'lead' only is mentioned and it would mean to and fro. If the lead is only one side, the tender notice would specifically mention as 'one side'. In support of his contention he relied upon Ex. C-2 the Tender Notice issued by the Singareni Collieries Co. Ltd., Bellampally, dated 5-11-1985 published in the Indian Express, Hyderabad edition dated 19-11-1985. Under Ex. C-2 Sealed Tenders are invited from reputed transport contractors for transport of coal in self-dumping lorries at the following place :

#'One way distance Approx. quantityin kms. (approx.) in tonnes by/monthSRP 2A to 9000'RAP-I CSP##

It is therefore, clear that Ex. C-2 which relates to transport contract specifically mentions as 'one way distance', Ex. C-2 clarifies that as the lead is for one side, it is mentioned specifically as 'one way distance'.

RW 1 was confronted with Ex. C-2 in the cross-examination and he admitted that Ex. C-2 relates to the transport contract.

RW 1, of course, says that Ex. C-2 relates to that Company (Singareni Collieries). It is true that Ex. C-2 relates to Singareni Collieries, but it is also a government company. All the government companies have to follow the same rules pertaining to the transport contracts. Even RW 1 stated in his evidence that in all the transport contracts it would be mentioned as lead only and would not be mentioned as one way lead. But Ex. C-2 proves that the view expressed by RW 1 is not correct.

Since RW 5 who is the witness of the respondent Company and who transported and dumped 22,000 MTs of material from out of PW 1's contract, unequivocally stated that one kilometre lead mentioned in tender notice is meant and understood as one kilometre lead to and fro and since Ex. C-2 also specifically mentions as one side lead, PW 1's version is accepted and RW 1's version cannot be accepted.

From my above discussion, I hold that the claimant transported 10,195.80 MTs of material within one kilometre lead to and fro, as contended by the claimant but not the entire material of 47,463.29 MTs as contended by the respondent Company."

As against the above discussion and conclusion of the Arbitrator, the High Court on the same issue observed as follows :

"... [T]he learned Arbitrator did not discuss the meaning of the term 'lead' used in ordinary or engineering parlance. He relied on two factors, namely, the tender notice of another Company (Ex. C-2) and the socalled admission of RW 5 which we shall refer to later.

What is important is to find out whether the word 'lead' means the distance covered from the point of origin to the point of destination only, or the return empty trip from the destination to the point of origin should also be taken into consideration. If a distance of, say, 4 kms. was to be covered by way of 'lead', whether it would mean that a distance of only 2 kms. from the point of origin to the point of destination would be taken into account or whether the return trip of 2 kms. also would be included within the meaning of the word 'lead'. We have no doubt in our mind that,

> that is not the meaning which could be attributed to the word 'lead'. 'Lead' means and for all practical purposes it is only the one way distance to be covered from the point of origin to the point of destination unless otherwise specified.
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> The Concise Oxford Dictionary, 1990 Ed., spells out different meanings of the word 'lead' used in different contexts. As far as the present context is concerned, the meanings of the word 'lead' is stated to be as follows in the said dictionary :
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> 'Bring to a certain position or destination.'
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> In Oxford Universal Dictionary (Illustrated), the meaning of the word 'lead', under the sub-head 'Engineering' is given as follows :
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> 'The distance to which ballet, coal, soil etc. is to be conveyed to its destination.'
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> This meaning attributed to the word 'lead' in the Oxford Dictionary makes it abundantly clear that only one way distance from the point of origin to the point of destination is to be taken into account."

The High Court further observed :

> "We are also of the view that it admits of one and only meaning and the Arbitrator, on a consideration of irrelevant factor, namely, tender notice of Singareni Collieries and going by a non-existent admission of RW 5, understood the word 'lead' in a sense contrary to its plain meaning, without any factual or legal basis and, therefore, there is an error of law apparent on the face of the award. The construction of a material portion of document is a question of law, but not merely one of fact. There is no basis at all for the Arbitrator's conclusion and the legal error is therefore apparent."

11. The disposal of the matter by the High Court in the manner shown above does not come within the ambit of Section 30 of the Arbitration Act. This Court, time and again, has pointed out the scope and ambit of Section 30 of the Act. In State of Rajasthan v. Puri Construction Co. Ltd. [(1994) 6 SCC 485] after referring to decisions of this Court as well as English cases, the Court observed as follows : (SCC p. 492, para 12)

> "On the scope and ambit of the power of interference by the court with an award made by an arbitrator in a valid reference to arbitration, various decisions have been made from time to time by Law Courts of India including this Court and also by the Privy Council and the English Courts. Both the parties have referred to such decisions in support of their respective contentions. The factual contentions of the respective parties are proposed to be scrutinised and then the facts are proposed to be tested within the conspectus of judicial decisions governing the issues involved."

This Court again observed in paras 26-28 as follows : (SCC pp. 500-501)

> "The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v. Govt. of

Kerala [(1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.

In Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497], it has been held by this Court that appraisement of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. It may be possible that on the same evidence the court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award. It has also been held in the said decision that it is difficult to give an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not covered by authority the verdict of a jury or the decision of a Judge sitting as a jury usually determines what is 'reasonable' in each particular case. The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An arbitrator acting as a Judge has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable.

In this case, claims before the arbitrators arise from the contract between the parties. It is well settled that if a question of law is referred to arbitrator and the arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this Court in Alopi Parshad and Sons Ltd. v. Union of India [(1960) 2 SCR 793 : AIR 1960 SC 588] and Kapoor Nilokheri Coop. Dairy Farm Society [Kapoor Nilokheri Coop. Dairy Farm Society Ltd. v. Union of India, (1973) 1 SCC 708]. In Indian Oil Corpn. Ltd. v. Indian Carbon Ltd. [(1988) 3 SCC 36], this Court has held that the court does not sit in appeal over the award and review the reasons. The court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous."

12. In Hindustan Construction Co. Ltd. v. Governor of Orissa [(1995) 3 SCC 8] this Court observed on the scope of interference by the Court as follows : (SCC p. 17, para 10)

> "... It is well known that the court while considering the question whether the award should be set aside, does not examine that question as an appellate court. While exercising the said power, the court cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act."

13. Bearing in mind the principles laid down by this Court in the abovesaid cases, if we look into disposal of the matter by the High Court, it would be evident that the High Court has substituted its own view in place of the Arbitrator's view as if it was dealing with an appeal. That is exactly what is forbidden by the decisions of this Court. Therefore, we have no hesitation to set aside the judgment of the High Court on this issue.

14. The learned counsel for the appellant also submitted that the High Court went wrong in awarding interest only from 14-6-1984 on the ground that the notice demanding the amount was issued on that date only and, therefore, the appellant was not entitled to any interest prior to that date. According to the learned counsel, Section 3(1)(b) of the Interest Act, 1978 in unequivocal terms specifies that interest would be available from the date mentioned in the demand notice and without noticing that provision the High Court has wrongly given interest from the date of the notice.

15. On the question of interest we think the learned counsel for the appellant is right in placing reliance on Section 3(1)(b) of the Interest Act. The appellant Company had issued notice on 14-6-1984 demanding payment of the specified amount and interest on that specified amount at the rate of 21% per annum from 1-4-1983 till payment. Section 3(1)(b) of the Interest Act, 1978 reads as follows :

> "3. Power of court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -
>
> #(a) * * *##
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> (b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings."

16. In view of this, the learned counsel appearing for the respondent Company could not support the order of the High Court in awarding interest from the date of notice, namely, 14-6-1984 and not from the date mentioned in the notice viz. 1-4-1983.

17. In the result, we set aside the judgment of the High Court and restore the award of the Arbitrator. There will be no order as to costs.