

M/s. Kundale & Associates

Versus

M/s. Konkan Hotels (P) Ltd.

Civil Appeal No. 484 of 1984.

(Sujata V. Manohar, R.C. Lahoti JJ)

05.04.1999

JUDGMENT

Mrs. Sujata V. Manohar, J.

1. The appellants, M/s. Kundale & Associates, are building contractors. They entered into an agreement dated 29th of April, 1975 with the respondents for the work of construction of a hotel building for the respondents at Roha. In respect of the construction work, there were disputes and differences between the parties which were referred to the sole arbitration of H.N. Dallas by an agreement of reference dated 20.9.1976. The arbitrator made his award dated 20.7.1977 under which he has directed the respondents to pay the appellants a sum of Rs. 54,320/- with interest at 9% from the date of the award till the date of the decree. It is a non-speaking award. The award was filed in the court of the Civil Judge, Senior Division, Alibagh. The respondents filed their objections to the award which were dismissed by the Civil Judge. The respondents filed their appeal before the High Court. The High Court has allowed the appeal and set aside the award on the ground of legal misconduct by the arbitrator. The present appeal is from the judgment and order of the High Court.

2. The High Court appears to have emphasised the fact that no reasons are given in the award. However, under the law then in force, it was open to the arbitrator to give an award without giving reasons since the parties had not stipulated that the arbitrator should give a reasoned award. The High Court also commented on the fact that summary proceedings were not envisaged under the Arbitration Act. The trial court has, however, noted that both sides led evidence before the arbitrator and tendered documents which were considered by the arbitrator before giving his award. The trial court has noted that on behalf of the respondents oral evidence of their architect Shri Bhagat and their Director Shri N.G. Bhave was adduced along with documentary evidence. On behalf of the appellants, no oral evidence was led but documentary evidence consisting of letters and other documents was produced. The respondents did not, at any time, protest before the arbitrator against the documents being taken on record without a formal proof as envisaged under the Evidence Act. Documents on both sides have been taken on record by the arbitrator. The arbitrator had also before him joint measurement taken by the architect of the respondents in respect of the work done by the appellants. The arbitrator himself visited the site and inspected the construction of the building. On the basis of this evidence before him the arbitrator gave the award in question. This does not show any legal misconduct on the part of the arbitrator.

3. In his award the arbitrator has stated that after carefully considering all the claims and counter claims made by both the parties and after carefully considering the oral and documentary evidence produced by both the parties and the pleadings of both the parties and arguments advanced by the parties, he was making the award. The High Court said that the arbitrator had not applied his mind

because the appellants had not led oral evidence. We fail to see how this conclusion can be deduced in the way it has been done by the High Court. Oral evidence was led before the arbitrator by the respondents. The arbitrator had made a general statement that he has considered oral as well as documentary evidence led by both the parties. From this it would not be proper to deduce that oral evidence was led by both the parties and documentary evidence was led by both parties. All that can be said is that whatever evidence whether oral or documentary was led before the arbitrator has been considered by him.

4. Before the arbitrator the appellants had made a total claim of Rs. 98,023/-. This consisted of the claims in connection with the construction work and extra work as also giving credit for the amounts already received. In the course of the hearings before the arbitrator the appellants filed a revised statement of claim in which they reduced their total claim to Rs. 66,499/-. The High Court commented on the fact that there was considerable variance between the original claim and the revised claim. There is an increase in certain claims and a reduction in certain other claims. The High Court has also commented that a copy of this revised statement was not formally served on the respondents and their advocates in the same manner as the earlier statement of claims. The trial court in its judgment has observed that the revised statement of claim was filed before the arbitrator, a copy of it was handed over to the respondents and the respondents and their advocates in the course of their arguments dealt with the revised claims. There is, therefore, no prejudice to the respondents on account of revised claims for reduced amount being filed by the appellants. The High Court has also commented on the fact that the award itself does not show that the revised claim was considered by the arbitrator. The award being a non-speaking award, there is no question of the arbitrator dealing in the award itself with various claims or revised claims made by the parties before him.

5. We fail to see how the High Court could have come to the conclusion that there is any legal misconduct on the part of the arbitrator in giving the award. The court cannot go into the merits or otherwise of the claims which were before the arbitrator. The decision of the arbitrator is binding on both the parties.

6. In the premises, we set aside the impugned judgment of the High Court and restore the judgment and order of the trial court. There will, therefore, be a decree in terms of the award. The appeal is allowed accordingly. The respondents shall also pay to the appellants further interest at the rate of nine per cent per annum from the date of the decree till payment and costs.