

(SUPREME COURT OF INDIA)

I.T.C. Limited

Vs

George Joseph Fernandes and Another

HON'BLE JUSTICE SHIVARAJ V. PATIL AND HON'BLE JUSTICE B. N. SRIKRISHNA

19/11/2004

I.A. No. 2 IN Civil Appeal No. 1795 of 1982

JUDGMENT

ORDER

1. By this application the applicant has prayed that the Registry of this Court be directed to transfer the arbitral award dated 25.6.1996 made by the learned Arbitrator late Justice A.C. Gupta, filed in this Court to the Principal Senior Civil Judge at Vishakhapatnam, Andhra Pradesh.

2. The circumstances under which the application has been made are as under:

The applicant and the respondent entered into an agreement with regard to the hiring of applicant's trawlers Ave Maria I and Ave Maria II. The agreement contains an arbitration clause. Certain disputes arose between the parties pertaining to the subject matter of the agreement. The appellant (ITC Limited) terminated the agreement by notice and followed it up with a suit CS No. 636 of 1978 on the original side of the Calcutta High Court seeking a declaration that the agreements dated 21.3.1977 and 2.2.1978 were illegal and for a decree for the sum of Rs. 39.64 lakhs.

3. On 24.4.1979 the applicant filed a petition under section 34 of the Arbitration Act, 1940 praying for stay of the aforesaid suit in view of the Arbitration clause contained in the agreement. The High

Court allowed the petition and ordered stay of the suit. An appeal carried before the Division Bench of the Calcutta High Court failed. The applicant carried the matter to this Court by Civil Appeal No. 1795 of 1982. The said appeal was disposed of by a judgment dated 6.2.1989 (Reported in). By this judgment this Court upheld the view of the courts below that the reliefs claimed in the suit other than the question of ab initio illegality of the contract would be arbitrable, since the parties agreed to have disputed arbitrated. This Court disposed of the appeal by the following observation:

"Mr. C.S. Vaidyanathan for the respondents states that the respondent shall have no objection to a retired Judge of the Supreme Court being appointed as arbitrator and the respondents shall not raise the question of limitation as indicated by Mr. Shanti Bhushan learned counsel for the appellant. We have no doubt that the arbitrator so appointed shall proceed in accordance with law to decide the questions including that of jurisdiction, if raised. " *

In the result, we find no merit in this appeal and hence it is dismissed leaving the parties to bear their own costs. " *

4. The parties thereafter agreed upon the name of late Justice A.C. Gupta, a retired Judge of this Court, as Arbitrator. The Arbitrator commenced proceedings and made his Award on 25.2.96. On 27.2.96 the learned Arbitrator gave notice of making the Award to the advocate for the applicant forwarding a copy of the Award. He also informed the applicant's advocate that the original Award and other papers had been filed in this Court.

5. On 22.3.1996 the appellant forwarded to the applicant a sum of Rs. 6, 67,385/- towards the amount payable under the Award, one month's interest thereon at the rate of 18%, and the costs of reference. This amount was received by the applicant who acknowledged it by a letter dated 6.4.1996. By this letter, the applicants declared his intention to challenge the Award insofar as it negatives his claim in excess of Rs. 667385/- and stated he had received the demand draft sent by the appellant "without prejudice to our right to challenge the Award before the competent Court of law".

6. On 22.4.96 the applicant filed an application under section 14(2) of the Arbitration Act, 1940 before the Court of Principal Senior Civil Judge at Vishakhapatnam. In this application he prayed for a direction to the learned Arbitrator to take back the Award from this Court and to file it in the Court at Vishakhapatnam. He also filed an application for condoning the delay of 25 days in filing the said application.

7. On 27.1.1998 the applicant filed IA No. 1 of 1998 in Civil Appeal No. 1795 of 1982 in this Court. The substantive prayer made in this I.A. was as under:

"...a) direct the Registry of this Hon'ble Court to transfer the Arbitral Award dated 25.2.1996 passed by Justice Sri A.C. Gupta, learned Arbitrator filed in this Hon'ble Court to the file of the Hon'ble Court of the Subordinate Judge at Vizag;" *

8. On 23.4.1998 an office report was made by the Registry of this Court informing advocates of both the parties that the Arbitrator had sent the Award to this Court.

9. On 12.5.1998 the appellant filed its counter-affidavit in I.A.1/98 opposing it, inter alia, on the ground that a similar application was already pending before the Vishakhapatnam Court.

10. On 13.5.1998 this application was heard and dismissed as withdrawn.

11. On 2.7.02 the Principal Senior Judge Vishakhapatnam disposed of the application for condonation of delay by condoning the delay upon payment of cost. The main application under section 14(2) of the Arbitration Act, 1940 before the Principal Civil Judge, is still pending.

12. On 7.2.03 the appellant filed a Civil Review Petition No. 3214/02 before the High Court of Andhra Pradesh which was admitted and further proceedings in the Arbitration Application were stayed.

13. Sometime during the year 2003 the learned Arbitrator died.

14. On 28.1.2004 the present I.A. No. 2/2004 was taken out for directions as indicated hereinabove.

15. The application has been vehemently opposed by the appellant and we have heard learned counsel on both sides.

16. Although the learned counsel for the appellant raised a number of objections, it appears to us that most of the objections pertain to the validity of the Award, which is really not in issue before us. As and when such objections are raised before the appropriate court, the appropriate court will deal with them. In the present application we are only concerned with physical transmission of the Arbitral Award to the Court in Vishakhapatnam. This request has been made to this Court on account of the peculiar facts and circumstances of the case. The arbitration was suggested and directed by the Order dated 6.2.1989 of this Court made in its judgment in ITC Limited (supra). The Award was accordingly made by the learned Arbitrator. The Arbitrator perhaps thought that the arbitration having been directed by this Court it was appropriate that the Award should be filed in this Court. The appellant has already paid the amount payable under the Award to the applicant. It is the applicant who wants to challenge the Award insofar as the Award is restricted to the amount as indicated. He had filed an application under section 14(2) of the Arbitration Act, 1940 before the court at Vishakhapatnam to issue a direction to the Arbitrator to take back the Award from the Registry of this Court and to file it before the Court at Vishakhapatnam. Pending this application, the learned Arbitrator passed away.

17. It is obvious that the Court at Vishakhapatnam would not be in a position to give any direction

to this Court, nor to the Arbitrator. Hence, the attempt on the part of the applicant to see that the Award is physically transmitted to the court at Vishakhapatnam.

18. The learned counsel for the appellant however contends that the appellant is entitled to object to the petition being entertained at this stage by any Court as it is hopelessly barred by time. He contends that, upon receiving notice from this Court about the filing of the Award, no objection was filed within 30 days as provided in Article 119 B read with section 14(2) of the Arbitration Act, 1940 and thus the applicant has lost his opportunity to object to and challenge the said Award. It is further urged that if this Court transmits the Award to the Vishakhapatnam Court, the applicant is likely to take the stand that the objections can be filed within a period of 30 days from the date on which the Vishakhapatnam Court receives the Award. According to the appellant this should not be permitted.

19. In our view, it is not necessary for us to decide even this contention. It would be appropriate if the Award is transmitted to the Court in Vishakhapatnam and the parties are left at liberty to raise all contentions, including the aforesaid contention before the said court.
#

20. In the result, the application is disposed of by the following order:

1. The Registry is directed to transmit the Award filed by late Justice A.C. Gupta, in the matter of Arbitration between ITC Ltd. vs. George Joseph Fernandes & Anr. Under cover of its letter dated 27.2.1996 to the Court of Principal Senior Civil Judge at Vishakhapatnam for being dealt with in accordance with law.

2. Both the parties are at liberty to raise all their contentions before the said Court. The transmission of the Award to the said court shall be without prejudice to the contentions of the appellant that the application/objections for setting aside the Award is barred by limitation as it was not filed before this Court within 30 days as provided in Article 119B of the Limitation Act, 1963 read with section 14(2) of the Arbitration Act, 1940. It shall also be without prejudice to the contentions of the applicant to the contrary.

21. The application is accordingly disposed of without any order as to costs.