SUPREME COURT OF INDIA

Hari Om Maheshwari

Vs.

Vinitkumar Parikh

C.A.No.7978 of 2004

(S. B. Sinha and N. Santosh Hegde JJ.)

09.12.2004

JUDGMENT

Santosh Hegde, J.

1. Heard learned counsel for the parties.

2. Leave granted.

3. These appeals are preferred against the common judgment and order passed by the Appellate Bench of the High Court of Judicature at Bombay whereby the said Bench dismissed the appeals filed by the appellants herein against the judgment and order of the learned Single Judge of the said High Court allowing the applications filed by the respondent herein by setting aside the awards made by the Arbitrators.

4. Two disputes pertaining to the claim of the appellants against the respondent herein were referred to arbitration and the same were numbered as Arbitration Reference No. 313/95 in the case of Deepa Jain and Arbitration Reference No. 316/95 in the case of Hari Om Maheshwari the appellants herein. Though both the arbitration proceedings were taken up for consideration together. In Reference Case No. 313/95 i.e. case of Deepa Jain the evidence of both the parties concluded on 29th of January, 1999 while the evidence of the appellant in Reference Case No. 316/95 pertaining to Hari Om Maheshwari was concluded on 8th of April, 1999 and the matter was listed for evidence of the respondent in that case to 10/11th of May, 1999. On that day i.e. on 10th of May, 1999 the respondent herein remained absent.

5. The Arbitrators on that day closed the evidence and posted the matter for making awards. Before the said awards were made on 20th May, 1999 the respondent herein sent an application to the Arbitrators seeking further opportunity to lead evidence in the Reference Case No. 313/95 of Deepa Jain in which the evidence of both the parties had closed. No application was made in Reference Case No. 316/95 which is the arbitration case of Hari Om Maheshwari. From the record it is seen that the said application was not entertained by the Arbitrators and they delivered the award sometime in November, 1999.

6. It is against the two awards the respondent herein preferred two applications to set aside the said awards under Section 30 of the *Arbitration Act, 1940* (hereinafter referred to as 'the Act') before the learned Single Judge of the Bombay High Court. It was his contention that he could not attend the arbitration proceedings on 10th May, 1999 because on the previous date of the proceedings he had wrongly noted down the next date of hearing. Hence, the Arbitrators ought to have given him an opportunity of presenting his evidence before making an award.

7. The learned Single Judge who heard the two applications together accepted the case of the respondent herein and set aside the awards in question and remitted the same to the Arbitrators for fresh disposal after giving an opportunity to the respondent to lead his evidence. They also directed that one more arbitration proceedings between one Jayesh Sanghani and the respondent herein which was earlier remanded to the Arbitrators should be decided along with these arbitration proceedings.

8. An appeal filed against the said common order of the learned Single Judge before an Appellate Bench of the Bombay High Court came to be dismissed and it is against this common order of High Court of Bombay that the appellant is before us.

9. Shri Jaideep Gupta, learned Sr. counsel appearing for appellant herein contended that the grounds on which the High Court has set aside the award are not the grounds contemplated under Section 30 of the Act. He submitted that arbitration proceedings having started in the year 1995 could not be completed even in the year 1999, therefore, the High Court ought not to have interfered with the award. He pointed out that in Reference Case No. 316/95 pertaining to Deepa Jain the evidence had already concluded and the explanation given by the respondent for not leading evidence on 10th of May, 1999 was frivolous and the Arbitrators rightly did not entertain a prayer for granting a further opportunity for leading evidence. Such a denial of a further opportunity by the Arbitrators would not be a ground contemplated under Section 30 of the Act to set aside the award. Hence, the courts below have gone beyond the scope of Section 30 of the Act while allowing petitions to set aside the arbitration awards.

10. Shri U.U. Lalit, learned Sr. Counsel appearing for the respondent contended that three arbitration proceedings against the respondent herein were being held simultaneously by the same Arbitrators which involved similar issues. In the first arbitration case of Jayesh Sanghani court had already set aside the awards and remitted the matter to the Arbitrators and since the Arbitrators did not grant a reasonable opportunity to the respondent to lead his evidence in these cases, the High Court was justified in giving a further opportunity to the respondent. Hence, this is not a fit case for interference under Article 136 of the Constitution of India.

11. From the above narrated facts the question that falls for our consideration is whether the learned Single Judge or the Division Bench of the High Court were justified in setting aside the award of the arbitrators solely on the ground that the respondent herein who failed to

appear before the arbitrators on a day fixed for his evidence ought to have been granted another opportunity to produce his evidence. The relevant part of the proceeding note of the arbitrators dated 8.4.1999 reads thus:

> "Meeting adjourned to 10th & 11th of May, 1999 at 4.00 p.m. No notice to the parties."
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> On 10th of May, 1999 when the arbitrators met, the respondent was not present. So the following order was made by the arbitrators:
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> "Neither the respondent nor his Advocate is present. Matter was kept at 4.00 p.m. for hearing. We have waited for the respondent to come up to 4.40 p.m. Neither of them is present. Matter was for Examination in Chief to be conducted by the respondent's Advocate. It seems that they do not wish to lead any evidence in the matter. The case is closed. We shall make the award."

12. From the above it is clear that though on 8.4.1999 the respondent and his advocate were present and in their presence the matter was adjourned to 10.5.1999. They were not present on the said date consequent to which the arbitrators decided to close the proceeding and adjourned the matter for pronouncement of the award.

13. This is an order made in Reference No. 316/1995 in the case of Hari Om Maheshwari, one of the appellants herein obviously because in Arbitration Reference No. 313/1995 in the case of Deepa Jain the evidence of both the sides had already concluded which was well within the knowledge of the respondent. Inspite of the same for reasons of his own, the respondent sent a representation to the arbitrators in Reference No. 313/1995 on 20.5.1999 seeking another opportunity to lead his evidence which was not acceded to by the arbitrators who made the award in November, 1999.

14. It is the above award that was challenged under section 30 of the Arbitration Act, 1940 before the learned Single Judge by respondent which came to be allowed by the learned Single Judge. While doing so learned Single Judge observed:

> "the cross-examination of M/s D. Jain and Co. was over in 1997, the cross-examination of witness examined in Shri Maheshwari's reference was completed on 8th April 1999 and the Arbitrators adjourned the matter to 10th and 11th May 1999 for the petitioner to lead his evidence.
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> However, it appears that the petitioner noted a wrong date and therefore, he did not appear on 10th May 1999. It is clear from the record that there is an application submitted by the petitioner before the Arbitrators on 20th May 1999 regarding the mistake committed by him in recording the date of hearing and requested the Arbitrators to give an opportunity to lead the evidence. One can understand if the Arbitrators have after closing the matter for award have delivered the award immediately but since the Arbitrators had not deliver their award by 20th May 1999,

they also did not deliver their award immediately thereafter, but waited till November 1999 to make their award, the Arbitrators could have easily permitted the petitioner to lead evidence. I do not think that the Arbitrators were justified in denying the petitioner an opportunity to lead evidence."

15. This finding of the learned Single Judge has been accepted by the Division Bench without any further discussion.

16. In the above circumstances, the question for our consideration is ; was the High Court justified in interfering with the discretionary jurisdiction of the arbitrators while entertaining a petition under section 30 to set aside an award. Section 30 of the Arbitration Act 1940 reads thus:

"30. Grounds for setting aside award. An award shall not be set aside except on one or more of the following grounds, namely:

(a) That an arbitrator or umpire has misconduct himself or the proceedings'

(b) That an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Sec. 35;

(c) That an award has been improperly procured or is otherwise invalid."

17. A bare reading of the said section shows that the civil court has very limited jurisdiction to interfere with an award made by the arbitrators and it certainly does not permit the civil court including the High Court to interfere with the discretionary order of granting or refusing an adjournment.

18. This Court in Arosan Enterprises Ltd. v. Union of India [4] considering section 30 of the Act held thus :

"Section 30 of the Arbitration Act, 1940 providing for setting aside an award of an arbitrator is rather restrictive in its operation and the statute is also categorical on that score. The use of the expression "shall" in the main body of the section makes it mandatory to the effect that the award of an arbitration shall not be set aside excepting for the grounds as mentioned therein to wit: (i) arbitrator or umpire has misconducted himself; (ii) award has been made after the suppression of the arbitration or the proceedings becoming invalid; and (iii) award has been improperly procured or otherwise invalid.

These three specific provisions under Section 30 thus can only be taken recourse to in the matter of setting aside of an award. The legislature obviously had in its mind that the arbitrator being the Judge chosen by the parties, the decision of the arbitrator as such ought to be final between the parties. Reappraisal of evidence by the court is not

permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act.

In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law.

In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined."

A similar view has also been taken in State of U.P. vs. Allied Constructions and Continental Construction Ltd. vs. State of U.P.

19. From the above it is seen that the jurisdiction of court entertaining a petition or application for setting aside an award under Section 30 of the Act is extremely limited to the grounds mentioned therein and we do not think that grant or refusal of an adjournment by an arbitrator comes within the parameters of section 30 of the Act. At any rate the arbitrator's refusal of an adjournment sought in 1999 in an arbitration proceeding pending since 1995 cannot at all be said to be perverse keeping in mind the object of the Act as an alternate dispute resolution system aimed at speedy resolution of disputes.

20. We think both the learned Single Judge and Division Bench have erred in setting aside the award only with a view to give an opportunity to the defaulting respondent to lead evidence which was rejected by the arbitrators by their reasoned order of 10.5.1999.

21. For the reasons stated above we allow these appeals, set aside the orders of the learned Single Judge as confirmed by the Division Bench and restore the award of the arbitrators. Appeals allowed.