

SUPREME COURT OF INDIA

New Gramin Milk Coop.Society Ltd.

Vs.

Delhi Milk Scheme

C.A.No.8268 of 2010

(R.V.Raveendran J.)

24.09.2010

ORDER

1. Leave granted. Heard.

2. The appellant, M/s. New Gramin Milk Cooperative Society Ltd. was a contractor with the Delhi Government in regard to its Delhi Milk Scheme. Certain disputes having arisen between the parties, the appellant sought arbitration in regard to the following claims:

“(i) Damages for losses sustained by the appellant Rs.9,54,000/- (ii) Release of Security Deposit Rs.1,90,431/56 (iii) Liquidated damages Rs. 9,000/- (iv) Interest at 18% per annum The disputes were referred to arbitration by order dated 25.9.1995. The sole Arbitrator made a non-speaking award dated 6.5.1996. The arbitrator rejected claims (i), (iii) and (iv). He allowed only claim (ii) for the refund of security deposit withheld, namely, Rs.1,90,431.56p. No interest was awarded.”

3. Being under the impression that the award could be directly executed, the appellant filed an execution petition on 5.7.1996. By order dated 31.10.1998, the Executing Court rejected the execution petition on the ground that the matter was governed by Arbitration Act, 1940 and under the provisions of the said Act, the award, unless made into a rule of the Court, could not be executed. Thereafter, on 12.1.1999, the appellant filed an application under Section 14 and 17 of the Arbitration Act, 1940 for making a decree in terms of the award. He also filed an application under Section 5 of the Limitation Act, 1963 supported by an affidavit giving reasons for the delay. If the time spent by the appellant in prosecuting the execution proceedings between 5.7.1996 and 31.10.1998 is excluded, the delay was hardly about a month. Learned District Judge, by his judgment dated 8.12.2000 dismissed the application filed by the appellant on the ground that the delay of one month and twelve days was not satisfactorily explained. Even though, there was no application under Section 30 read with Section 33 of the Arbitration Act, 1940, learned District Judge also went into the merits of the award in a casual manner and held that the arbitrator had erred in making the award. The appeal filed by the appellant was dismissed by the High Court by the impugned

judgment dated 25.3.2008. The High Court was of the view that the reason given for condonation of delay was not satisfactory.

4. As noticed above, the main part of the delay was on account of the pendency of the execution proceedings. Under the Arbitration and Conciliation Act, 1996 (and the ordinance proceeding) it is not necessary to make the award a rule of the Court before execution. It is clear that the appellant was under the bonafide wrong impression that it could execute the award directly being under the impression that the matter was governed by the new law. Therefore, the period spent in pursuing the execution proceedings has to be excluded. On such exclusion, the delay is hardly one month and twelve days.

“The appellant has satisfactorily explained the said delay with reference to the illness of his counsel. We find that the delay has been satisfactorily explained and deserved to be condoned. The learned District Judge and the High Court were not justified in dismissing the application on the ground of delay.”

5. In this case, no application was filed by the respondent under Section 30 read with Section 33 of the Act for setting aside the award. In the absence of such an application, the Court ought to have made the Award a rule of the court unless it was patently illegal [*See Madan Lal & Natural Gas Corporation*¹,] The fact that security deposit was given by the appellant is not in dispute and the award of the arbitrator was a non-speaking award. In the circumstances, there was no ground for interference with the award.

6. Therefore, we allow this appeal, set aside the judgments of the High Court and of the District Judge and make the award dated 6.5.1996, a rule of the Court. The award amount will carry interest at 6% per annum from the date of the award to date of payment. The respondent shall also pay costs of Rs.10,000/- to the appellant.

¹1984 Supp. SCC 263