RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Heera Singh

Civil Misc. Appeal No. 423 of 1998
(J.C. Verma, J.)

25.08.2000

JUDGEMENT

J.C. Verma, J.

1. The State has come up in this civil misc. appeal against the order dated 2-4-1998 passed by the District and Sessions Judge, Karauli whereby the award given by the Arbitrator has been made a rule of law. The challenge is made on the ground that the Court where the Arbitration award had been filed under the Act had not issued any notice to the State and, therefore, the mandatory provisions to allow the present appellant to file the objections have been violated.

2. The facts as stated are that the Arbitrator had passed an award on 17-8-1995 in favor of Heera Singh Contractor, the respondent for the claim of Rs. 11,68,837/- for the work actually executed and loss occurred to the respondent because of certain alleged unauthorized and illegal action of the State. The Arbitrator had also awarded interest @ 18% from 1-7-1988 to 31-8- 1995.

3. It is alleged that the objections were filed on the ground that same matter was also pending in the Civil Court and, therefore, no arbitrations could be held. The other objections *inter alia* were that there was a difference in the claim and the suit filed by the respondent and that the Arbitrator could not have enlarged the term of arbitration.

4. The respondent had taken an objection in the court that the objections filed by the State, now the appellant, were beyond the period of 30 days and, therefore, could not be entertained in view of Section 14 (2) of the Arbitration Act. The objection was not entertained on the ground that they have been filed after the expiry of the period of

limitation.

5. It is the contention of the appellant that the Limitation Act could start only from the date of knowledge i.e. from the date of the receipt of the notice from the Court where the award was submitted by the Arbitrator and in the present case for the reason that no notice whatsoever was served on the appellant and without the service of the notice of filing of the award, the limitation had not even started and when the filing of the award had come to the knowledge of the appellant that application was moved as soon as the knowledge was acquired and, therefore, the objection ought to have been heard.

6. The Court in the impugned order had observed that the award was passed on 31-8-1995 and the same was filed in the Court , mention of which is found in the order of the Court dated 3-9-1995 (though from the record the date is as 8-9-1995) on which date the advocate of the respondents, now the appellant, was present and he had acquired the knowledge of filing of the award. No objections were raised. It is submitted that the respondent had filed an application on 18-10-1995 for passing a decree based on the award, copy of which application had been given to the Advocate of the appellant. But still no objections were filed. Objections were filed only on 16-11-1996 wherein under the provisions of the law, the objections ought to have been filed within a period of 30 days from the date of service of notice. The appellant had submitted before the court below that the award was still in the sealed cover and the contents of the award had not been made known to the parties and, therefore, there was hardly any occasion for the appellant to file the objections.

7. The trial Court had held that the case was being adjourned on number of occasions. It was further observed that the appellant had even failed to move an application under section 5 of the Limitation Act. The contention of the State before the trial Court was that no counsel was present on his behalf on 8-9- 1995 and no notice whatsoever had been issued and as soon as the knowledge had been acquired, the application was moved.

8. From the proceedings of the Court as on 31-7-1995, it had been ordered that the time for filing the award is extended and the report be submitted by 8-9-1995 to which date the case was adjourned.

9. On the 8-9-1995, counsel for the applicant was present, but the counsel for the

respondent was not present, however, the clerk of the department was present in the Court. It was noticed that the report of the arbitrator had been filed in the Court. The case was adjourned for seeing the report and also for further proceedings to 18-9-1995.

10. On 18-9-1995 both the counsel were present but the Presiding Officer of the court was on leave. The case was adjourned to 29-9-1995.

11. On 29-9-1995, both the counsel were present and the counsel for the appellant had sought time to go through the report. The case was adjourned for further proceedings to 12-10-1995.

12. On the 12-10-1995 even though advocates of both the parties were present, but the counsel for the appellant had submitted that he had not been able to see the report. The case was adjourned to 18-10-1995.

13. On 18-10-1995 both the counsel were present. An application was moved on behalf of the applicant, copy of which was given to the counsel for the respondents. The case was adjourned to 16-11-1995 for filing reply.

14. On 16-11-1995, time was again sought to file the reply and so was the position on 5-12-1995 and again on 12-12-1995.

15. On 25-1-1996, counsel were present and time was sought to address arguments on the case. However, up to 22-3-1996 the arguments on the case could not be addressed because of the shortage of time with the Court and from 23-4-1996 to 23-10-1996 time was being sought for addressing the arguments on the case, even on certain dates the official of the department was also present along with the counsel for the State and it was on 16-11-1996 when the objections were filed.

16. Counsel for the respondents relies on AIR 1988 Supreme Court 2054, AIR 1962 Supreme Court 666, AIR 1993 Supreme Court 2629 and AIR 1994 Supreme Court 501 on the proposition that the notice which the Court is to issue under Section 14 (2) of the Arbitration Act of the filing of the award need not be a notice in writing. The notice can be given even orally. The communication of the information to the pleader of the party, that an award has been filed, is sufficient compliance with the

requirement of sub-section (2) of Section 14 of the Arbitration Act with respect of giving of the notice to the parties concerned about the filing of the award. Notice to the pleader is notice to the party.

17. In the case of *Indian Rayon Corpn. Ltd. v. Raunaq and Company Pvt. Ltd.,* [1] the award was filed in the High Court on 4-2-1977 and the party to the award had filed an affidavit on 4-2-1978 stating that the award had been wrongly filed in the High Court and it should be taken off the file. On 30-7-1981 notice under section 14 (2) of the Arbitration Act was served on the party. The party applied for certified copy of the award on 18-8-1981 and filed the objections to set aside the award on 8-9-1981. Even though notice was served on 30-7-1981 but the Hon'ble Supreme Court had held that by filing an affidavit on 4-2-1978 in the High Court to the effect that the award had been wrongly filed in the Court, the Supreme Court had held that the party is deemed to have the knowledge that the award had been filed and, therefore, the subsequent notice issued by the Court had no relevancy.

18. In the case of *Neelkantha Sidramappa Nigashetti v. Kashinath Somanna Nigashetti* [2] the Supreme Court had held that the notice to the counsel is sufficient notice. It was observed as under :- (Paras 10 and 12)

> "We see no ground to construe the expression 'date of service of notice' in col. 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. When the legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice.'
> 'We therefore agree with the High Court that the intimation to the pleaders of the parties on February 21, 1948, amounted to service of the notice on the parties about the filing of the award and that the objection filed on behalf of the appellant was filed after the expiry of the period of limitation"

19. In the case of Neelkantha (supra) even though no formal notice was given by the Court, it was held that the defendant No. 1 had knowledge of filing of the award when it was stated in the Court in the application dated 17-2-1948 that he intended to file an objection to the award.

20. In the case of *Food corporation of India v. E. Kuttappan* wherein the award was sent by the Arbitrator to the parties counsel in response to the specific request by the party to give it for filing in the Court, it was held that the starting point of limitation had started when the award was taken by the counsel for filing in the Court and the fact that the Court subsequently issued notice to the parties of the award would be inconsequential.

21. In the case of *State of Bihar v. Rameshwar Prasad,* [4] it was held that when the award was known to the parties through their counsel, the period of limitation would begin to run against the party questioning the award. Even so, in computing the period of limitation of 30 days the day the parties were informed of the nature of the award, would have to be excluded in the view of Section 12 (1) of the Limitation Act.

22. Applying the above dictim of law and going through the proceedings of the Court of the relevant dates, as enumerated above, it is very clear that on the date when the award was passed, an official of the department was present in the Court and it is presumed that he had been deputed to watch the proceedings in the Court. It was his duty to inform the appellant that the award has been filed in the Court. Even subsequent to the date of 8-9-1995 the counsel i.e. APP of the State was present and was asking time first to inspect the award and then for arguments on the case and right up to 16-11-1996 the objections were not filed.

23. From the narration of the facts and law, it cannot be held that the respondent had no knowledge of the award and, therefore, in view of the law as laid down and discussed above and the facts of the case, I don't find any infirmity in the order impugned and the misc. appeal is devoid of merits and is, therefore, dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1988 SC 2054
2. AIR 1962 SC 666
3. AIR 1993 SC 2629
4. AIR 1994 SC 501