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IN THE HIGH COURT OF DELHI

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FAO No.631/2001

Central Pollution Control Board Appellant
through: None.

VERSUS

M/s.Modern Decorators & Anr. Respondents
through : Mr.S.K.Sharma for respondent No.1.

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DATE OF DECISION:
26.03.2008

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. By way of the instant appeal exception is taken to an order dated 19.9.2001 dismissing objections to an award passed by the learned arbitrator being the award dated 20.5.1997. The impugned order is a short and cryptic order. I reproduce the same in its entirety:-

“Pr. Counsels for the parties.

Heard the arguments addressed on behalf of counsels for the parties and perused the material on record.

Earlier the award passed by the Ld.Arbitrator was set aside by the order of my Ld.Predecessor vide order dt.18/10/96 and award was *illegible* 18/10/96 U/s.16 of the Arbitration Act 1940 for giving reasons for the award within 4 months. Arbitrator sought extension in time for giving award after giving reasons for the award within four months.

Counsel for the objector respondent has raised the objections that the reason given by the arbitrator are not sufficient reasons. However, counsel for the claimant has filed 2000 VII AD (Delhi) 545 judgment of Hon'ble High Court of Delhi wherein it was held that,

“Where award was remanded back with respect to fresh consideration on escalation and interest awarded, arbitrator complied with the order of escalation and interest scaled down. Fresh objections filed. These objections are barred by the principle of res judicata.”

Counsel for the objector argues that as the award was set aside he has right to file fresh objection. However, counsel for the claimant submits that in view of judgment cited above as the decisions on the objection become res judicata no fresh objection can be filed as the arbitrator has given the reasons for passing his award, and he was directed to give the reasons for the award only while remitting the award to him. He has duly complied with the directions of the court and no fresh objections can be filed to the award, in view of the judgment of Hon'ble High Court of Delhi reported in 2000 VII AD (Delhi) 545. Accordingly objections of the objector are dismissed as not being made out and award of the arbitrator dt. 20/5/97 is made rule of the court specially when court cannot go into the merits of the award.

Decree sheet be prepared. File be consigned to record room.”

2. Suffice would it be to record that the learned arbitrator had published an award dated 13.10.1994 which was challenged on various grounds. One of them being that the arbitration agreement between the parties required a reasoned award to be pronounced. It was urged that since the award dated 13.10.1999 was sans a reasoning it was contrary to law.

3. Vide order dated 18.10.1996 objections filed to the award dated 13.10.1994 succeeded. Learned Judge held that since reasons were not given in the award it was illegal on said count alone. The matter was remitted to the arbitrator to give reasons.

4. It may be noted that since the award dated 13.10.1994 was without reasons the learned Judge did not deal with the merits of the award pertaining to the challenge to the claims allowed.

5. At the second stage when the reasoned award came it was challenged. The learned Judge has dismissed the challenge vide afore-noted order.

6. The perversity is writ large on the face of the order itself.

7. A claim or an objection would be barred on the principles of res judicata only where a Court of competent jurisdiction has dealt with the same issue on merits.

8. The decision of the learned Single Judge of this Court reported as 2000 (VII) AD 545 Subhash & Co. vs. DDA relied upon by the learned Trial Judge does not hold what has been interpreted by the learned Trial Judge. Perusal of the said decision shows that an earlier award which under challenge resulted in a decision of this Court rejecting challenge to a substantial part of the award. Matter was however remitted to the learned arbitrator to re-decide on claim No.5 and 7.

9. When the learned arbitrator re-decided claims No.5 and 7 a fresh set of objections were filed and while so doing a challenge was raised to certain claims which were allowed under the first award and in respect whereof the first round of challenge resulted in a failure. It was in said context it was held that no fresh challenge could be raised to the claims which were allowed by the learned arbitrator at the first stage and in respect whereof the challenge failed.

10. In the instant case it has to be noted that at the first round of litigation the objections were not decided on merits with respect to the various claims allowed by the learned arbitrator. The award was set aside and the matter was remitted to the arbitrator on account of the award being a non-reasoned award. Thus, when a reasoned award came it was permissible to challenge the findings in the award relatable to

each and every claim.

11. The appeal is allowed. The impugned order dated 19.9.2001 is quashed. The objections are restored for fresh adjudication by the learned Additional District Judge.

12. Since none appears for the appellant the successor court before whom the matter would be revived is directed to issue notice to the parties and thereafter re-decide the objections in accordance with law, guided by the present decision.

13. No costs.

14. TCR be returned forthwith.

26th March, 2008
d.k.bainsla

PRADEEP NANDRAJOG, J.