

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO No. 131 of 2007

Date of Decision : 24-09-2008

VIKESH CHUGH Appellant
Through: Mr. Dinesh Sabharwal, Advocate

versus

B.L.B.LTD. & ANR. Respondent
Through : Navin Bhardwaj, Advocate

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

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

REKHA SHARMA, J.

This appeal arises out of the judgment of Additional District Judge Shri K.S.Mohi dated February 3, 2007 dismissing the objections filed by the appellant against the Award dated April 17, 2006 passed by the Arbitrator Shri Anil K.Chauhan. The facts relevant to the disposal of the appeal are as under : -

The appellant was selected as Junior Executive (Dealing Room) in the respondent company and upon his selection he executed an 'employment agreement' dated December 24, 2002 containing conditions of his employment. In terms of the conditions as contained in the agreement he executed a bond and an undertaking to serve the

respondent for a period of at least 5-1/2 years including the period of probation. The terms of his employment also contained an arbitration clause which provided that in case of disputes and differences between him and the company during the course of employment or thereafter in relation to respective rights and liabilities including the effect and interpretation of terms and conditions of the letter of appointment, service bond or any other document, the same shall be referred to the sole Arbitrator appointed by the Chairman of the company not below the status of Executive Director/ Working Director/ Vice President of the Company or any practicing Advocate of the Delhi High Court.

It so happened that in June 2005 the appellant left the employment of the respondent. According to the appellant he was forced to resign, while as per the respondent he acted in breach of the terms of his employment. In view of the dispute having arisen between the parties, arbitration clause was invoked and Shri Anil K. Chauhan, Advocate, was appointed as the Arbitrator. The respondent filed its Statement of Claim before the Arbitrator and claimed a sum of Rs. 7,41,300/- along with interest @ 24%. The appellant filed written statement and thereby not only refuted the claim of the respondent but also filed counter-claim demanding a sum of Rs. 9,61,400/- from the respondent. The learned Arbitrator vide his award dated April 17, 2006 awarded a sum of Rs.3,04,092/- to the respondent and a sum of Rs.3,000/- to the appellant. Resultantly, the appellant was directed to pay a sum of Rs.3,01,092/- to the respondent along with interest @ 9% per annum from the date of filing the statement of claim till realization.

As noticed above the appellant assailed the award before the Additional District Judge who found no merit in the objections and dismissed the same. Hence, the present appeal.

A perusal of the impugned award shows that the appellant broadly challenged the award on three grounds. Firstly, it was argued that the learned Arbitrator was lacking in jurisdiction to deal with the matter as he was not appointed in terms of the arbitration clause. The clause in question as noticed above authorized the Chairman of the respondent company to appoint an Arbitrator who shall not be below the status of Executive Director/ Working Director/ Vice President of the company or any practicing Advocate of Delhi High Court. It was contended before the learned Additional District Judge that Shri Anil K Chauhan Advocate was not a practicing Advocate of the Delhi High Court as he maintained his office in Chamber No.K-130-A, at Tis Hazari Courts, Delhi. Although, nothing to this effect was explicitly stated in the written statement filed before the Arbitrator and all that was stated therein was that the Arbitration Tribunal had no jurisdiction to adjudicate the claim yet the Additional District Judge considered the objection but found no merit in the same. It has been held by the learned Additional District Judge that as per Section 13(2) of the Arbitration and Conciliation Act 1996, the objection as to the jurisdiction of an Arbitrator has to be filed within 15 days after the party raising objection to the jurisdiction becomes aware of the constitution of the arbitral tribunal. Any objection raised after the expiry of 15 days has been held to be of no consequence. In any case, the learned Additional District Judge has also held that the mere fact

that the Arbitrator was having his chamber at Tis Hazari Courts was no ground to hold against him that he was not a practicing Advocate of Delhi High Court. I find no error or infirmity in the said finding of the learned Additional District Judge. Hence, I too hold that the Arbitrator was fully competent to deal with the disputes raised.

Secondly, the appellant challenged the 'employment agreement' containing the terms and conditions and also the 'arbitration clause' on the ground that it was hit by Section 10,13,14,15, 27& 28 of the Indian Contract Act. This objection did not find favour with the learned Additional District Judge on the ground that while on the one hand the appellant questioned the terms and conditions of the agreement, on the other he raised counter claim basing himself on the same agreement. I fully endorse the view of the Additional District Judge. The appellant was blowing hot and cold at the same time. He could not claim benefit on the basis of terms and conditions of the 'employment agreement' and yet ridicule the agreement.

Lastly, it was contended that the arbitration award was in conflict with public policy. The learned Additional District Judge has observed that the learned counsel for the appellant could not point out that the award passed against him was opposed to or was in conflict with the fundamental policy of Indian Law. It has been further observed that the appellant with all his wisdom entered into a contract of service with the respondent on the condition that he would not work with any competitor of the respondent company during that period. Such a service agreement is not and cannot be said to be opposed to public

policy or hit by any of the provisions of Indian Contract Act. Here, again I am in agreement with the finding of the Additional District Judge.

It is well settled that the jurisdiction of the reviewing court under the Arbitration and Conciliation Act 1996 is not appellate in nature and the award given by the arbitrator cannot be scrutinized by the court in a manner as it does in the exercise of its appellate jurisdiction. The Court will not interfere with the award merely because it is found that the view taken by the arbitrator does not agree with the view of the court in the facts or on law.

For the foregoing reasons the appeal against the impugned judgment is dismissed.

REKHA SHARMA, J.

SEPTEMBER 24, 2008

9