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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 13, 2009
Date of Order: April 15, 2009

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Som Nath Bobal & Ors.
Through : Petitioner in person.

15.04.2009
...Petitioner

Versus

**M/s Forever Precious Jewellery
& Diamonds Ltd.**
Through : Mr. Puneet Mittal and Mr. Dharmendra Arya, Advocates

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. The instant petition/ objections have been filed by the petitioners against an award dated 26th November 2008 passed by the Sole Arbitrator Shri S.M. Chopra adjudicating the disputes between the parties.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent had filed a criminal complaint under Section 420/406/120-B of Indian Penal Code against the petitioners herein and others in view of the fact that the petitioners had received 91 items of jewellery from the respondent worth about Rs.68 lac but had failed to pay around Rs.50 lac. In the abovestated criminal complaint, the petitioners were sought to be arrested and the petitioners applied for anticipatory bail before this Court. During the pendency of the anticipatory bail application, the petitioners and the

respondent reported to the Court that they had entered into an agreement.

The terms of agreement as set out in the order read as under:-

"1. That party No.1 shall not make objection for the quashing of the FIR against the second party, which would also result in dismissal of complaint in court after the claims are settled.

2. That the second party has no objection if Rs.35,00,000/- out of Rs.40,00,000/- deposited with the Hon'ble Registrar of Delhi High Court by the second party release to the first party. Without prejudice of the rights of the parties, Rs.5,00,000/- shall remain with the Registrar of the High Court till further orders of the Court.

3. That both the parties have agreed for appointment of Shri S.M. Chopra, Retired ASJ as an Arbitrator for the balance amount. The first party will place their claim before the Arbitrator whose decision shall be final and binding on both the parties. The fee of the Arbitrator is Rs.50,000/-. The parties shall bear the fee equally."

3. In view of the agreement arrived at between the parties, the matter was referred to the Arbitrator as agreed upon by the parties and the learned Arbitrator gave its award allowing the following claims:

"(a) the respondents shall pay to the claimant Rs.11,10,152/- (Eleven Lac Ten Thousand One Hundred Fifty Two only) towards the price of goods;

(b) the respondents shall pay to the claimant interest @ Rs.18% p.a. on Rs.35,00,000/- (Thirty Five Lac) from 01.08.2007 till February, 2008;

(c) the respondents shall pay to the claimant interest @ 18% p.a. on Rs.11,10,152/- (Eleven Lac Ten Thousand One hundred Fifty two only) from 01.08.2007 till the date

of this award;

(d) the respondents shall pay interest @ 18% p.a. on the sum total of (a), (b) and (c) above, from the date of this award till realization/ payment;

(e) the respondents shall pay to the claimant Rs.55,000/- (Fifty Five Thousand only) towards the cost of the arbitration (inclusive of Rs.5,000/- as administrative expenses).

4. Challenge to the award is made on the ground that the Arbitrator while considering cost of the gold items calculated it wrongly. The cost of jewellery items should have been Rs.67,15,330/- instead of Rs.66,74,658/- and, therefore, the award was against the substantial law and public policy. The other objection is that the Arbitrator held the outstanding dues as on 1st August 2007 to the tune of Rs.46,10,162/- whereas the outstanding dues comes to Rs.45,50,834/-. Thus the award was without jurisdiction. The next objection taken by the petitioner is that the Arbitrator ignored the documents produced by the petitioner and did not rely upon the documents placed by the petitioner before Arbitrator. A number of irregularities are pointed out in the format of list of jewellery submitted by the claimant and relied upon by the Arbitrator. The other ground taken is that the petitioner was rightly demanding invoices of the jewellery sold from the respondent and the Arbitrator wrongly came to conclusion that it was a case of complete sale because 2 kg of gold was handed over by the petitioner to the respondent in lieu of part payment of the price of the jewellery. It is submitted that the invoices of the jewellery were not issued by the respondent to the petitioner and the sale was not complete. An objection has also been raised against the interest @ 18% and the deduction towards the gem stones and labour charges.

5. It is settled law that this Court while considering the objections under Section 34 of the Arbitration & Conciliation Act, 1996 cannot act as a Court of appeal and cannot re-appreciate the evidence. The Arbitrator is the final adjudicator of the questions of facts and the question of law. Unless the decision rendered by the Arbitrator on question of law is contrary to law of the land, the Court cannot set aside the decision of the Arbitrator on the issue of law as well. Where two views are possible, the Court cannot substitute its own view in place of the view expressed by the Arbitrator. There is a limited scope for interference of the Court against an award passed by the Arbitrator under Section 34 of the Act.

6. I have gone through the award and the calculations arrived at by the Arbitrator while considering the price of the gold items, labour rate, price of gems and price of 2 kg of gold given by the petitioner to the respondent for adjustment against the price of 91 gold items. It would be seen that the Arbitrator has relied upon the documents of both the parties. The list which was placed on record by the petitioner herein has been duly considered. There is no dispute about the number of jewellery items or their weight. The Arbitrator has taken into consideration the versions of both sides to arrive at a conclusion as to what was the price of the gold on the date of transaction, what was the settled practice/ agreement about the labour charges and given its award after calculating the price of 91 gold items received by the petitioner from the respondent. The finding of fact given by the Arbitrator regarding price of gold, labour rate, the price of gems etc cannot be interfered by this Court. Similarly conclusion arrived at by the Arbitrator that it was a concluded sale is also in accordance with the provisions of Sale of

Goods Act. In my view, no ground is made out by the petitioner warranting inference by this Court on this count as well.

7. However, I consider that 18% rate of interest as awarded by the Arbitrator seems to be on a little higher side keeping in view the fact that the rate of interest on loans and deposits are much below 18%. In my opinion, interest @ 12% per annum would be a reasonable rate of interest to be awarded in this case. It is ordered accordingly.

8. In the result, the award of the arbitrator is modified to the extent that wherever 18% interest is mentioned in the award, it should be read as 12%. With this modification in the rate of interest awarded, the award is upheld. The petition is hereby disposed of. No orders as to costs.

April 15, 2009
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SHIV NARAYAN DHINGRA J.