

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

+ FAO(OS) No.392/2002

Date of Decision : April 08, 2009

BHANDARI BUILDERS LTD. Appellant
Through Mr. S. S. Jauhar, Adv.

versus

NEW INDIA MOSAIC & MARBLES CO. (P) LTD. Respondents
Through Mr. Trideep Pais, Advocate.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

% J U D G M E N T(Oral)

MUKUL MUDGAL, J.

1. This appeal challenges the judgment of the learned Single Judge dated 24th September, 2002, by which the Arbitration Award dated 29th July 1991 was made Rule of the Court and the objections preferred by the appellant/objector were dismissed except to the extent of partial modification of the Award thereby reducing the costs of the proceedings awarded from Rs.1,00,000/- to Rs.20,000/- and setting aside the award on claim of Rs.50,000/- towards the machinery retained by the appellant.

2. The facts of the case are as follows:

i. A contract was entered into between the parties for construction of house and other public buildings at Al-Najaf for the State of organization for Housing, Republic of Iraq. The respondent M/s New India Masaic & Marble Company claimed that a sum of Rs.8,97,875.71 comprising balance amount in respect of bills was due and payable by the appellant to it in respect of the tiles manufactured by the respondent at Al-Najaf at Iraq and sold and delivered to the appellant. The respondent filed a petition under Section 433 and 434 of the Companies Act contending, inter alia,

that the aforesaid amount of Rs.8,97,875.71 was due and payable to the it by the appellant together with interest and damages.

ii. The aforesaid company petition was registered as C.P.No.133/85. When the said petition was pending before the learned company Judge, it was agreed by the parties that the disputes between the parties could be referred to an arbitrator for adjudication and decision. This is evident from the order dated 24th October, 1986 passed by the learned Company Judge. On 31st October 1986, the company petition was disposed of by recording an order which ordered that the parties agreed that disputes as spelt out in the pleadings filed by them in the company petition could be referred to an arbitrator for his decision and award. In view of the aforesaid agreement, it was directed by the learned company judge that Sh. Rajinder Sachar, retired Chief Justice of this Court, be appointed as the sole arbitrator to decide the dispute between the parties. It was also directed that the claims of the respective parties against each other as mentioned in the pleadings be referred to the arbitrator and that the arbitrator would give his award in accordance with law. It was further observed in the said order that if, however, the award is in favour of the respondent and the amount under the award is not paid to the respondent within one month of the award,

the respondent would have a right to have the petition revived.

iii. However, subsequent thereto, an application was filed which was registered as C.A. 753/87. In the said application, the order dated 31st October 1986 was sought to be modified to the extent that instead of Mr. Justice Rajinder Sachar being the arbitrator, Mr. H. J. Shah, Chairman of M/s Shah Construction Co. Ltd., who had given his consent to the parties, be appointed as the sole arbitrator. In view of the aforesaid position and agreement between the parties, the order dated 31st October 1986 was modified to the aforesaid extent only observing that the sole arbitrator would be Mr. H. J. Shah, Chairman of M/s Shah Construction Co. Ltd. in place of Mr. Justice Rajinder Sachar. Pursuant to the aforesaid reference, the arbitrator entered into the reference and received the evidence adduced by the parties.

iv. During the pendency of the said proceedings before the Arbitrator, two applications were filed in C.P. No.133/85. The said applications were registered as C.A. 21/90 and C.A.40/90. C.A.21/90 was filed by the appellant praying for removal of the arbitrator and reference of the matters under dispute to the sole arbitration of some other person, whereas the other application, which was registered as C.No.64/90 was filed by the respondent

praying for extension of time for making his award by the arbitrator as the time for making the award expired on 31st October 1989. The company judge considered both the applications. The contention raised by the appellant before the company judge was that in view of the interest as disclosed by the arbitrator in the proceedings dated 22nd August 1989 there is a reasonable apprehension in the mind of the appellant that the arbitrator would not be impartial. The said ground was put forth as the main ground seeking removal of the arbitrator. The company judge considered the contentions of the counsel appearing for the parties and it was held that the apprehension expressed by the appellant was wholly imaginary and there was no substance in the said ground. It was held that the appellant had failed to make out a case for removal of the arbitrator and that the proceedings were at the last stage as the arbitrator had already heard the parties on the claims of the parties and the parties had only to make submissions on the counter claims of the appellant. Thus, the company judge held that the same is a fit case for grant of extension of time for making the award and accordingly time was extended for another four months for making the award. The said order was passed by the Company Judge on 9th October 1990. Thereafter, after hearing the parties, the arbitrator made and

published his award on 29th July 1991. The relevant portion of the said award is extracted below:

“AND NOW, THEREFORE, after duly considering all matters, I, (The Sole Arbitrator do hereby make the award as follows:-

a) That M/s Bhandari Builders Ltd. to pay to M/s New India Mosaic & Marble Co. Pvt. Ltd. a sum of Rs.7.90 lakhs (Rupees Seven Lacs & Ninety Thousand only within a period of 30 (thirty) days from the date hereof.

b) M/s Bhandari Builders Ltd. will pay an additional amount of Rupees One Lacs (Rs.1,00,000/-) towards cost and expenses of New India Mosaic & Marble Co. Pvt. Ltd.

c) That M/s Bhandari Builders Ltd. shall return to M/s New India Mosaic & Marble Co. Pvt. Ltd. all their machinery and equipment as per Annexure marked “a” to this award, failing which, respondents will pay to Claimants in addition, the amount of Rs.50,000/- (Fifty thousand) towards the same.

d) The respondents to pay interest at 12% per annum, from one month after the date of this award, if the amount awarded to the Claimants is not paid within the stated period of one month, till the amount is paid to the claimant.”

3. We have considered the pleas of Shri S. S. Jauhar, the learned counsel for the appellant and Trideep Pais, the learned counsel for the respondent. The main plea before the learned Single Judge was that the award was unreasoned. The learned Single Judge has rejected the aforesaid plea while holding as follows:

“Therefore, the arbitrator was under no obligation to give an item-wise break-up of the heads under which the amount has been awarded. In the case of a lump sum award as it is in the present case, it is not open to try to ascertain the reasoning based on which the amount was awarded. As no reason was required to be assigned and none was assigned in the present, it is not possible to ascertain and probe into the mental process of the arbitrator in giving the lump sum award.

19. Therefore, so far the award passed by the arbitrator in paragraph (a) of the award is concerned, whereby he has directed the respondent No.1 to pay an amount of Rs.7,90,000/- to the petitioner, the same cannot be held to have been passed in excess of jurisdiction, nor the same could be held to be vitiated. The said award was passed as a lump sum, award for the claims and counter claims and the same is held to be legal and

valid and the same is upheld.”

4. Reliance was placed by the learned Single Judge on the decision of the Hon'ble Supreme Court in the cases of *Rajpur Development Authority v. M/s Chokhamal Contractors*, JT 1989 (2) SC 285 and *M.K. Shah Engineers & Contractors v. State of M.P.*, (1999) 2 SCC 594, wherein it was held that there was no requirement for the arbitrator to give a reasoned award unless the contract so specified. A lump sum award as contrasted with the item-wise award was held not to be a bad award.

5. The learned Single Judge held that no reason was required to be assigned and indeed none was assigned in giving the lump sum award. In view of the aforesaid findings the learned Single Judge, in our view, has rightly upheld the award of Rs.7,90,000/- which was held to be within his jurisdiction. The learned Single Judge has reduced the costs of proceedings to Rs.20,000/- which was naturally not objected to by the appellant. The award of payment of Rs.50,000/- towards machinery retained by the appellant has been found by the learned Single Judge to be beyond the pleadings before the Company Judge and that part

of the judgment in favour of the appellant is not challenged. Besides the reasoning given by the learned Single Judge we have also noticed that the Arbitrator was appointed as suggested by the appellant company itself. The claim of bias was rejected by this Court by the Order dated 9th October 1990 in C.A. No.21/90 and C.A.No.61/90. Significantly, this order dated 9th October 1990 had become final and binding.

6. The learned Arbitrator had informed the parties in a timely manner about his interest and given an opportunity to them to object to his continuation as an arbitrator. However, no objection was raised by the appellant. Only later, after considerable lapse of time an objection was raised by the appellant. Moreover, from the impugned judgment it appears that this was not even a ground raised before the learned Single Judge. We cannot lose sight of the fact that the Arbitrator was an expert in the field and taking into account the aforesaid factor in addition we are fully satisfied that no interference is warranted with the judgment of the learned Single Judge on the ground of bias. There is no merit in the appellant's plea that the Single Judge on the Original Side of this court had no

jurisdiction to entertain the award and that the same should have been filed before the Company Judge since the reference was made in a Company Petition. We agree with the finding of the learned Single Judge on this aspect as well. An arbitration agreement may be arrived at between the parties at any stage, including during the pendency of any legal proceedings merely because the parties agree to refer their disputes to arbitration while the Company Petition was being heard and the agreement was recorded before the Company Judge, it does not follow that for all purposes the Company Judge would get vested with the jurisdiction to deal with matters arising out of the award.

7. The learned counsel for the appellant has sought to place reliance on the decision of the Supreme Court in ***Seth Mohanlal Hiralal Vs. State of M.P.*** 2003 (3) Arb. LR 317 (SC) which in turn follows the decision of the Supreme Court in ***K.P. Poulose Vs. State of Kerala*** AIR 1975 SC 1259 and holds that mis-conduct does not necessarily connote a moral lapse on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by

ignoring material documents which throw light on the controversy to hold a just and fair decision. In our view the aforesaid judgment has no application in the facts of this case as no such inconsistent conclusion or a material document ignored was brought to our notice. We are satisfied that there is no merit in the appeal. Accordingly, the appeal is dismissed.

MUKUL MUDGAL
(Judge)

VIPIN SANGHI
(Judge)

April 08, 2009
dr