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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 31, 2009
Date of Order: September 25, 2009

+OMP 377/2008

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Davinder Singh

Through: Mr. Harish Pandey, Advocate

25.09.2009

...Petitioner

Versus

Surjeet Singh

Through: Ms. Ruchita Datta, Advocate

...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. By this petition, the petitioner has assailed the award given by majority of Members of the Tribunal in favour of respondent.
2. The presiding arbitrator Shri Mahinder Pal and Mr. Madan Singh passed separate awards in favour of respondent and Mr. Ranjit Singh Khalsa gave a dissenting award in favour of petitioner. The award passed by Mr. Madan Singh is dated 1st September 2007 and that of the presiding arbitrator is dated 20th February, 2008.
3. The disputes between the parties was in respect of an agreement dated 5th November, 1999 which contained an arbitration clause whereunder the petitioner had agreed to make a payment of Rs.30 lac to respondent on or before December 1999 and if he failed to make payment of this amount

within the stipulated time, he had agreed that in lieu thereof he will transfer the title of four shops on the ground floor and one hall on top floor of the premises bearing number DD Complex, R-63, Ramesh Park, Laxmi Nagar, Delhi in favour of respondent. This agreement was in *Gurumukhi* script duly signed by the parties. The parties had business dealings and the amount of Rs.30 lac had become due and payable to the respondent by the petitioner and it is apparent from the record that the petitioner had agreed to pay this amount within specified time period and executed the agreement dated 5th November 1999. Respondent raised claim in terms of the agreement. The petitioner, however, disputed the validity and genuineness of the agreement dated 5th November 1999 and subsequent agreement dated 27th July, 2000. He took the stand that he had no knowledge of *Gurumukhi* script and the agreement was in *Gurumukhi*. He also raised an issue of limitation and the issue of jurisdiction of the arbitral tribunal. The arbitral tribunal addressed all these four issues and on the basis of evidence and documents, the arbitral tribunal held that the agreement was valid and genuine. The petitioner had knowledge of *Gurumukhi*. The petitioner, during evidence, admitted the other letter in *Gurumukhi* written by him, although he claimed that he had got this letter written but that showed that he was corresponding in *Gurumukhi*. The tribunal also held that the claim was within the period of limitation and the arbitral tribunal had jurisdiction to adjudicate the disputes between the parties. Mr. Madan Singh passed an award for a sum of Rs.15.60 lac in favour of respondent with pendent lite and future interest @ 18% per annum and costs of proceedings to the tune of Rs.4 lac. The presiding arbitrator vide separate award agreed with the award passed by Mr. Madan Singh but stated that since there was no finding qua interest in the award passed by Mr. Madan Singh so he was awarding interest for pendent lite and subsequent

period also. However, it seems that the presiding arbitrator had not seen last paragraph of the award given by Mr. Madan Singh where future interest was also awarded.

4. The award has been challenged by the petitioner on various grounds. The brief summary of the grounds is as under:

- (i) *The conduct of both the arbitrators was tainted.*
- (ii) *The reliance of arbitrators on report of handwriting expert to conclude that the agreement was genuine was fanciful.*
- (iii) *The agreement should have been sent to CFSL Laboratory for opinion .*
- (iv) *The signatures of petitioner on the agreement had not been proved.*
- (v) *The agreement dated 5th November 1999 itself was a void agreement since it amounted to paundering of black money into white money.*
- (vi) *The respondent was not an honest citizen since it had not disclosed its income to the income tax authorities and, therefore, no relief should have been given to such a respondent.*
- (vii) *the respondent had failed to establish and prove the execution of the agreement dated 5th November 1999 which was the very basis of the entire award. Thus, the award must fail.*
- (viii) *The arbitral tribunal failed to appreciate the facts and the evidence led by the petitioner and wrongly relied upon the evidence of handwriting expert Mr. B.N. Srivastava. The arbitral tribunal committed gross violation of principles of natural justice in not appreciating the material and the evidence before them in proper perspective.*
- (ix) *There was no legal evidence before the arbitral tribunal to pass the award.*
- (x) *The agreement was for paying Rs.30 lac by December, 1999 or transfer of four shops on ground floor and a hall on the top floor of property bearing number DD Complex, R-63, Ramesh Park, Laxmi Nagar, Delhi.*
- (xi) *The arbitrator has passed the award for recovery of Rs.50.60 lac with pendent lite and future interest and such an award could not have been passed. The interest as awarded by the arbitrator @ 9% per annum was on the higher side.*

5. The grounds on which an award can be challenged have been specified

in Section 34 of the Arbitration & Conciliation Act, 1996 and have been summarized by Supreme Court in *DDA v R.S. Sharma ST 2008 (9) SC 362* as under:

“12. From the above decisions, the following principles emerge:

- (a) An Award, which is*
 - (i) contrary to substantive provisions of law; or*
 - (ii) the provisions of the Arbitration & Conciliation Act, 1996; or*
 - (iii) against the terms of the respective contract; or*
 - (iv) patently illegal, or*
 - (v) prejudicial to the rights of the parties, is open to interference by the Court under Section 34(2) of the Act.*
- (b) Award could be set aside if it is contrary to:*
 - (a) fundamental policy of Indian Law; or*
 - (b) the interest of India; or*
 - (c) justice or morality;*

6. It is apparent that none of the grounds raised by petitioner fall within the ambit and scope of Section 34. This Court while entertaining objections under Section 34 does not act as a Court of appeal and have no jurisdiction to re-appreciate the evidence and to come to different conclusion. The arbitral tribunal is the sole judge of the quantity and quality of evidence. The arbitral tribunal has authority to ignore the evidence which is not relevant and has also authority to appreciate the evidence.

7. A perusal of award would show that a request was made to CFSL to examine the documents in question but CFSL expressed its inability to entertain the request. It is only under these circumstances that the arbitral

tribunal referred the documents to a professional handwriting expert and finger print expert. No fault can be found with the tribunal for not considering the CFSL report since there was no report of CFSL.

8. Learned counsel for petitioner argued that the petitioner had made an application under Section 17 of the Arbitration & Conciliation Act, 1996 for sending the documents to CFSL and this application was not decided by the tribunal. I consider that this argument is fallacious. In fact, the tribunal had specifically disallowed the request of sending the documents to CFSL as CFSL had refused to entertain such a request when the document was earlier sent. The tribunal observed that implication of this aspect would be considered at the final stage and the Tribunal at final stage had considered that the evidence provided by handwriting expert was good enough to come to the conclusion that the document was a genuine document. This Court cannot substitute the opinion rendered by the tribunal by its own opinion after reconsidering the evidence.

9. The petitioner has failed to show as to how the claim of respondent was barred by limitation or how the tribunal had no jurisdiction. The petitioner's counsel contended that the award was contrary to public policy since the agreement showed that the parties indulged into black money transactions. It seems from the record and from the award that the parties, while doing business, were not maintaining regular accounts and they were having transactions/ dealings with each other on the basis of rough notes which used to be destroyed and new notes used to be prepared. It seems that a violation of the Income Tax Act was being done by both parties. I think the petitioner can approach the Income Tax Authorities for taking appropriate action against

both the parties for violation of provisions of the Income Tax Act but the petitioner now cannot take a plea that since both the parties were involved in transactions without maintaining proper accounts, the award should be held contrary to public policy. However, a notice of this award be sent to Income Tax Authorities for taking appropriate action as per law. It is observed that the amount of award shall be treated as income of respondent and respondent shall be liable to pay income tax as applicable coupled with penalty under the provisions of Income Tax Act to the Income Tax Authorities within 60 days of receipt of the amount from the petitioner.

10. In view of my foregoing discussion, I find that none of objections raised by petitioner is tenable in the eyes of law. The petition filed by the petitioner is hereby dismissed. No orders as to costs.

September 25, 2009
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SHIV NARAYAN DHINGRA J.