

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

+ FAO 217/2008

Date of Decision: 21.10.2010

K.L.ARORA

..... Appellant

Through: Mr.Sandeep Sharma, Adv.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Arvind Kr.Gupta, Adv. with
Mr.Mohit Garg, Adv.

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

MOOL CHAND GARG,J (Oral)

FAO 217/2008 & CM No.9658/2008

1. This order shall dispose of an appeal filed by the appellant under Section 37 of the Arbitration and Conciliation Act 1996 against the order dated 03.10.2006 passed by the Addl. District Judge whereby dismissing the objections filed by the appellant to the award delivered by the sole arbitrator appointed by the Commissioner (Transport) Govt. of NCT of Delhi vide letter No. F 13911/2002/AV/1371 dated 24.01.2005 to adjudicate upon the matter between the Dy. G.M.(ISBT) Transport Deptt. Delhi (claimant) and M/S. K.L. Arora & Associates (non-claimant)/ respondent i.e. the appellant before us in regard to parking site at Vivekanand ISBT, Anand Vihar, Delhi dated 01.06.2005.
2. By the impugned award the sole arbitrator has allowed the claim of the claimant and has held that the non-claimant i.e. the

appellant is liable to pay the following amounts to the respondent i.e.:

- | | | |
|-----|---|----------------|
| (a) | Arrears of Parking fees upto 09.09.2003 | ₹ 16,81,483.15 |
| (b) | Interest on delayed payment | ₹ 1,47,052.00 |
| | Total: | ₹ 18,28,535.00 |

In addition to above, the Non-Claimant is also liable to pay to the Claimant penal interest @ 18% per annum so long as the above-mentioned arrear is not paid.

3. However, by the same award the arbitrator has dismissed the claim for damages as claimed by the claimant.

4. The disputes had arisen between the parties on the basis of a tender award to the appellant which was for a period of 11 months of a Parking Site commencing from the date from which the use of parking site was allowed and that the licensee shall execute the license deed (Agreement) for a period of 11 months in 3 spells i.e. 2 terms of 4 months each and one term of 3 months. The award given by the arbitrator is a reasoned award.

5. The appellant had assailed the award given by the sole arbitrator before the Addl. District Judge by filing objections under Section 34 of the Arbitration and Conciliation Act 1996 on the allegations, on allotment of parking site an agreement dated 11.03.2002 was executed between the parties for a period of 4 months while the agreement for the remaining two spells was not executed. However, the appellant remained in occupation of the parking site from 20.03.2002 to 09.09.2003 which period is more than 11 months for which the original agreement was entered into between the parties. It has been pleaded by the appellant that when the agreement was entered into between the parties there was no parking lot near or adjoining to the allotted parking site. However later on the first respondent opened new parking site near and adjoining to the site allotted to the appellant and declared the same as a free parking which parking was more convenient to the general public being easily approachable from the road, and on account of that business of the appellant was effected and in fact it was almost reduced to 50 % and as such the appellant was not in a position to

meet the running expenses of the allotted site. He therefore started requesting the respondents to take up the matter with the said Transport authority to allot him new parking site. In fact he even requested to the respondents either to take out the parking site or to reduce the license fee to 50% w.e.f. 01.06.2002 but neither the respondent reduced the license fee nor took over the possession of the site. Accordingly the license fee of the entire period was deposited by him. It was also pleaded that no amount was due and payable by the appellant. Despite that the sole arbitrator was appointed with regard to the parking site at ISBT Anand Vihar Delhi. The arbitration proceedings were contacted and vide impugned award the claim of the respondent was allowed towards arrears of parking fee with effect from 09.09.2003 with interest.

6. It has been submitted that the agreement dated 11.03.2002 was followed only for a period of 4 months. As per the next two spells no agreement was entered into. It is thus submitted that arbitration award is invalid irregular and the same is liable to be dismissed. It is also stated that reference to the arbitrator was invalid and he has no jurisdiction to adjudicate upon the controversy and disputes raised and claimed by the respondents and as such the award is illegal and without jurisdiction.

7. It has been submitted that at the time when the agreement was entered into admittedly there was no parking lot and therefore opening of another parking lot which was free was violative of the agreement entered into between the parties. It is also agreed that despite intimation to the respondent regarding loss suffered by the appellant non-reduction of the license fee and not taking possession of the site back by the respondents has caused immense loss to the appellant and therefore he cannot be put to further loss by compelling him to pay the arbitration amount. It is also submitted that in the month of August 2005 he fell sick and in fact underwent heart surgery and was advised complete bed rest. And therefore he could not file the objections within the statutory period of 3 months extendable by one month.

8. In this case admittedly the award was made by the sole

arbitration on 01.06.2005. Despite receipt of notice of the award the appellant has not filed the objections within the statutory period of 3 months extendable by one month from the date of the receipt of award. He has tried to justify the delay in filing the award on account of his illness.

9. The Addl. District Judge has dismissed the objections filed by the appellant primarily on the ground of limitation. The relevant observations are made in para 11 which reads as under:

“11. The award had been passed on 01.06.2006. However, the objections have been filed only on 12.01.2006. Our own Hon’ble High Court has held in **“DTC Buses Vs. M/s Road Advertising” 113 2004 DLT 403** that ‘the objections are to be filed within 90 days or at best within 120 days in view of the Section 34 (3) of the Arbitration Act. The delay cannot be condoned.’ The Hon’ble High Court had relied on the judgment of the Hon’ble Supreme Court as **“Union of India Vs. Popular Construction Company” 2001 (8) SCC 470.**

10. Section 34 sub-clause 3 reads as under:

“34.(3)An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

11. In view of the aforesaid and taking note of the judgment cited by the Ld. Addl. District Judge the objections which were belated cannot be entertained. In such proceedings even Section 5 of the Limitation Act does not come to the rescue of the appellant because the limitation has been prescribed by the statute itself. The judgments relied upon by the appellant as in the case of N. Balakrishnan Vs. M. Krishnamurthy AIR 1998 SC 3222 and Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors. (2002) 3 SCC 195 have no application to arbitration proceedings.

12. Even the judgment delivered by the Hon’ble Supreme Court in

the case of Bihar State Mineral Dev. Corpn. & Anr. Vs. Encon Builders (I) Pvt. Ltd. 2003 (3) Arb. LR 133 (SC) also does not help the appellant because the said judgment also does not deal with the issue of limitation in filing the objections to the award in terms of provisions contained under Section 34 (3) of the Arbitration and Conciliation Act.

13. Additionally, I also find that even this appeal filed by the appellant against the order passed by the Addl. District Judge dated 03.10.2006 has been filed by the appellant in 2008 and the application filed by him does not disclose any sufficient cause for condoning the delay inasmuch as the only ground taken by him is that ever since 2006 he is not well and his condition is becoming worse but not even a single document has been placed on record to substantiate his medical illness inasmuch as the only ground given by the appellant is that he was suffering from heart problem, diabetes and heart pressure which nowadays are common diseases. He has stated that he was operated thrice for the heart problem and also remained admitted in Maharaja Agarsen and Heart Institute & Research Centre but not even a single document to substantiate the aforesaid fact has been placed on record.

14. In view of the above no credence can be given to the cause shown by the appellant in filing this appeal after a period of more than 557 days.

15. In view of the aforesaid the application for condoning the delay in filing the appeal is dismissed. Consequently the appeal filed by the appellant is also dismissed with no orders as to costs.

MOOL CHAND GARG,J

OCTOBER 21, 2010

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