

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.29/2010

Judgment Delivered on: December 14th, 2011

M/S KHUBI RAM RAJIV KUMAR & CO. Appellant
Through: Mr. Hemant K.Chaudhry, Adv.

Versus

\$ SHRI. JAGDISH SHARMA AND ORS. Respondent
Through: Mr. Sumit Aggarwal, Advocate for
respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J.

1. The present appeal has been filed by the Appellant firm under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") assailing the order dated 13.08.2009 passed in Suit no. 850/08 by the Addl. District Judge (Central) Delhi, by which the objections to the award dated 19.02.2007 were dismissed. The order is challenged on various grounds which shall be noticed after noting the relevant facts leading to filing of this appeal.
2. The Appellant firm is a commission agent engaged in the sale and purchase of cloth and it conducts its business as per the rules and regulation of the Delhi Hindustani Mercantile Association, Delhi of which it is a member.
3. The appellant and respondent no.2 had business dealings with each other. The respondent no.2 used to purchase goods on credit basis from time to time from appellant on various terms and conditions of Bijak, which also contains an arbitration clause i.e. clause no.3 as well as a clause for payment of interest. As per the appellant, a sum of Rs.36,697/- were due and payable by respondent no.2 to the appellant as on 28.02.2006 after making adjustment of all part payments made by the respondent no.2. It

is the case of the appellant that number of demand letters were sent to respondent no.2 calling upon him to pay the legitimate dues, however, the respondent no.2 avoided to make the payment. Although part payment was made, the complete amount was not paid by the respondent no.2 . The appellant sent demand notices dated 14.06.2005 and 16.08.2005 to respondent no.2 calling upon him to pay the legitimate dues of the appellant. Since the respondent no.2 failed to pay the amount, the appellant invoked the arbitration clause and referred the matter to the Delhi Hindustani Mercantile Association against respondent nos.2 and 3 on 06.03.2006. The arbitrator entered upon reference. The respondent no.2 did not appear before the arbitrator. The arbitrator rendered the award by which the claims of the appellant were rejected in terms of award dated 19.02.2007.

4. Counsel for the Appellant firm has challenged the impugned judgement dated 13.08.2009 passed by the Additional District Judge on the ground that the arbitrator has gone beyond the scope of reference i.e. the reference before the Ld. Arbitrator was for the period from the year 2001 only, and that considering the accounts from the years 1992 to 2000 was not within the scope of the subject matter of the reference made to the Ld. Arbitrator, and that the Ld. ADJ has failed to consider the material facts and documents relevant for deciding the objections.
5. I have heard counsel for the appellant and counsel for respondent no.2. Perusal of the award would show that the arbitrator has passed a reasoned award. Respondent no.2 in the present proceedings was proceeded ex parte before the arbitrator. The learned arbitrator has considered the submissions of counsel for the petitioner, claimant and passed a reasoned and detailed award by which the claim of the appellant herein has been

rejected. In the concluding portion of the award the arbitrator has held as under:

“I, am not satisfied with the proof and evidence furnished by the plaintiff. There is no principle amount outstanding and due from respondent towards the plaintiff, hence, the respondent is not liable to make payment any kind of interest and expenses to the plaintiff. The plaintiff had enclosed copies of the various dishonoured cheques, which on being carefully study were given in favour of the plaintiff and issued by Shri Ramesh Kumar Aggarwal, whose connection in any manner does not seem to be with the respondent in this case and does not seem to have been issued for this purpose. Possibly, there is some other accounts/ transaction between the plaintiff and the issuer of the cheque, which are being included in this case by the plaintiff, since the name of Ramesh Kumar Aggarwal neither in the name of the respondent is included in any manner and nor for this purpose any confirmation was made by the plaintiff, which I deny. In addition with regard to the respondent no.2, neither any case constitutes nor he has any link with the plaintiff or respondent no.1. Hence, I dismiss this suit of the plaintiff.”

6. The Ld. Arbitrator has dealt with the issues, among them the central issue being, would the claim made by the Appellant firm against the Respondent No. 2 be maintainable. In his detailed, reasoned award with cogent reasons the Ld. Arbitrator dismissed the claim of the appellant firm by an award dated 19.02.2007.
7. Thereafter the Appellant firm filed objections to the award before the Ld. Addl. District Judge (Central) Delhi for setting aside of the award dated. 19.02.2007 under S.34 of the Act on the grounds that the Ld. Arbitrator had gone beyond the terms of the arbitration reference.
8. The Ld. ADJ was of the opinion that the arbitrator had not travelled beyond scope of the reference, and did not find any substance in the objection and dismissed the same vide order dated 13.08.2009.

9. With regard to the arguments raised by the Counsel for the Appellant firm that the Arbitrator had failed to take notice of the material facts and evidence presented before him, and was biased in his opinion because of which he perused evidence which was beyond the terms of the reference made to him; does not hold any merit. It is trite law that with regard to a reference made to an arbitrator, the power to appreciate facts and evidence, and to draw his conclusions is solely vested in him, which would not be open to challenge before a Court. The Supreme Court in *State of Rajasthan v. Puri Construction Company Limited. (1994) 6 SCC 485*, had observed as follows:

"26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In *Sudarsan Trading Co. v. Govt. of Kerala (1989) 2 SCC 38* it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have

selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator.

10. The argument raised by the counsel for the appellant firm that the Ld. ADJ had failed consider the lapses on the part of the Ld. Arbitrator are without any merit. The position of law with regard to the factual determination of a fact or the evidence presented before an Arbitrator is that the view of the Arbitrator would be final. The Supreme Court has further declared that the factual determinations made by an Arbitrator are not to be re-appreciated by Courts and the award must only be set-aside for perversity/ manifest illegality etc. The Supreme Court in the case of *Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd.* (2003)5 SCC 705 had held as follows:

"54. It is true that if the arbitral tribunal has committed mere error of fact or law in reaching its conclusion on the disputed question submitted to it for adjudication then the Court would have no jurisdiction to interfere with the award. But, this would depend upon reference made to the arbitrator : (a) if there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the Court could interfere; (b) It is also settled law that in a case of reasoned award, the Court can set aside the same if it is, on the face of it, erroneous on the provision of law or its application; (c) If a specific question of law is submitted to the arbitrator, erroneous decision in point of law does not make the award bad, so as to permit of its being set aside, unless the Court is satisfied that the arbitrator had proceeded illegally."

11. It is trite law that the scope of interference in an Arbitral Award under Section 34(2) of the Arbitration and Conciliation Act is extremely limited. The interference by a Court in an Arbitral Award is open only in those cases where the Award is contrary to either the substantive provisions of law or the contractual provisions and/or is opposed to public policy [See *Delhi Development Authority v. R.S.Sharma & Co.*: (2008) 13 SCC 80]. Even otherwise, it is settled law that this court is not a court of appeal, neither this court can substitute its view with respect to the view of the arbitrator, provided the finding of the arbitrator is not illegal or perverse or against the provisions of any act. A reading of the Award shows that the Arbitrator has decided the matter fairly and the view taken by the Arbitrator is reasonable and cogent. With regard to the objections raised by Counsel for the Appellant firm against the award dated 19.02.2007, I concur with the view of the Ld. Judge of the trial court, that Arbitration and Conciliation Act, 1996 lays down very limited grounds to set aside an arbitral award under Section 34 of the Act, and in view observations made above; I find this Appeal to be devoid of merits as no question justiciable under Section 37 of the Act has arisen and does not make out any cause for this Court's interference.
12. Accordingly, the appeal is dismissed.

G.S.SISTANI,J

DECEMBER 14, 2011

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