

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Not Reportable)

Reserved on: 7th August, 2012

Decided on: 4th September, 2012

O.M.P. 49 of 2008

K.S. FORGE METAL PVT. LTD. Petitioner

Through: Mr. Sandeep Aggarwal with
Mr. K.A. Singh, Advocates.

versus

SACHIN GUPTA & ANR. Respondents

Through: Mr. A.K. Singh with Mr. S.K. Singh,
Mr. Garud M.V. and Mr. Pramod K.
Tiwary, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

04.09.2012

1. K.S. Forge Metal Private Limited has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging an Award dated 31st July 2004 passed by the sole Arbitrator in the disputes between the Petitioner and the Respondents, Mr. Sachin Gupta and Mr. Mahipal Singh.

2. The case of the two Respondents, who were Claimants before the learned Arbitrator, was that Respondent No. 1 had invested Rs. 12 lakhs and Respondent No. 2 invested Rs. 4 lakhs in the Petitioner company for construction of a building on Plot No. 31, Rajasthani Udyog Nagar, G.T. Road, Delhi. According to them, it was agreed that after the building was completed, a furnace plant would be installed and the profits therefrom would be shared with the Respondents. Respondents 1 and 2 claimed to have dealt with the Petitioner company through its Attorney, Mr. Amit Aggarwal.

3. The case of Respondents 1 and 2 was that when the project could not be completed, they decided to recover the said sums from the Petitioner company and an amicable settlement was arrived at by which the Petitioner company through its Director, Mr. Ramesh Sharma and Attorney, Mr. Amit Aggarwal, agreed to repay Rs. 15 lakhs to Respondent No. 1 and Rs. 5 lakhs to Respondent No. 2 in full and final settlement. The Respondents claimed that a promissory note and receipt for the sum of Rs. 20 lakhs was executed on 14th August 2001 by the Petitioner company acting through its Director, Mr. Ramesh Sharma, and Attorney, Mr. Amit Aggarwal. They further claimed that an agreement was also executed on the same day whereby in the event of the Petitioner company failing to pay the amount due with interest within 10 days of the written demand by the Respondents, then the amount due with interest would be adjusted and taken as part consideration for sale of the aforementioned Plot No. 31, Rajasthani Udyog Nagar measuring 2610 sq. yds, the total sale consideration of which was agreed at Rs. 38 lakhs. The agreement was that on the payment of the balance consideration, the Respondents would be entitled to the ownership of the plot and the Petitioner company would execute and get registered the title documents in their favour or in favour of their nominees. The Respondents claim that photocopies of the Power of Attorney, resolution, minutes, title documents of the plot were handed over to the Respondents towards acknowledgment of liability and the terms of the agreement.

4. Before the learned Arbitrator it was stated that the Petitioner company had appointed one Mr. K.K. Aggarwal as its Attorney. The case of the Respondents was that despite repeated efforts by them thereafter, the Directors of the Petitioner company did not settle the disputes and failed to accept the balance consideration and transfer the plot in favour of the

Respondents. The Respondents stated that they were ready and willing to pay the balance consideration and perform all their obligations under the agreement dated 14th August 2001. It was stated that a notice was served on 17th May 2004 on the Petitioner company through its Director, Mr. Amit Aggarwal, giving 10 days time to pay the dues with interest. Thereafter, after invoking the arbitration clause in the agreement, the Respondents filed the statement of claim against the Petitioner company before the Arbitrator appointed by them. The claim was for re-payment of a sum of Rs. 35,70,208 (Rs. 20,00,000 as principal and Rs. 15,70,208 as interest) which was due till 14th May 2004, 24 % interest per annum on the aforementioned sum from 14th May 2004 onwards and for a decree of specific performance of the agreement dated 14th August 2001 for transfer of the property in favour of the Respondents for the sale consideration of Rs. 38 lakhs.

5. In the impugned Award in para 1, it was noted by the learned Arbitrator that notice for the hearing on 18th June 2004 was unserved as Directors of the Petitioner company were not available. Notice for 28th June 2004 was stated to have been duly served on the Petitioner company “through its Director, Sh. Amit Aggarwal”. A final notice for 6th July 2004 was stated to have been sent under certificate of posting. It was stated that the Petitioner “chose not to appear.”

6. On the above basis, an *ex parte* Award was passed by the learned Arbitrator on 31st July 2004. It was held that the Respondents had “successfully proved their claim by statement on oath, proof of promissory note Ex. CW-1/1, Receipt Ex. CW-1/2, agreement Ex. CW-1/3, Copies of attorney resolution and title documents Ex. CW-1/4 to 1/7, Copy of letter dated 17.05.2004 Ex. CW-1/8, Reply/writing dated

22.05.2004 Ex. CW-1/9”. It was further held that there was nothing on record which would lead the learned Arbitrator to disbelieve the Respondents. Consequently, the Respondents were held entitled to Rs. 20 lakhs as the principal amount, Rs. 15,70,208 as interest, Rs. 11,000 as expenses prior to reference, Rs. 1,26,000 as arbitration fees and administrative expenses and Rs. 35,000 as lawyers’ fees. Accordingly, in all, Respondents were held entitled to Rs. 37,41,208 with future interest at 24 % per annum which was required to be adjusted towards the sale consideration of the plot in question. The Respondents were to pay the balance fee, if any, at the time of execution and registration of title documents in favour of their nominees with the cost of execution and registration being borne by them. The Petitioner company was directed to execute and get registered, after completing all legal formalities, the title documents in favour of the Respondents or their nominees within one month and inform the Respondents in writing fixing the time and date for execution by giving the Respondents 10 days’ advance notice. The Respondents were, upon receipt of the said information, to tender the balance consideration to the Petitioner company by pay order within five days. Thereafter, vacant and peaceful possession of the plot was directed to be handed over by the Petitioner company to the Respondents. According to the Respondents, a signed copy of the Award was sent to the Petitioner company at the address of its Attorney, Mr. K.K. Aggarwal.

7. The Respondents filed an Execution Petition No. 61 of 2005 in this Court on 5th April 2005 under Section 36 of the Act seeking enforcement of the impugned Award. On 25th April 2005, the Court directed that attachment warrants in respect of the property at No. 31, Rajasthani Udyog Nagar, Delhi-110033 be issued. On 9th August 2005, the Petitioner company appeared in the said proceedings stating that it had filed an

application challenging the Award.

8. It appears that, in the meanwhile, Mr. K.K. Aggarwal had filed a Suit No. 350 of 2005 in the Court of Civil Judge in Tis Hazari Courts challenging the impugned Award. E.A. No. 104 of 2006 was filed seeking the transfer of the said suit to this Court. In an application being E.A. No. 348 of 2006, this Court passed an order on 18th July 2006, appointing a Local Commissioner to visit the property in question and to submit a report with regard to the status of construction on the property. Status quo was asked to be maintained with regard to the construction of the property in question.

9. E.A. No. 388 of 2007 was filed by the Petitioner company, in which notice was directed to be issued on 1st August 2007. Thereafter, on 1st October 2007, the said application was allowed by directing the Arbitrator to provide the copy of the Award and other documents to the Petitioner company. Meanwhile, Suit No. 350 of 2005 filed by the Petitioner company was dismissed on 4th January 2008. Consequently, E.A. No. 104 of 2006 filed by the Respondent No.1 was also dismissed. On 11th January 2008, OMP No. 49 of 2008 was filed by the Petitioner company to challenge the Award.

10. On 27th March 2008, OMP No. 343 of 2005 filed by Mr. K.K. Aggarwal was dismissed by the Court by the following order:-

“The original arbitral records have been received. The matter was passed over on the first call as none was present on behalf of the petitioner. Even on the second call, none is present on behalf of the petitioner. On the last date of hearing i.e. 4.1.2008, it was recorded that the arguments on the maintainability of the present petition shall be heard.

Counsels for the respondents state that they have raised objections

to the maintainability of the present petition for the reason that the petitioner was neither a party to the arbitration agreement nor was he party to the arbitral proceedings and hence he is not competent to file the present petition under Section 34 of the Arbitration and Conciliation act. They further state that the aforesaid position was indicated in the order dated 7.9.2006, reproduced in the order sheet dated 11.10.2006. Be that as it may. In view of the fact that none is present on behalf of the petitioner, the present petition is dismissed for non-prosecution.

Counsel for the respondent no. 6 submits that the arbitration proceedings tagged with the present file are relevant for deciding the OMP No. 49/2008, which is listed on 2.5.2008. Accordingly, the arbitration proceedings may be detached from the present petition and be tagged with the OMP No. 49/2008.”

11. It may be mentioned that EA No. 80 of 2006 was also filed by Mr. K.K. Aggarwal praying for the setting aside of the impugned Award. On 19th August 2008, the Petitioner company raised an objection as to the maintainability of the execution petition in view of the challenge to the impugned Award.

12. On 26th May 2009, this Court noted that a request had been received by the Registry from DCP, North-East for furnishing certain documents available in the Court file for the purposes of investigation in FIR No. 115/08 under Sections 420/468/471/406/34 IPC. The Court directed that the Registry should supply the documents to the concerned police official with an undertaking that the documents would be returned to the Court within 60 days. The said documents have since been returned to the Court.

13. This Court has heard the submissions of Mr. Sandeep Aggarwal, learned counsel appearing for the Petitioner company and Mr. A.K. Singh, learned counsel appearing for the Respondents.

14. A perusal of the arbitral record shows that a copy of the impugned Award was sent only to the address of Mr. K.K. Aggarwal. The AD Card shows the signature of one “Amrit Agarwal” without any stamp of the Petitioner company. It does appear that a signed copy of the Award was not received by the Petitioner company. Therefore the present petition has been filed within time. The submissions to the contrary by the Respondents are hereby rejected.

15. A perusal of the arbitral record also leads to the conclusion that notices of the arbitral proceedings were not served on the Petitioner company. Strangely the arbitral record does not have a postal acknowledgment signed by an authorised representative of the Petitioner company showing that the notices of the arbitral proceedings was properly served on it. The proof of dispatch by UPC does not inspire confidence. This is made even more suspicious on account of the delivery certificate endorsed by Respondent No. 2 Mr. Mahipal Singh on 15th June 2004 on the reverse of the notice purportedly sent by the learned Arbitrator. The said notice bears the signature of “A. Kumar” which according to the Respondents is how Mr. Amit Aggarwal used to sign. Mr. Mahipal Singh claimed that on reaching the premises on 15th June 2004 at about 11 am, he found one Chowkidar named Udai Singh who did not allow him to go inside stating that there was no one in the company. From there, he was supposed to have gone with Respondent No.1 to the house of Mr. Amit Aggarwal. The endorsement of 22nd June 2004 states that at 4.30 in the evening, he went to the residence of Mr. Amit Aggarwal, who took the notice in his hand and signed on the notice by saying that if some time was given, everything would be alright. He was supposed to have asked Mr. Mahipal Singh not to say anything to Mr. K.K. Aggarwal about the proceedings.

16. The above endorsements made on the reverse of the notices sent by the learned Arbitrator do not appear to be genuine proof of service of notice on the Petitioner company. Significantly there is no stamp of the Petitioner company on any of the notices. The learned Arbitrator could not have possibly accepted the said endorsements as proper proof of service of notice on the Petitioner company. The fact that there was no effort to properly serve the Petitioner company the notices of the arbitral proceedings, is sufficient to hold that the impugned *ex parte* Award is patently illegal and opposed to the public policy of India.

17. Even on merits the documents on which the claim of the Respondents was based also do not appear to be valid. On the reverse of the original of the agreement dated 14th August 2001 is the promissory note. The two revenue stamps of Re.1 each have obviously been affixed on the top of the signatures of “A. Kumar” which is supposed to be Mr. Amit Aggarwal. Incidentally, Mr. Amit Aggarwal filed an application, being E.A. No. 201 of 2009 along with a supporting affidavit dated 13th April 2009, in this Court denying that he had signed any such document. His signatures on the said application and on the affidavit in support thereof are, even to bare eye, completely different from the signatures on the promissory note and agreement.

18. The agreement purportedly bears the signatures of Mr. A. Kumar and Mr. Ramesh Sharma. They were said to be authorized to act on behalf of the Petitioner company by virtue of a resolution of the Petitioner company passed on 21st December 2000. The said resolution authorizing Mr. Amit Aggarwal as general Attorney of the Petitioner company was supposed to have been signed by Mr. K.K.Arora and Mr. Ramesh Sharma. The circumstances in which the said resolution came to be passed are

suspicious. The Petitioner's assertion that neither of those persons were authorized to act on its behalf has not been satisfactorily rebutted by the Petitioners. It has been pointed out that the resolution itself was a forged document procured behind the back of the other Directors of the company.

19. With the aforementioned documents on a bare perusal giving rise to serious doubts as to their genuineness, no Arbitrator serious about his task could have simply proceeded to pass an *ex parte* Award on the basis of such documents. The agreement is neither stamped nor registered. It purports to bring about the transfer of immovable property for valuable consideration in the event of certain contingencies. With the Arbitrator not taking the trouble of even enquiring into the genuineness of the said document, the impugned Award cannot be held to have been validly passed.

20. It was urged by Mr. A.K. Singh learned counsel for the Respondents that Mr. Amit Aggarwal is the son of Mr. Subhash Aggarwal, who is the real brother of Mr. Vinod Kumar Bansal. He pointed out that the Petitioner is now sought to be presented by the same Mr. Vinod Kumar Bansal and his son Gaurav Bansal. It is submitted that the Petitioner company had two Directors i.e. Mr. K.K. Arora and Mr. Ramesh Sharma. Later, when Mr. Amit Aggarwal was inducted, Mr. K.K. Arora resigned. Thereafter, Mr. Amit Aggarwal and Mr. Ramesh Sharma remained Directors. The case of the Respondents is that Mr. Vinod Kumar Bansal and his son Mr. Gaurav Bansal and the other family members i.e. Mr. Amit Aggarwal along with Mr. Ramesh Sharma acted in collusion and conspiracy. They cheated the Respondents by neither returning the money nor transferring the property in question in their favour.

21. The case of the Petitioner is that Mr. K.K. Aggarwal had never been the Director of the company at any time and that Mr. Amit Aggarwal had also not been inducted as the Director. It is categorically stated that neither Mr. Ramesh Sharma nor Mr. Amit Aggarwal had any power or authority to act on behalf of the Petitioner company and, in particular, agree to transfer the valuable property of the Petitioner company to any person.

22. Indeed, the so called Power of Attorney of Mr. K.K. Aggarwal is not the Power of Attorney executed by the Petitioner company. It is a General Power of Attorney executed at the time of transfer of title. While the genuineness of the document is in grave doubt, in any event it cannot be relied upon to explain how Mr. K.K. Aggarwal could be an attorney of the Petitioner company without any resolution of the company's board of directors. Interestingly, the case set up by Mr. K.K. Aggarwal is that Mr. Amit Aggarwal had sold the property to him acting on behalf of the Petitioner company and, in turn, Mr. K.K. Aggarwal was appointed as Attorney of the company. With Mr. Amit Aggarwal's right to represent the Petitioner company itself being in serious doubt, the above transaction of sale was of doubtful validity.

23. In the arbitral record is a so called letter dated 22nd May 2004 purportedly signed by Mr. Amit Aggarwal (signed as A. Kumar) on a non-judicial stamp paper of Rs. 100. The said document reads as under

“With respect to your letter dated 17.5.2004 and as desired by you, for and on behalf of K.S. Forge Metal P. Ltd. I Amit Aggarwal as director assure that all efforts are being made to settle the disputes.

Since the Company is in financial problems and as already talked to ten days time is required for waiting results. In case within 15 days

no positive response or payment or part payment is made to you, in that case you have the Pronote and Receipt cum agreement, your position is safe. The value of the plot No. 31 is much more than your dues. Furnace installation proposal is also being worked out and will be discussed with you in 10 days.

In case no solution is found the disputes are subject to Arbitration clause and will be solved through arbitration by Sh. S.S. Budhiraja. I am not committing the dues and amount or interest which will be discussed at the time of talks.

Our intentions are clear and honest and there is nothing to be afraid of the amount or dues. Please cooperate and see the results. I am writing this because your call to give writing on stamp. Hope for the best.”

24. On the face of it, the above document does not have legal sanctity. It is a letter written by Amit Aggarwal addressed to no one in particular. No reliance could have been placed on the above document for any purpose whatsoever.

25. It may be noted that a criminal case has since been filed against Mr. Amit Aggarwal. He is stated to have remained in judicial custody in that connection. The criminal case is pending investigation. The case is of forgery and fabrication of documents.

26. It appears to the Court that on the basis of forged and fabricated documents certain transactions entered into on behalf of the Petitioner company have been made to appear genuine. Whether the Respondents themselves were part of the criminal conspiracy is not for this Court to comment upon as it is not within the scope of the present proceedings. It may however be noted that the impugned Award is based on documents of doubtful validity. Grave doubts have been raised as to the authority of

Mr. Amit Aggarwal to act as the Attorney of the Petitioner company and enter into the above transactions. His so called signatures on the documents, viz., the agreement and the promissory note do not tally with his signatures in E.A. No. 201 of 2009 filed along with the supporting affidavit dated 13th April 2009. The documents on the basis of which rights, title, and interest in the property in question are being claimed by the Respondents have no legal sanctity. While it is possible that the Respondents may have been cheated by being made to believe that Mr. Amit Aggarwal and Mr. Ramesh Sharma were bonafide in acting on behalf of the Petitioner company, the Court cannot validate patently invalid transactions on that basis. The remedy for the Respondents would be to seek redress in other appropriate proceedings in accordance with law.

27. For the above reasons, this Court is satisfied that the impugned Award is unsustainable in law. It is patently illegal and opposed to the public policy of India. The impugned Award dated 31st July 2004 is accordingly set aside. The petition is allowed with costs of Rs. 10,000 which will be paid by the Respondents to the Petitioner within four weeks.

S. MURALIDHAR, J

September 4, 2012

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