

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

% Judgment delivered on: 04.12.2014

+ **OMP 65/2011**

CARAVAN ROADWAYS LTD. PETITIONER

Versus

HAFED SPINNING MILLS AND ANR. RESPONDENTS

Advocates who appeared in this case:

For the Petitioner : Mr. Deepak Diwan, Advocate

For the Respondents: Mr. Yashpal Rangi, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J (ORAL)

1. Even though the captioned petition has been registered as an OMP, it seeks to assail the award dated 09.04.2007 passed under Sections 30 and 33 of the Arbitration Act, 1940 (in short the 1940 Act). The learned counsel for the petitioner says that the petition, in substance encapsulates the objections to the aforementioned award and since proceedings had commenced prior to the Arbitration and Conciliation Act, 1996 (in short the 1996 Act) came into force, the objections were preferred under Sections 30 and 33 of the 1940 Act.

2. It may only to be noted that this is a third round of litigation. The petitioner had approached this court earlier as well. The petitions filed prior to the captioned petitions, were numbered as : OMP 90/1997 and OMP 135/1997. The first petition was disposed of on 16.05.1997, while the second petition was disposed of 24.02.2006.

2.1 In so far as the present petition is concerned, which assails the award dated 09.04.2007, there are two submissions made by the counsel for the petitioner. The first submission is that, upon dismissal of OMP 135/1997, vide order dated 24.02.2006 whereby this court had decided that there was an arbitration agreement in existence and therefore, the learned arbitrator had jurisdiction to adjudicate upon the disputes, no notice was given by the learned arbitrator pursuant to the order of this court dated 24.02.2006.

2.2 The second submission is that in so far as respondent no.1 is concerned, which is the contesting party, it is no longer in existence.

3. As regards, the first submission, I find that there is some merit in what Mr. Diwan, the learned counsel for the petitioner, has stated. It appears that after this court's order dated 24.02.2006, the proceedings have been taken out by the learned arbitrator. This application is dated 03.04.2006.

3.1 It appears that there was no movement by the learned arbitrator in respect of the proceedings pending before him. There is nothing on record that any order was passed on the petitioner's application in that behalf.

3.2 Evidently on 31.07.2006, respondent no.1 moved a similar application which was taken up by the learned arbitrator on 31.07.2006. As per the request of respondent no.1, the next date of hearing was fixed as 29.08.2006. On the said date, only the representatives of respondent no.1 were present. At the hearing, it was evidently contended by the representatives of respondent no.1 that a registered notice be sent to the petitioner herein. Notices were, however, handed over to Mr. R.K. Goel, a representative of respondent no.1. The matter was thereafter, taken up by the learned arbitrator, on 27.09.2006. The learned arbitrator notes in the proceedings of that date that there has been no representation on behalf of the petitioner though notice has been served. On the basis of the submissions made by the

counsel for respondent no.1, another opportunity was apparently granted and the hearing was adjourned to 13.10.2006 at 2.30 p.m. There is on record, no order dated 13.10.006. There is, however, on record an order dated 09.11.2006, which is, indicative of the fact that the hearing was postponed to 13.12.2006.

3.3 On the said date, the learned arbitrator after recording that proceedings had been adjourned sine die in 2002, in view of the proceedings pending in this case (I assume the reference was to OMP 135/1997), and given the fact, that the petitioner, had not appeared on various dates which, as indicated in the order are : 10.08.2006, 29.08.2006 and 09.11.2006; he proceeded to decide the case exparte. The award in this case was reserved. Finally, the learned arbitrator, it appears, on 09.04.2007, pronounced the award.

3.4 As contended by the learned counsel for the petitioner, even though an application had been filed way back on 03.04.2006, no action was taken by the learned arbitrator on this application, whereas the learned arbitrator, it appears, took up the matter based on the application filed by respondent on 31.07.2006. Mr. Diwan, the learned counsel for the petitioner says that though the matter was taken up by the learned arbitrator on various dates, no notice of proceedings was received by the petitioner. It is his contention that on 29.08.2006, when notice was handed over to one of the representative of respondent no.1, (though the procedure was not in order), even that, order, was not received.

3.4 As against this, Mr. Rangi, the learned counsel for respondent no.1 says that respondent no.1, had sent a copy of an internal communication dated 31.08.2006, to the petitioner, which indicated that the proceedings before the arbitrator were fixed on 27.09.2006. It is, Mr. Rangi's contention

that, therefore the petitioner, was all along aware of the proceedings, at least, qua proceedings held on 27.09.2006.

4. Having perused the record, I am of the view that there is nothing to show that the petitioner was given notice of the proceedings held before the arbitrator, after this court had disposed of OMP 135/1997, vide order dated 24.02.2006.

4.1 As indicated above, the documents relied upon by Mr. Rangi, is an internal document. The document, apart from being a photocopy, carries a photocopy of a receipt issued by the postal department, which is dated 31.08.2006. This document by itself does not show as to whether, the correspondence, which was otherwise, not addressed to the petitioner, was dispatched by respondent no.1 to the petitioner. In these circumstances, the petitioner has rightly contended that it was not represented on any of the dates referred to above. The petitioner was, therefore, not given due opportunity and, consequently, has rendered the award vulnerable.

4.2 Accordingly, the award has to be set aside and remitted to the arbitrator for a fresh adjudication. It is ordered accordingly.

5. I may only say that in so far as the second submission of the petitioner is concerned, the said submission, appears to be prima facie unsustainable. Respondent no.1 has filed an order of the Registrar of Cooperative Societies, Haryana, which is dated 31.03.2001. The said order has been passed by the Registrar in liquidation proceedings. The said order, broadly, conveys Hansi Cooperative Spinning Mills Society Ltd. was taken over on lease by HAFED Spinning Mills. The said order read with the affidavit filed on behalf of respondent no.1, would show, that the, lease operated between 04.07.1985 and 31.12.2000.

5.1 The confusion, if any, was caused on account of the fact that while,

HAFED was running the mill otherwise owned by Hansi Cooperative Spinning Mills Society Ltd., on a leasehold basis, it changed the name of the mill to HAFED Spinning Mills. This may have been done to gain some mileage, but in law, there is nothing to suggest that there was a take over.

5.2 As a matter of fact, the order of the Registrar would show that winding up proceeding qua Hansi Cooperative Spinning Mills Society Ltd. were commenced on 23.03.1999, under the Hayana Co-operative Societies Act. The said proceedings were concluded on 31.03.2001. In those proceedings, HAFED itself, lodged a claim against Hansi Cooperative Spinning Mills Ltd. The claim of HAFED was rejected by the Registrar. The Registrar, directed the HAFED to make payments towards dues of Hansi Cooperative Spinning Mills Society Ltd. The Registrar, thereafter, distributed the sums received, in accordance with, priority stipulated under the relevant Act.

5.3 Therefore, the argument of Mr. Diwan that Hansi Cooperative Spinning Mills Society Ltd. could not have continued the proceedings, as it was no longer in existence, will have to be dealt with by the learned arbitrator, inter alia, in the light of the order of the Registrar.

5.4 The learned arbitrator will have to determine as to whether the claim lodged with him was of Hansi Cooperative Spinning Mills Society Ltd. or, was in substance, the claim of HAFED Spinning Mills. If it was the claim of HAFED Spinning Mills, surely, HAFED Spinning Mills is in existence, and should be in a position, to therefore, prosecute the claim. These are aspects, which the arbitrator, will have to adjudicate upon. For this purpose, due opportunity will be given to both parties.

6. Accordingly, the award dated 09.04.2007, is set aside. The parties will appear before the Registrar Cooperative Society. If the earlier arbitrator

is available, proceedings will be conducted by the said arbitrator. In case for any reason, the said arbitrator is not available, the Registrar Cooperative Society will take up the proceedings himself or appoint a new arbitrator. The proceedings will, however, be taken up from where they were positioned prior to the passing of award dated 09.04.2007.

6.1 Mr. Diwan says that he has no difficulty in these directions being issued.

7. As to what was the understanding of respondent no.1, as to whether this was an award delivered under the 1940 Act or under the 1996 Act, is not known. However, I am not called upon to comment upon this aspect of the matter. I may only note that respondent no.1, has not instituted any proceedings to make the award rule of the court.

IA Nos.21026/2012 (for clarification), 21027/2012 (condonation of delay in re-filing) and 16716/2014 (Exemption)

8. Mr. Diwan says that since the award has been set aside, the captioned applications have been rendered infructuous.

9. The captioned applications are accordingly disposed of.

IA No.16715/2014 (u/s. 151 CPC)

10. Mr. Diwan seeks to press this application. The relief sought in the application is as follows :-

“(i). pass orders directing the District Collector / District Revenue Officer / Naib Tehsildar, Dharuhera (Rewari) to remove the entries from the Revenue Records in respect of the total land measuring 20 kanal 14 marla in khasra no.3/12, 19, 21/2 and 22/1 belonging to M/s. Caravan Roadways Ltd., AG-28, Sanjay Gandhi, Transport Nagar, Delhi.

11. According to me, no such direction can be issued in the present application. The captioned application is dismissed giving liberty to the

applicant/petitioner to take recourse to an appropriate proceeding; albeit in accordance with law.

RAJIV SHAKDHER, J

DECEMBER 04, 2014

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