

Court No. - 4

Case :- FIRST APPEAL FROM ORDER No. - 925 of 2007

Appellant :- State Of U.P. Through The Engineer In Chief Lko And Ors.

Respondent :- M/S B.Patel And Company Vijay And Ors.

Counsel for Appellant :- C.S.C.,Kr. Pradeep Mohan Singh

Counsel for Respondent :- Pradeep Chandola,Arun Kumar Yadav,D.K.Srivastava,Dr. Ramsurat Pande,Dr.Krishna Singh,Dwijendra Mishra,Himanshu Kant,Manish Chaudhary,Pankaj Srivastava,Rajesh Tiwari,Vikram Jeet Singh Rathore

Hon'ble Rajnish Kumar,J.

1. Heard Sri Devendra Mohan Shukla, learned Additional Chief Standing Counsel appearing for the appellant, Sri D.K.Srivastava, learned counsel for the respondent no.1 and Dr. Krishna Singh,Deputy Advocate General appearing on behalf of the respondent no.2.

2. This first appeal from order under Section 39 of the Arbitration Act 1940 has been filed against the judgment and decree dated 24.05.2007 passed by the learned Civil Judge(Senior Division),Lucknow in Misc. Case No.89-c/2005(State of U.P. and another versus M/s. B. Patel & Company) and Misc. Case No.90/2005(State of Uttarakhand versus M/s. B. Patel & Company and others) and Regular Suit No.264/07(M/s. B. Patel & Company versus Engineer-in-Chief, U.P., Lok Nirman Vibhag, Lucknow and others), rejecting the objections under Section 30/33 of the Arbitration Act 1940 and against the award dated 04.11.2020 given by the arbitrators in a dispute between the appellants and the respondents.

3. The appeal was admitted. During pendency of the appeal, an application for deciding the locus of the appellant and the maintainability of the first appeal from order has been filed by the respondent no.1. Another application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure for

transposing the respondent no.2 as the appellant no.3 in this appeal has been filed by the respondent no.2.

4. Learned counsel for the respondent no.2, on the application for transposition, submits that the agreement in question was made with the State of U.P. on 16.03.1990 and the date of completion of the work under the contract was 15.08.1990, which was extended upto 15.05.1991. However, after completion of work, the final payment was made to the respondent no.1 and a farkhati i.e. No dues certificate was given by the respondent no.1 on 17.05.1991 but without considering the same, the award was made. He further submits that when the execution case for execution of the award was filed against the respondent no.2 before the court of Civil Judge, Almora and the notices were served then it came to the knowledge of the respondent no.2 that the award is being executed against him, therefore this application for transposition has been filed. However, on repeated queries, he could not point out any ground for transposition for respondent no.2 as appellant no.3.

5. Learned counsel for the respondent no.1 submits that since the respondent no.1 has filed an application for deciding the locus of the appellant in filing this appeal, therefore application for transposition has been filed by the respondent no.2. He further submits that the appeal has been filed mainly on the ground that the State of U.P. is not liable to make the payment and there is admission on behalf of the respondent no.1 in this regard in view of the statutory provision made in Section 55 and 56 of the U.P. Re-Organisation Act 2000(hereinafter referred to as the Act 2000) because the contract was for the purpose of projects and sight in Ranikhet, which is in Uttarakhand State, therefore the award and the judgment and order passed on objection u/s 30/33 of Arbitration Act 1940 is liable to be complied and satisfied by the respondent no.2, as

such he has filed execution case against him before the Senior Civil Judge, Almora and pressing it. He further submits that if respondent no.2 had any grievance, he could have challenged the award as well as the order passed on his objection under Section 30/33 of the Arbitration Act 1940 by filing an appeal but he cannot be transposed to treat the appeal on his behalf in view of the stand of the appellant against him and limitation.

6. Learned counsel for the respondent no.1 also submits that the respondent no.2 is misleading the Courts by making wrong statements, not only before this Court but before the executing court also as well as the Uttarakhand High Court. One of such fact is that without any interim order in this case, the respondent no.2 stated before the Uttarakhand High Court that interim order is continuing before this Court in this appeal.

7. Learned counsel for the appellant submits that in the objection filed under Section 30/33 of the Arbitration Act 1940 before the Civil Judge(Senior Division), Lucknow against the award passed by the arbitrator, a specific plea was taken by the appellant that under the Act 2000, the appellant is not liable for payment under the contract and comply and satisfy the award and Uttarakhand State is liable but without considering the same and deciding it, the objection filed by the appellant has been rejected recording a finding in this regard that it is between the appellant and the respondent no.2, who had also filed an objection under Section 30/33 of the Act 2000 as to whether the payment under award is to be made by the State of U.P. or Uttarakhand, it is between them. However, in case the award is not being executed by the respondent no.1 against the appellant, he has no grievance against the award and the order passed on objections under Section 30/33 of the Arbitration Act 1940 and the appeal may be disposed of accordingly.

8. Having considered the submissions of learned counsel for the

parties and on perusal of record, it is apparent that one of the grounds for filing the appeal is that the State of U.P. is not liable to satisfy the award under the Act 2000, which only is being pressed by learned counsel for the appellant. The plea in this regard was taken before the Civil Judge(Senior Division), Lucknow in objection filed by the appellant under Section 30/33 of the Arbitration Act 1940. However, in regard to the same, while deciding the objection filed by the appellant and the respondent no.2, it has been observed that it is a matter between them i.e. the appellant and the respondent no.2. The respondent no.1, in whose favour the award has been made has admitted and categorically stated that the State of U.P. is not liable under the contract in question and satisfy the award in view of Section 55 and 56 of the Act 2000 and therefore he is not seeking execution of it against the appellant.

9. So far as the application for transposition of the respondent no.2 is concerned, learned counsel for the respondent no.2 has failed to make out a case for transposition. The argument of learned counsel for the respondent no.2 is also misconceived because the issue of liability was left on the appellant and the respondent no.2 and the appellant had filed this appeal in the year 2007 within the period of limitation taking the specific plea that the State of U.P. has no liability under the Act 2000. Even otherwise it cannot be allowed in view of the contrary stand of the appellant and respondent no.2 against each other in regard to liability for payment under the contract in regard to which the impugned award has been made and the objections have been rejected. Therefore the application is totally misconceived and liable to be rejected.

10. In view of above, the application for transposition is liable to be rejected and the appeal disposed of in terms of the statement of learned counsel for the respondent no.2, leaving

the plea of learned counsel for the respondent no.1, in regard to misleading by respondent no.2 to the Courts, open to be taken up before the appropriate Court.

11. No other ground or plea has been pressed or argued by learned counsel for the parties before this Court.

12. The application for transposition of respondent no.2 is hereby rejected and the instant appeal is **disposed of** in terms of statement of learned counsel for the respondent no.1. The application of respondent no.1 also stands disposed of. No order as to costs.

Order Date :- 19.2.2024

Akanksha