IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2901 of 1999 (O&M)
Date of decision: 16.09.2015

Vishnu Dass Aggarwal

... Petitioner

versus

Haryana State Coop. Suply and Marketing Fed. Ltd. and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Anil Khetarpal, Senior Advocate with
Mr. Sanjiv Ghair, Advocate for the petitioner.

Ms. Anita, Advocate for
Mr. Deepak Balyan, Advocate,
for the respondents.

K.Kannan, J.

The revision petition is against the order of the Appellate Court in an Arbitral reference made that resulted in an award by the Arbitrator, made rule of the Court after hearing objections. The decision was set aside on appeal by the judgment debtor. The petitioner is the contractor who had undertaken the work of construction of a cold storage godown on behalf of the HAFED-respondent. The work provided for certain modalities for availing of cement at controlled price. Although the work of allotment was made on 23.03.1983 and the stipulation was for completion of work within one year from the date of lay out plan, the work was not completed till March 1988. The reasons were several, which according to the petitioner, was not within his hands but on account of the respondent himself not prepared to go with the project of completion as unviable. The cement was also not made available at the controlled price and when the respondent-HAFED decided to drop the project altogether, the contractor had already completed the work upto 80%. The actual measurement of the work done was entered in FMB (Field Measurement Book). The provisional reckoning made on 07.01.1990, however, did not notice several completed works and when the contractor protested, the work taken again was still not completed. The dispute lingered on with the actual field measurements not having been completed and the final bill had not even been prepared or paid. After several entreaties through representations of the petitioner, an Arbitrator had been appointed on 27.10.1995 and the Engineer-in Chief of Haryana PWD (retired) entered reference and invited claims from the parties. The petitioner had lodged a claim for Rs. 17,18,676/- as amount payable while the respondents made a counter claim for Rs. 19, 12, 000/- as work not done or excess credited away.

Since, the Arbitrator was himself an Engineer and an expert in contract works for buildings, with the consent of the parties the Arbitrator have carried out inspection of the site and prepared an estimate of all the expenses that had been incurred and an assessment of all the nature of works that had been completed or the extent not completed. The arbitration award was passed on 21.07.1996 for Rs. 9,57, 240/-. The petitioner was agreeable for the award and he had not himself filed any objections when the award was filed in the Court. A decree in terms of the award was sought by the petitioner. The respondent filed his objections, but, the Court granted the decree in terms of the award and made it a rule of Court.

The respondent filed an appeal against the decree of the Appellate Court and obtained a reversal of the judgment on two points, firstly, the claim made before the Arbitrator was barred by limitation, secondly, the Arbitrator had exceeded his jurisdiction by passing an award without authority beyond the period of four months from the date of entering the reference. The contractor who is aggrieved is in revision petition before this Court.

Learned senior counsel would refer met to the Clause in the contract which contains the arbitral agreement. Clause 25 reads:

> "that the arbitrator could be appointed on written request from the Controller who will act within 30 days of the final payment has been made or from the date of a registered notice for receiving the final payment is sent to the Contractor, and in case of minus bill then from the date of signing by the contractor such bill or from the date of notice to the contractor for his bill being minus, and his decision shall be final and binding and where the matter involved a claim for or the payment or recovery or deduction of money, only the amount if any, awarded in such arbitration shall be recoverable in respect of the matter so referred".

The counsel would point out that the period contemplates 4 different contingencies and none of the contingencies arose. Indeed, the final bill had not even been prepared and no payment had been made. There had been no notice also from the HAFED to the contractor calling upon him to receive the final payment. There had also been no demand that the petitioner had availed of any excess credit for any "bill being minus". In a case where the parties had been engaging in communications about the measurements to be carried out and when HAFED was also not completing the work and had merely prepared a provisional bill on 07.01.1990, it is inexplicable that the Lower Appellate Court could have found that to be a starting point for the period of limitation. Such an assessment runs contrary to Clause 25, the relevant portion of which has been extracted above. I have no doubt in my mind that the decision was on a wrong reading of Clause 25. I would also observe that it was grossly improper on the part of the respondent to even take a defence to the reference being barred by limitation, when, admittedly, the final bill had not been prepared or paid. If there was "a minus bill" there ought to have been a demand of the availment of excess credit which was also not the case of the respondent. I set aside the finding that the claim was barred by limitation.

As regards the finding of the Lower Appellate Court that the Arbitrator had no jurisdiction to pass an award beyond a period of 4 months, I must observe that the Appellate Court had made an error in failing to actually note that there had been periodical extensions to the Arbitrator's mandate by the parties themselves offering for requesting for further time and the extensions were done with the concurrence of both the parties. The records available in the Court itself shows that in the proceedings of the Arbitrator, an endorsement had been made on 16.05.1996 when the parties had mutually agreed for the award, to be completed by 31.06.1997. The Arbitrator had actually passed the award even before the date agreed to between the parties namely on 21.07.1996. Even in the proceedings before the Courts, the award was made the rule of the Court, it was admitted by OW-1 in the course of cross-examination that both the parties agreed that the passing of award could be extended upto 31.07.1996. There is adequate case law to the effect that if the parties had consented for extension of time and when the Arbitrator had passed the award within the time agreed to between the parties there could be no bar of limitation. The Supreme Court had held in judgment Hari Krishna Wattal Vs. Vaikunt Nath Pandhya (dead) by LRs and another, AIR 1973 SC 2479 that an Arbitrator can enlarge the time for making award if after entering on the arbitration, the parties had mutually agreed to such enlargement. The Court was holding that the power to enlarge time by a subsequent agreement need not be stipulated in the arbitration agreement itself. Such a consent may be before the passing of award. I hold that the decision of the Lower Appellate Court finding lack of jurisdiction in the Arbitrator on the ground that the award had been passed beyond the time stipulated under the Act was, therefore, against the reference that clearly contained the consent about the mutual agreement between the parties brought before the Arbitrator for extension of time.

Yet another reasoning adopted by the Lower Appellate Court was that no materials have been brought before the Arbitrator by the actual claim as made by the contractor. In this case, the Arbitrator had actually carried out a personal inspection, being himself a buildings expert and if an award is passed on a personal assessment supported by adequate evidence given by parties, the Court will not treat itself as a Court of appeal and reapprise the assessment made. The Appellate Court's intervention was, therefore, wholly unjustified and I set aside such a finding that is rendered without reference to the peculiar circumstances where the Arbitrator empowered himself of the personal details by inspection and found adequate corroboration through the evidence offered by the petitioner before him.

The order of the Appellate Court is set aside and the revision is allowed, restoring the order already passed by the Court of first instance making the award the rule of Court. The civil revision petition is allowed with costs of Rs. 10,000/- against the respondent.

(K.KANNAN)
JUDGE

16.09.2015
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