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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. No. 360/2007

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5th August, 2015

V. VIKRAM REDDY

..... Petitioner

Through: Mr. Saurabh Gupta, Advocate with
Mr. Gagan Gupta, Advocate.

Versus

M/S R.L. AGENCIES PVT. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') by which the petitioner, who was the respondent in the arbitration proceedings, challenges the Award passed by the Arbitrator dated 16.2.2007. By the Award, the Arbitrator has passed an Award for a net amount of Rs.41,61,542/- in favour of the claimant, the respondent in the present petition. Arbitrator has also awarded Rs.1.50 lacs as costs to the respondent herein/claimant.

2. For the sake of convenience, I would refer to the respondent in the present proceedings as the claimant and the petitioner herein as the objector.

3. Parties entered into a Consignment Agreement dated 5.12.2002 and by which the objector agreed to sell the products of the claimant from the objector's shop called "Krishtie". The goods supplied to the objector by the claimant were on 'sale or return basis'. The agreement was terminable by either party by giving three months' notice. On termination of the Agreement the objector was required to immediately return the unsold stock to the claimant within 15 days of date of termination of Agreement.

4. The claimant supplied to the objector goods worth of Rs.36,05,979/-. The objector terminated the Agreement dated 5.12.2002 by his letter dated 21.2.2003. In the termination letter, objector claimed that the claimant should reimburse to the objector's expenses incurred for advertisement to the tune of Rs.1,03,330/- and another sum of Rs.25,000/- towards fees of the Advocate. The objector informed the claimant that the goods can be taken back only after settling the dues. Correspondences thereafter were exchanged between the parties dated 24.2.2003, 3.3.2003, 5.3.2003, 10.3.2003 and 29.3.2003. The sum and substance of these

correspondences was that the case of the objector was that only after the claimant reimburses the objector with respect to various charges as stated above and with further charges of godown rent at Rs.20,000/- per month, claimant will not be allowed to take away the goods. The objector ultimately by his communication dated 5.7.2003 claimed a sum of Rs.6,58,470/- from the claimant. The Agreement dated 5.12.2002 contained an arbitration clause and after disputes had arisen, the disputes were referred to an Arbitrator, the retired Judge of this Court, and who has passed the subject detailed Award running into 38 pages agreeing with most of the contentions of the claimant, while allowing a few counter claims of the objector.

5. The main conclusions arrived at by the impugned Award are as under:-

(i) As per Clause E.I.3. of the Agreement dated 5.12.2002 (Ex.CW1/2) goods were to be on 'sale or return basis'. As per Clause F.4 of the Agreement (Ex.CW1/2) on termination of the Agreement, objector was under an obligation to immediately return the unsold stock of products to the claimant. As per the same Clause F.4 in case the objector failed to return the goods, the claimant was entitled to liquidated damages of 24% on the total

amount of outstanding stock with the objector. The objector terminated the contract by means of the Notice dated 21.2.2003 (Ex.CW1/4).

(ii) Value of the goods supplied by the claimant to the objector was proved to be of a sum of Rs.36,05,973/- and this aspect stood proved on behalf of the claimant not only by the affidavit of its witness-Sh. V.M. Gupta, General Manager, but also because claimant in its e-mail message dated 5.3.2003 (Ex.CW1/7) specifically mentioned with respect to giving material worth of Rs.36.50 lacs to the objector, and in the reply given by the objector dated 10.3.2003 (Ex.CW1/8) objector did not deny this aspect. Also, the contention of the objector that several items were missing was found to be false because neither the details of the missing items were given by the objector nor any document was given in support of the same and that during the arbitration proceedings the objector agreed to supply Form F under the Central Sales Tax Act, 1956 to the claimant and which thus showed that the objector had duly received the goods from the claimant. It was also held by the Arbitrator that it is for the first time by filing reply in the arbitration proceedings that the objector had taken up a stand with respect to non-supply of the goods in question and hence objector was to be disbelieved. Arbitrator notes that the objector filed as evidence, an affidavit

which was neither attested nor verified and in spite of this being pointed out no remedial steps were taken.

(iii) The contention of the objector that after termination of the contract, objector was forced to remove goods to a godown and they were stolen from there, and hence objector cannot be liable, was rejected by the Arbitrator by referring to the fact that not only the contractual liability to insure the goods was upon the objector by virtue of Clause E.I.9 of the Agreement, but also even assuming this clause did not apply since contract was terminated and thereafter objector put the goods in a godown, this factual aspect of objector putting goods in a godown made the objector liable as a Bailee of the goods as per Section 151 of the Indian Contract Act, 1872 and as per which provision a Bailee was bound to take care of the goods and which the objector failed to do. The objector also failed to prove his case of theft of goods as not only the letter of the objector dated 22.10.2003, Annexure R-9; which was a letter of the objector to the ACP, Ulsoore, Bangalore; did not talk of any theft of any specific goods and in fact only talked of somebody taking forcible possession of the property and that antique furniture and items were illegally thrown on the road but also the case of theft of goods was mentioned by the objector by means of his

letter to the claimant dated 31.10.2003 i.e after 12 days of the theft and even with respect to the letter dated 31.10.2003 there is no proof with respect to dispatch of the same.

The Arbitrator finally notes that this Court appointed a Local Commissioner vide Order dated 17.10.2003 and the Local Commissioner was prevented by the objector and his father from entering into the godown to make the inventory of the goods and although the godown was not found to be sealed as alleged by the objector, yet the Local Commissioner was not allowed to enter into the godown to see even the so called 5% goods which were said to be remaining after allegedly 95% were stolen.

(iv) The Arbitrator has held that the clause with respect to liquidated damages of 24% is effectively a clause with respect to payment of interest and the Arbitrator instead of awarding interest @ 24% has only awarded interest @ 12% per annum simple.

(v) Arbitrator has awarded costs of arbitration as per the costs paid to the Arbitrator with a further amount of Rs.10,000/- incurred in the arbitration proceedings by the claimant, and thereby awarding a total sum of Rs.1.50 lacs.

(vi) Out of the 10 counter claims filed by the objector totaling to a sum of Rs.6,58,470/-, the Arbitrator has found that no proof whatsoever was filed with respect to most of these counter claims, which were therefore rejected, however taking note of certain admissions of the claimant in its correspondence dated 18.7.2003 (Ex.CW1/14), the Arbitrator awarded a sum of Rs.50,000/- on the advertisement expenses payable by the claimant to the objector and a further sum of Rs.25,000/- towards Advocate's fees and truck persons' expenses. Arbitrator also awarded the godown rent of Rs.20,000/- to the objector on account of admission made by the claimant to pay godown fees in the letter dated 18.7.2003 (Ex.CW1/14).

(vii) Arbitrator hence awarded a net sum of Rs. 41,61,542/- plus costs of Rs.1.50 lacs to the claimant, respondent herein.

6. The scope of challenge to an award under the Act is now well-settled. This Court can only interfere if the award is in violation of the law (Section 28(1)(a) of the Act) or is against the contract between the parties (Section 28(3) of the Act) or the arbitrator can be said to have arrived at findings and conclusions which are perverse vide judgment in the case of *Oil and Natural Gas Corporation Limited Vs. Western Geco International Limited (2014) 9 SCC 263*. The aforesaid principles are also stated in the

judgment in the case of *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.*, (2003) 5 SCC 705.

7. On behalf of the objector it was very vainly sought to argue before this Court that objector rightly refused to return the goods as the claimant failed to pay the necessary charges payable towards advertisement expenses, truck persons' expenses etc and that objector had kept the goods in a godown after termination of the contract at the risk of the claimant and from where they were stolen, and hence it is argued that objector had no liability and that the Arbitrator has wrongly awarded the amount against the objector, however, I cannot agree with the argument urged on behalf of the objector inasmuch as the Award is a detailed Award which specifically goes into each issue, discusses each proved document with their exhibit numbers, refers to various clauses of the Agreement, gives reference to court judgments and provisions of statutory enactments applicable and has ultimately arrived at the conclusions which I have already reproduced above. The conclusions cannot in any manner be said to be violative of any law or any contract or can be said to be perverse for this Court to in any manner interfere with the Award. I in order to avoid any prolixity am not referring to the detailed discussions and conclusions arrived at by the Arbitrator

inasmuch as I have in a nutshell reproduced the conclusions and findings of the Arbitrator as stated above.

8. In view of the above, I do not find any merit in the petition and the same is therefore dismissed. No costs.

AUGUST 05, 2015
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VALMIKI J. MEHTA, J.