

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Miscellaneous Appeal No. 680 of 1994**

Nemichand Suthar S/o Pukhraj Suthar, aged about 64 years,
Business, Asoka Automobile, Near Gurudwara, Dellirajahara,
Tahsil Ballod, District Joanpur

---- Appellant**Versus**

1. Mohan Lal Gagorh S/o Keshrimul Gagorh, aged about 61 years,
Businessman.

2. Champalal Chhajare S/o Mulchand Chhajare, aged about 65
years, Businessman (Dead) Through LRs:

2(1) Shri Mohan Lal, aged about 64 years.

2(2) Shri Madan Lal, aged about 60 years.

2(3) Shri Gautam Chand, aged about 57 years.

2(4) Shri Gulab Chand, aged about 54 years.

2(5) Shri Prakash Chand, aged about 51 years.

2(6) Shri Om Prakash, aged about 48 years.

2(7) Shri Kailash, aged about 43 years.

2(8) Shri Suresh, aged about 40 years.

2(9) Shri Ajay, aged about 35 years.

3. Sardar Keshar Singh S/o Mungal Singh Chhatwal, aged about 68
years, Businessman.

All resident of Dellirajahara, Tahsil Balood, District Durg.

---- Respondents

For Appellant : Shri Upendra Nath Awasthi, Senior Advocate
with Ms. Raksha Awasthi, Advocate.
For Respondent No. 3: Shri B.P.Sharma, Shri Hari Agrawal and Shri
Manay Nath Thakur, Advocates.

Hon'ble Shri Deepak Gupta, Chief Justice

C.A.V. Judgment

22/07/2016.

1. This miscellaneous appeal under Section 39 of the Arbitration Act, 1940 (hereinafter called 'the Act') is directed against the judgment and decree passed by the 1st Additional District Judge to the Court of District Judge, Durg, in Civil Suit No. 12-A of 1993, dated 29.06.1994 whereby he affirmed the award of the Arbitrators dated 06.08.1987 and made it rule of the Court and passed decree in terms thereof.

2. The undisputed facts are that according to the Appellant, he was having a joint business with wife of Respondent No. 3, Sardar Keshar Singh. There was some dispute between the Appellant and the wife of Respondent No. 3 and the said dispute was referred for arbitration. Arbitrators were appointed on 06.08.1987 and passed an award on the same date. The award was, however, filed in the Court by two out of five Arbitrators in the year 1988. The present Appellant objected to the award being made rule of the Court. Since the objections were over-ruled and decree has been passed in terms of the award, the Appellant has filed the instant appeal.

3. To appreciate the contention of Shri Awasthi, learned Senior Counsel for the Appellant, it would be pertinent to refer to the award of the Arbitrators. The award of the Arbitrators is as follows:

"Panch Award"

Today on 06.08.87, the Panch persons decide the following old transaction regarding shop and house between Shri Keshar Singh Ji and Nemi Chand Suthar, which is as follows:

1. The Railway rent due up to December 1980, shall be paid by Shri Keshar Singh.

2. The shop owned by Keshar Singh, which has a godown on backside, is on rent with Munim Nemichand, rent of which upto the Diwali in Year 1987 is included in the award. Thereafter, if Munim Nemichand Ji wishes to continue shop on rent after Diwali, then he shall get the rent fixed with Keshar Singh. If the rent is not agreed, he shall vacate within three months from Diwali and shall also pay separate rent for the period of three months after Diwali, i.e. Rupees 900 @ 300 Rs per month. He shall vacate the shop and godown after three months. If he does not vacate after 3 months, the Panch persons of today's award i.e. Shri Champa Lal Chhajer, Shri Mohan Lal Gagerh, Shri Ajay Dhandhiya, Shri Trilochan and Shri Champa Lal Chopra who all are agreed panch of both the parties, shall go and get the shop vacated. The shop and house are in the name of Munim Nemichand who shall reduce in writing and give to Keshar Singh, in which there is no right of Nemi Chand.

Keshar Singh shall pay Rs 25,000 (in words Rupees Twenty Five thousand) to Munim Nemichand and Keshar Singh shall get vacant possession of his shop and godown which are in possession of Munim Ji and pay him Rs 25000/-

The above award is passed in the presence and with the consent of both the parties and signature of both the parties is obtained.

Party No. 1

Sd/-

Nemi Chand Suthar

Party No. 2

Sd/-

Keshar Singh

06.08.87

Signatures of Panch persons

1. Sd/- Mohan Lal

2. Sd/- Champa Lal Chhajer

3. Sd/- Anraj Jain Dhandhiya

4. Sd/- Trilochan Singh."

5. Sd/- Champa Lal Copra

4. Though this award was passed on 06.08.1987, two of the Arbitrators namely Mohanlal Gogad and Champalal Chopda filed an application for making the award rule of the Court on 03.04.1989. It would be pertinent to mention here that prior to that, the present Appellant was served with a copy of the award. He also submitted his written objections to this application for making the award rule of the Court. He did not file any specific objections to the award in terms of Section 30 of the Act but only filed written statement to this application. Be that as it may, the Court below treated the same as an objection to the award.

5. Before me, Shri Awasthi, learned Senior Counsel for the Appellant has raised many issues which were not raised in the written statement and therefore, I shall refer to the written statement in detail.

6. The stand of the Appellant in the Court below was that he and Smt. Jugendra Kour, wife of Sardar Keshar Singh were partners in automobile business and there was some monetary dispute (लेन—देन) with regard to this business. To resolve this dispute, Sardar Keshar Singh on behalf of his wife and the Appellant herein had appointed Arbitrators to decide the dispute.

7. The case of the Appellant is that dispute relating to house on the land belonging to Railways and rent thereof had not been referred to the Arbitrators. In fact, there was no dispute with regard to the same and no such dispute was referred to the Arbitrators. It was also submitted that from the award of the Arbitrators, it appears that the Arbitrators have connived with Sardar Keshar Singh and therefore instead of only dealing with the referred disputes, they had also adjudicated upon other matters which was beyond their jurisdiction and as such, the same is absolutely illegal.

8. The Appellant also took the plea that even before the award was announced, the Arbitrators had obtained signatures of the two parties and thereafter announced the award. According to the Appellant, immediately after the award, he had refused to accept the same and had orally informed the Arbitrators that there was no dispute with regard to the shop or rent thereof. According to the Appellant, he received the award of the Arbitrators by registered post on 16.11.1988 and on 23.11.1998, he had raised objections to it in writing and these objections were sent under certificate of posting. Basically, the contention of the Appellant is that the dispute which had not arisen between the parties has been decided by the Arbitrators. Further more, the Arbitrators obtained signatures of the Appellant by fraud and even before the award was announced and they had dealt with the disputes which were not referred to them.

9. I have quoted the award fully in detail above. It is a non-speaking award. Under the Act of 1940, the Arbitrator had a right to pass non-speaking award. When an award is non-speaking, the Court cannot go into the reasoning of the award.

10. The Apex Court in **AIR 1988 SC 2018, State of Orissa vs. M/s Lall Brothers** clearly held that even if an award is an unreasoned award, the same is no ground to set aside the same. The law is well settled that the Court cannot determine the error of law in respect of a non-speaking award since the same would not be apparent on the face of record.

11. The opening portion of the award states that what has been referred to the Arbitrators is a dispute regarding dealings between the parties (लेन-देन) and the Arbitrators have clearly stated that this includes the dispute relating to shop and house. The submission that no dispute relating to the shop and house was referred is obviously without any merit and is rejected.

12. Another ground raised by Shri Awasthi, learned Senior Counsel is that the award is illegal since no opportunity was given to the Appellant in terms of paragraph 6 of the First Schedule of the Act, which reads as follows:

“6. The parties to the reference and all persons claiming under them shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in difference and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively, which may be required or called for and do all other things which, during the proceedings on the reference, the arbitrators or umpire may require.”

Any party has a right to lead evidence in terms of above quoted paragraph 6, but this right can be waived by the parties.

13. It is more than apparent that the award in question was actually an award passed with the consent of the parties because signatures of both the parties are at the bottom of the award and thereafter the signatures of the Arbitrators are also there. The Appellant does deny his signature on the award. His submission is that the signatures had been obtained even before the award was announced. This submission does not appear to be correct. The signatures of both the parties are not at the bottom of the page and a bare perusal of the award shows that the award has been written with same pen with which the Appellant as well as the Arbitrators have signed. The Appellant by signing the award has virtually agreed to the award. The objector who is a businessman would not have signed a blank paper.

14. Even according to the Appellant, as mentioned in his written statement, he had orally raised an objection to the award immediately after the same was announced. That story is not believable. The Arbitrators have decided a big dispute and if the signatures of the Appellant had been taken on a blank piece of paper or the Appellant had

serious objections to the award, he would have himself given notice to the Arbitrators or filed some proceedings or complaint against the arbitrators. He did not do so. It is more than apparent that the Appellant after having virtually consented had a change of mind and when he did not comply with the award, the Arbitrators were forced to file the award in the Court with a prayer that it should be made rule of Court and decree be passed accordingly. It was only thereafter that for the first time the Appellant raised these frivolous objections. There is no merit in the objections raised by the Appellant. The contention of the Appellant that the dispute regarding house and shop were not referred for arbitration, is on the face of it false in view of the opening portion of the award quoted hereinabove.

15. The Civil Court does not sit in appeal over the award and can only set aside an award if the Arbitrators have misconducted themselves or the proceedings. Though the Appellant had alleged misconduct, he has miserably failed to prove his version that the Arbitrators have misconducted themselves or the proceedings.

16. Therefore, I find no merit in the appeal. It is accordingly dismissed.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE