

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 515 OF 2015
IN
ARBITRATION PETITION NO. 735 OF 2014
WITH
NOTICE OF MOTION NO. 2056 OF 2015
IN
APPEAL NO. 515 OF 2015
IN
ARBITRATION PETITION NO. 735 OF 2014

Mr.Rahul Kumar S/o. Shrenikbhai Bohra .. Appellant
Vs.
M/s.Rapier Fabrics .. Respondent

Mr.Kishor Jawle i/b Mr.D.C.Pathak, for the Appellant.
Mr.S.K.Jain i/b S.K.Jain & Associates, for Respondent.

**CORAM : A.S.OKA AND
M.S.KARNIK, JJ.**

22nd NOVEMBER, 2016

P.C. (PER M.S.KARNIK, J.) :

. The challenge by way of this Appeal is to the order dated 16/07/2015 passed by the learned Single Judge of this Court in arbitration petition filed under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the said Act'). The arbitration petition was filed by the appellant/original

petitioner challenging the arbitration award dated 03/08/2013.

The brief facts leading to the filing of the present Appeal are thus:

- i) The respondent was supplying fabrics to the appellant over a period of time. It is the claim of the respondent that though the petitioner received the fabrics, the petitioner did not pay for the supplies. The respondent claimed an amount of Rs. 55,81,404/- as principal and Rs.3,85,259.43 as interest calculated upto 25/06/2012. The reference to the arbitration was filed on 27/06/2012.
- ii) The respondent along with the statement of claim filed copies of three cheques which were dishonored. Two cheques were dated 14/01/2012 amounting to Rs.22,00,000/- and Rs. 12,00,000/- respectively and the third cheque dated 30/01/2012 is for Rs.5,00,000/-.

iii) By arbitration award dated 03/08/2013, the appellant was directed to pay a sum of Rs.54,50,850/- as the principal amount, a sum of Rs.15,94,201/- towards interest upto 03/08/2013 and a sum of Rs.2,900/- towards costs of the arbitration. Thus, by the impugned award the appellant was directed to pay to the respondent total amount of Rs.70,47,951/-(Rs. Seventy Lacs Forty Seven Thousand Nine Hundred Fifty One only) within 30 days from the receipt of the award or pay interest @ 1.50% per month on the awarded amount calculated from 04/08/2013 till actual date of payment along with awarded amount.

iv) The award dated 03/08/2013 was the subject matter of challenge in the arbitration petition. By the order dated 16/07/2015 impugned in this appeal, arbitration petition was dismissed with costs of Rs.25,000/- payable by the appellant to the respondent.

2. Learned Counsel for the appellant invited our

attention to the arbitration award and also took us through the impugned order passed in the arbitration petition. Learned Counsel for the appellant invited our attention to the copies of the bills & challans which are part of the record and contended that at no point of time, any such challans or bills were ever received by the appellant and in any case at no point of time, the same had been signed by the petitioner by virtue of which it could be said that the terms appearing therein could amount to contract between the parties. Learned Counsel for the appellant would submit that in the absence of signature about the receipt of the fabrics, it cannot be presumed that the fabrics have been supplied by the respondent. It is the further contention of the learned Counsel for the appellant that there is no material produced on record to show actual delivery in respect of the fabrics. It is the submission of the learned Counsel for the appellant that the appellant was not given a reasonable opportunity to represent his case before the arbitrators.

3. The principal challenge raised on behalf of the

appellant is that the learned Single Judge has committed an error in relying upon the categorical admission of the appellant during the arbitration proceedings conducted on 08/02/2013 that the goods supplied by the respondent are lying with the appellant at Bhiwandi and they want to clear the dues of the respondent by returning the same in lieu of their due payment. According to the learned Counsel for the appellant, the advocate for the appellant was not authorised by the appellant to make such a statement on his behalf. The said statement is not binding on the appellant as the same is made without any authority is the submission of the learned Counsel for the appellant. According to the learned Counsel for the appellant as the said statement of the advocate for the appellant forms the basis for allowing the respondent's claim, which is made without his authority, the impugned award as well as the impugned order calls for interference.

4. Learned Counsel for the respondent on the other hand supported the order passed by the learned Single Judge.

According to him, the receipts and challans on record constitute sufficient proof of actual delivery of the material. The arbitrators upon appreciating the material on record have come to the conclusion that the goods are actually delivered. Learned Counsel submitted that even three cheques issued by the appellant which have been dishonored are annexed along with the pleadings. Learned Counsel for the respondent thus submits that the contention raised by the appellant as regards the Advocate for the appellant having no authority to make a statement that the goods supplied are lying with the appellant at Bhiwandi and they are willing to return it back in lieu of the payment is nothing but an after thought and only with a view to get over the arbitration award. He therefore submits that present Appeal deserves to be rejected.

5. We have given our anxious consideration to the order passed by learned Single Judge. The finding in the award that the fabrics were supplied to the appellant through delivery challan issued by the respondent and invoices raised upon the

appellant by respondent is well supported by the materials on record. In our view based on the material on record in the form of various invoices and delivery challans, it cannot be said that there was no proof of actual delivery of the goods. The arbitrators after appreciating these materials on record have come to this conclusion and therefore, we do not find any error or material infirmity in the order passed by the learned Single Judge while refusing to substitute his own view in place of arbitrators view.

6. Moreover, the contention raised by the appellant's Counsel that the Advocate for the appellant had no authority to state during the course of arbitration proceedings in the meeting dated 08/02/2013 that the goods supplied to the appellant by the respondent are lying with the appellant and they want to clear the dues of the respondent by returning the same in lieu of their payment is nothing but an after thought. In the meeting held on 08/02/2013, Advocate for the appellant has in clear terms stated that goods supplied to the appellant by respondent

are lying at Bhiwandi and they would like to return the goods to the respondent in lieu of their payment. The appellant during the course of the arbitration proceedings made no attempt whatsoever to raise the contention that the appellant's Advocate was not authorised to make such a statement on behalf of the appellant. This contention is not even raised in the arbitration petition under Section 34 and therefore, the appellant for the first time can not be allowed to raise this contention in the Appeal. We also find that the appellant was given every possible opportunity and was repeatedly asked to furnish evidence and also to cross examine respondent's witness which the appellant failed to avail of.

7. In this view of the matter, we do not find any reason to interfere with the impugned order as the learned Single Judge, in our opinion, was right in coming to the conclusion that there is no error apparent on the face of the record and that in view of the limited scope of the interference, the learned Single Judge was justified in not reappraising the material on record

and substitute his own view in place of arbitrator's view.

8. The Appeal is accordingly dismissed with no order as to costs.

9. In view of dismissal of the Appeal, Notice of Motion No.2056 of 2015 does not survive and the same stands disposed of.

(M.S.KARNIK, J.)

(A.S.OKA, J.)