

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: February 09, 2016*
Judgment Delivered on : February 11, 2016

+ **FAO(OS) 488/2015**

AMRIK SINGH SURI Appellant
Represented by: Mr.Ashok Chhabra, Advocate

versus

HARMINDER SINGH SURI Respondent
Represented by: Mr.Gurpreet Singh Sethi, Advocate

FAO(OS) 531/2015

AMRIK SINGH SURI Appellant
Represented by: Mr.Ashok Chhabra, Advocate

versus

HARMINDER SINGH SURI Respondent
Represented by: Mr.Gurpreet Singh Sethi, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Award dated November 25, 2012 was challenged by Harminder Singh Suri in so far it was in favour of Amrik Singh Suri, his brother, requiring him to recompense Amrik for the price of 635 MT Die Steel @ ₹50/- per Kg. Amrik Singh Suri was aggrieved by the award in so far interest had been declined.
2. OMP 217/2013 filed by Harminder Singh has been allowed by the

learned Single Judge vide impugned order dated July 01, 2015. OMP No.219/2013 filed by Amrik Singh has been dismissed because if the award was set aside there was obviously no question of grant of pendente lite interest.

3. Harminder and Amrik are brothers. On April 01, 1981 they constituted a partnership under the name M/s.Suri Transmission Gear Company. Harminder managed the business at Delhi. Amrik at Mumbai.

4. Alleging that Harminder was siphoning the funds of the partnership firm, Amrik invoked the arbitration clause in the deed of partnership and before the learned Arbitrator filed a statement of claim alleging various acts of omission and commission against Harminder, and suffice it to crystallize, that everything turned on the books of accounts, purchase and sale invoices maintained by the two brothers for the reason it was the admitted case that at Delhi Harminder was dealing with Die Steel.

5. As both counsel conceded, Die Steel would be steel purchased from manufacturers such as Steel Authority of India, Tata Iron and Steel Ltd. This is the steel which these manufacturers do not sell to end consumers. Those who purchase Die Steel cut the edges of the steel purchased and the resultant regular shaped steel objects are either sold as such to end consumers or with further cutting as per the requirement of the end consumer.

6. Obviously, in this process there is bound to be wastage, and unfortunately the learned Arbitrator has failed to take note of this, the result being a perversity in the awards, is the finding reached by the learned Single Judge, a finding with which we concur.

7. It is plain logic that if one buys 10 Kg Die Steel which is a cube with

irregular edges and straightens the edges, there is bound to be some wastage. The purchase invoice would show 10 Kg Die Steel purchased. The sale invoice would show 9.5 Kg Die Steel sold. The 0.5 kg wastage would be accounted for by selling the same as scrap. Or as pleaded by Harminder, being the consideration received by the cutter to whom the Die Steel was sent for cutting. For if the books of accounts do not show any payment made to cutter, it would be good evidence that the consideration received by the cutter was the wasted steel being retained.

8. In the statement of claim Amrik raised the issue of his brother cheating him for long but admitted before the Arbitrator, when admission/denial of documents filed by Amrik was done, the balance sheets and profit and loss account up to the year 2000-01. He denied the balance sheet and profit and loss for the year 2001-02 till the year 2003-04. The statement of claim was filed in the year 2004.

9. Unfortunately, the learned Arbitrator failed to consider the impact of Amrik admitting the balance sheets as also the profit and loss account of the partnership firm till the year 2000-01. This would have curtailed the roving and the fishing inquiry conducted by the learned Arbitrator. The learned Arbitrator could have well focused on the accounts produced by Harminder pertaining to the business carried on at Delhi and the record maintained by him for the year 2001-02 onwards.

10. In view of the fact that stock register was not maintained, because as per Harminder, Die Steel purchased was directly got delivered at the fabrication site of the cutters and therefrom delivered directly to the end consumers, the learned Arbitrator had to focus on the purchase and the sale invoices as also the sales and purchase accounts i.e. expenditure and income

account.

11. The learned Arbitrator did so, but unfortunately has just not understood the effect of what was argued before him and as has been rightly observed by the learned Single Judge, has proceeded to decide the issue on surmises.

12. The learned Arbitrator has noted that as per Amrik, 835 MT of Die Steel had to be accounted for. Learned Arbitrator has noted that Harminder admitted 369 MT of Die Steel being unaccounted for. Learned Arbitrator has noted that as per Amrik he could show from the sale/purchase invoices that 635 MT Die Steel was not accounted for, and that he was of the firm view that there was further bungling of 200 MT Steel. The learned Arbitrator has held that 635 MT Steel was unaccounted for.

13. The reasoning of the learned Arbitrator is as under:-

“The above submission is factually correct. It is to be noted that when the named cutters were asked by the Arbitral Tribunal to tell how much stocks were lying with them, the reply was in the ‘NIL’ from both the cutters. Thus I am of the confirmed view that the opposite party had all along been concealing the stock position. He, admittedly, was singly operating the firm’s business as the claimant was staying in Bombay. Admittedly, he is the accounting party. Therefore, it was his bounden duty to keep the stock position correctly recorded in the stock register. But he did not maintain the Stock Register. It was not fair. He could have told the correct position at least before the Arbitral Tribunal but there also he did not tell and remained evasive. He only came out with his version when in the written submissions given by the claimant he was confronted with a figure of 835 MT as unaccounted being arrived at on the basis of sale/purchase invoices. The basis of calculation has been supplied by charts annexed to the written submissions.

The claimant has, on the basis of firm's sale/purchase invoices, tried to find out the stock position. According to him, from these invoices the stock of 835 MT of Die steel in possession of the opposite party remains unexplained which has to be taken into account for accounting.

The opposite party, in his written submissions controverts the figure of stock allegedly pressed by the claimant but admits that the unexplained stock position during the period 1998 to 2004 was 369 MT. Therefore, it is to be decided whether the unexplained stock of die steel was only 369 MT or 835 MT (as asserted by the claimant).

The parties were heard solely on the above point on 15.9.2012.

The claimant admitted that from sale/purchase invoices only 635 MT steel could be calculated but he was of the fir view that there was a further bungling of 200 MT steel in the accounts. For an Arbitrator it is difficult to give award on the basis of any such firm view. Though it is a proved fact that the opposite party had not maintained records about stock position of steel purchase/sold but award cannot be on conjectures and surmises. The learned counsel for the opposite party tried hard to dispel the assertions of the claimant but I do not agree with him for two reasons. Firstly, that they are not supported by facts on record. Learned counsel for the claimant has well explained that the calculation of only 30MT as 'lot' shown in invoice at page 46 of the written submissions given by the Opposite Party is absurd. Secondly, that when it has come on record that the opposite party bungled the records he has not to be believed. May be some more steel might have been concealed from the records of the firm but the award can only be on the basis of the documents produced by the claimant and not on the basis of his any firm view. For that concealment, if any, the

claimant himself is a contributory factor. Why he did not keep a proper vigil. It is not that he is not versed with the business of the Firm under accounting. He himself was doing the same business in partnership of the opposite party in Bombay. It also came in the notice that the claimant is doing similar business in Faridabad for which he regularly visited Delhi. Therefore, I hold that only 635 MT steel is unaccounted for.”

14. It is apparent that the learned Arbitrator has attributed an admission against Harminder that 369 MT Die Steel remained unexplained for the period 1998 to 2004. There is no basis for said admission, as rightly found by the learned Single Judge. As noted above, Amrik had admitted the balance sheet of the partnership firm as also the profit and loss account till the year 2000-01 and thus the question of there being unaccounted stock upto the year 2000-01 does not arise. The so called admission attributed against Harminder is in his written submissions. We find none. The so called admission figure of 369 MT Die Steel emerges from a statement annexed with his written submissions by Harminder. The statement, drawn up in a tabular form, is as under:-

Year	Purchase in Kg	Purchase value ₹	Sales in Kg	Sales in value ₹	Closing stocks ₹
1999-2000	107000	86,03,190.00	124419	62,64,611.00	67,24,085.00
2000-2001	217720	67,40,516.00	74176	89,79,980.00	56,07,116.00
2001-2002	NIL	NIL	56879	37,83,560.00	25,24,921.00
2002-2003	44415	12,32,953.00	65390	16,84,251.00	16,14,107.00
2003-2004	NIL	NIL	22695	68,13,06.00	10,72,473.00

15. The learned Arbitrator has equated 369.135 MT steel purchased as the admission of it being unaccounted for, overlooking that the tabular statement showed 343.559 MT Die Steel sold.

16. Learned counsel for Amrik could not show to us any admission made by Harminder that as per the record 369.135 MT Die Steel had to be accounted for by him.

17. The statement showed 343.559 MT Die Steel sold. The difference in the purchased and sold quantity was reflected in the tabular chart in terms of the value. This tabular statement was to explain to the learned Arbitrator the quantity of the steel purchased as per purchase invoices and sold as per the sales invoices. The figure in the closing stock was a surplus figure given by Harminder because when 369.135 MT steel was sent to the cutter, about 26 MT got wasted. There is no siphoning of the fund because the tabular statement shows that 369.135 MT steel was purchased for ₹1,65,76,659/- (Rupees One Crore Sixty Five Lacs Seventy Six Thousand Six Hundred Fifty Nine) and after cutting 343.559 MT was sold for ₹2,13,93,702/- (Rupees Two Crores Thirteen Lacs Nienty Three Thousand Seven Hundred two only). There was a profit of ₹49 lacs shown by Harminder.

18. In his written submissions Harminder has clearly pleaded, and annexing the aforementioned chart as Annexure-E, as under:-

“Now assuming that the claim of the Claimant can be considered from the period from 1999 to 2004 and further assuming that the value of the stock of the firm can be or should be assessed by its weight, the Claimant has not correctly calculated the weight of the stock as mentioned in the written submissions. As per the books of accounts maintained by the firm the total weight of the scrap die blocks purchased from the

period from 1999 to 2004 was 369 MT and the weight of the said material sold during the said period was 343.5 MT. In terms of money the purchase value of the old, used die blocks so purchased during the said period was ₹1.65 cr. And the sale value of the same was ₹2.14 Cr. And thus earning a profit of ₹49 lacs. The details of purchase and sales made during the said period have been shown in a table which is filed herewith as Annexure-E”

19. The learned Single Judge has therefore rightly opined that the learned Arbitrator has completely misread the submission made and the table Annexure-E and there is perversity in recording an admission attributable to Harminder.

20. In his written submissions, stand of Amrik was as under:-

“7. The claimant does not agree with the contention that the total weight of the scrap die blocks purchased was 369 MT. The respondent has tried to prove this contention not from the sale and purchase bills but from the figures purportedly shown and reflected in the balance sheets. It is submitted that the weight of the material and sale/purchase value can only be ascertained from the purchase as well as sale invoices and various other documents. In fact, the contention that only 369 MT was purchased is falsified from the fact that the record indicates the total purchase of 1125 MT for the entire five years which was not disputed by the respondent during the arbitration proceedings nor the present plea is supported by any of the documentary evidence and the facts and figures are concocted and beyond the pleadings.”

21. The learned Single Judge has therefore correctly noted that according to Amrik the total purchase should be taken as 1125 MT, a fact apparent from para 7 of his written submissions, contents whereof have been noted above. The further written submissions then refer to three invoices, the first No.263 dated October 11, 1998 showing steel purchased in sum of

₹18,85,209/- @ of ₹8.35 per Kg. to derive that 217 MT steel was purchased. He then uses this basis for two other invoices to highlight that there was something hanky-panky. The learned Single Judge has correctly opined that there was nothing emerging from the record that 635 MT die steel was unaccounted for.

22. We agree with the reasoning of learned Single Judge and would only highlight that a perusal of the relevant part of the award, contents whereof we have noted hereinabove, shows that the learned Arbitrator has himself commenced the reasoning by writing :-

“On the basis of the sale/purchase invoices, the claimant has arrived at some figure.”

23. The starting point of the discussion in the award is itself off the centre. Further there is no reference to any document or evidence with reference whereto the learned Arbitrator has recorded in the next paragraph :-

“He only came out with his version when in the written submissions given by the claimant he was confronted with a figure of 835 MT as unaccounted being arrived at on the basis of sale/purchase invoices.”

24. The reference to ‘he’ in the sentence is to Harinder.

25. Learned counsel for Amrik not throw light on any material wherefrom the figure of 835 MT steel could be derived. We note that the learned Arbitrator himself has not accepted this figure of 835 MT and has proceeded to note that as per Amrik the sale/purchase invoices show only 635 MT steel not being capable of being calculated. The learned Arbitrator has made the award on this quantity of steel. But the problem with the

award, as rightly found out by the learned Single Judge, is that there is no material to show that even this 635 MT steel allegedly purchased by Harminder and debited to the accounts of the partnership was not accounted for by him.

26. Learned counsel for Amrik could not point out from the record of the Arbitrator wherefrom this figure of 635 MT steel could be derived at.

27. We concur with the view taken by the learned Single Judge that even the price @ ₹50/- per Kg. has been pulled out of the hat by the learned Arbitrator as akin to pulling out a rabbit from a hat. The learned Single Judge has also found, and rightly so, that the report of Chartered Accountant reproduced fully in the award also does not bring out the figure of 635 MT steel and the price of ₹50/- per Kg.

28. The learned Single Judge has therefore hit the hammer on the head of the nail by recording that the award suffers from patent illegalities and is vague and incapable of a logical reasoned understanding.

29. Appeals filed by Amrik are accordingly dismissed with costs in favour of Harminder.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

FEBRUARY 11, 2016

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