

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

+ **FAO No.29/2016 and C.M. No.1300/2016 (stay)**

% **8th November, 2017**

UNION OF INDIA Appellant
Through: Mr. G.S. Gangwar, Advocate.

versus

ALOK KANSAL & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugning the judgment of the court below dated 7.9.2015 which has dismissed the objections filed by the appellant under Section 34 of the Act.

2. A reading of the impugned judgment shows that the court below has simply held that the Arbitrator has considered the evidence before him and accordingly passed an Award and the impugned judgment only refers to what has been decided by the Award.

Impugned judgment however does not state what were the issues between the parties, how those issues are rightly or wrongly decided by the Arbitrator and which is a *sine qua non* for a judgment to be a judgment in the eyes of law because a judgment has to be a speaking judgment. It is not enough for a Court dealing with objections under Section 34 of the Act to say that the Arbitrator has given a reasoning which has to be accepted as correct.

3. The relevant paras of the impugned judgment are paras 12 to 15 and these paras read as under:-

“12. The perusal of arbitral proceedings and observations of the Arbitrator in the impugned Award show that rival contentions of the parties and each and every document related to the two extensions of the DP upto 15.01.2005 and 15.04.2005 were meticulously considered by the Arbitrator including the contradictions therein.

13. It was only after having considered the entire evidence that the Arbitrator opined that date of breach of contract should be taken as 31.10.2004 in stead of 15.04.2005. He further concluded that the risk purchase PO dated 13.09.2005 was placed after nearly ten months and 13 days from the date of breach of contract. The contention of the petitioner /nonclaimant that supply of 40 items by the respondent no.2/claimant before 15.04.2005 would show that the contract was still alive till that time has also been considered by the Arbitrator in Para 4.6 of the Award while giving the abovesaid finding. After appreciating the entire evidence placed before him, the Arbitrator concluded that the risk purchase action by the nonclaimant/petitioner was not justified.

14. ***Bharat Coking Coal Ltd Vs L.K Ahuja, (2004) 5 SCC 109***, it has been observed by Hon'ble Supreme Court of India-

“There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside”.

15. In view of the above discussion, the Court is convinced that the petitioner cannot seek reappraisal of evidence from the Court U/s. 34 of the Arbitration and Conciliation Act 1996 in the garb of the ground mentioned in Section 34 (2) (b) (ii) of the Act. The present petition is, therefore, dismissed.”

4. I have already held in the case of ***Harbhajan Kaur Bhatia Through Her Attorney Charanjit Singh Bhatia Vs. M/s Aadya Trading & Investment Pvt. Ltd. & Anr.*** in FAO No.355/2016 decided on 18.7.2017 that judgment such as the impugned judgment is not a judgment in the eyes of law, and therefore, has to be set aside and matter has to be remanded back for a fresh decision. The relevant paras of the judgment in the case of ***Harbhajan Kaur Bhatia Through***

Her Attorney Charanjit Singh Bhatia (supra) are paras 6 to 9 and

these paras read as under:-

“6. The impugned judgment dismissing the objections, I am forced to note, is an apology for the expression judgment. In an impugned judgment what are the respective cases of the parties and the issues to be decided have to be mentioned. Thereafter how the issues are decided is discussed. The impugned judgment however only states that Award is passed by the Arbitrator and there are no grounds for setting aside of the Award under Section 34 of the Act because there is no incapacity of the objector or any issue of lack of notice. It is also observed that the Award does not deserve to be set aside as it is not in conflict with the public policy of India.

7. This Court is receiving many judgments of the courts below which are most unfortunately dismissing the objections by simply stating that the Award is not against the public policy or the Award does not violate the ratio of the judgment of the Supreme Court in *Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. (2003) 5 SCC 705* and the other connected judgments. In my opinion, this is an unacceptable practice. Since this Court has received a series of cases where objections under Section 34 of the Act are being decided without even mentioning what the disputes between the parties are, how the Award has decided the same and how a court hearing objections under Section 34 of the Act cannot interfere because the Award, as per the reasoning, is neither illegal or perverse including not falling under the ingredients of Section 34 of the Act, therefore, while setting aside the impugned judgment on the ground of complete absence of reasoning as also discussion as regards what were the issues involved and how they are decided, a copy of this Court's judgment along with the impugned judgment dated 10.12.2015 be put up before Hon'ble the Acting Chief Justice, so that appropriate directions can be issued, if Hon'ble the Acting Chief Justice so deems fit, to the District Courts that non-speaking judgments cannot be passed while dealing with the objections which are filed under Section 34 of the Act.

8. To show that the present impugned judgment is a completely non-speaking judgment, and as stated above is an apology for the expression judgment, the relevant paras of the impugned judgment of the court below are reproduced as under:-

“5. I have heard ld. counsel for both the parties very extensively. I have also gone through the file and written submissions placed on record.

6. Hon’ble Delhi High Court in case titled as **DDA vs Anand Associates 151 (2008) DLT 18** had held that court does not sit in appeal over an Award passed by Arbitrator. I cannot reappraise evidence which had been led before Arbitrator. Court has very limited jurisdiction.

7. As per Section 34 of Arbitration and Conciliation Act, an arbitration award can be set aside by the court only if it satisfies any of the grounds mentioned in section 34 (2) and (3) of the Act. Under no other ground, arbitration award can be set aside. The only ground under which award can be interfered with is under section 34 of the Act.

8. According to Section 34 (2) (i), if a party is under some incapacity, award can be set aside. Here there is no incapacity of the objector. As per sub clause (ii), if the Agreement is invalid then also award can be set aside. Here the agreement was valid. As per sub clause (iii), if objector is not given proper notice then award can be set aside. Here objector had participated in the proceedings. As per sub clause (iv), if the award deals with dispute not contemplated then also award can be set aside. Here dispute referred was as per Agreement and was contemplated. As per sub clause (v), if composition of the Tribunal is not as per agreement then also award can be set aside. Here there was nothing wrong with the composition. As per Section 34 (2) (b), if subject matter of the dispute is not capable of settlement or the Award is in conflict with public policy of India then award can also be set aside. Here subject matter is capable of settlement and the award was not in conflict with public policy.

9. This court is not to sit in appeal over the Award passed. It is merely to see if Arbitrator has not acted as per law or he himself misconducted or the Award was in conflict with existing legal provisions. All averments regarding competency of A.N.Sharma could have been proved before arbitrator by leading evidence. Unfortunately, objector had not led any evidence. Function of the court is akin to executing court. Like executing court cannot go beyond decree, this court cannot go beyond the award. Objections call for dismissal and same are dismissed. File be consigned to Record Room. No order as to costs.”

9. Accordingly, the appeal is allowed. The impugned judgment dated 10.12.2015 is set aside and it is ordered that the case be remanded back to the court below to decide the case in accordance with law after setting out the facts in issue, discussion on the relevant issues and giving reasoning for the conclusion which is to be arrived at by the court below for allowing or dismissing the objections under Section 34 of the Act.”

5. Accordingly, adopting the ratio of *Harbhajan Kaur Bhatia Through Her Attorney Charanjit Singh Bhatia* case(*supra*) the impugned judgment dated 7.9.2015 is set aside and the court below is directed to decide objections filed by the appellant under Section 34 of the Act in accordance with law and the observations made in the case of *Harbhajan Kaur Bhatia Through Her Attorney Charanjit Singh Bhatia (supra)*.

6. Parties to appear before the District & Sessions Judge (New Delhi), Patiala House Courts, New Delhi on 6th December, 2017 and the District & Sessions Judge will mark the petition for disposal to the competent court in accordance with law.

7. Appeal is accordingly disposed of in terms of aforesaid observations.

NOVEMBER 08, 2017
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VALMIKI J. MEHTA, J