

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 400 OF 2017

IN

ARBITRATION PETITION NO.20 OF 2017

T-Honnur Saheb.

...Appellant

vs.

1.Union of India & Ors

...Respondent

with

NOTICE OF MOTION NO.29 OF 2018

Mr.A.S.Rao, for the Appellant.

Mr.Suresh Kumar with Ms.Priyanka Tiwari, for the Respondent.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 7th August,2018

P.C.:

1. This appeal under Section 37 of the Arbitration and Conciliation Act,1996 (for short 'the Act') arises from an order dated 31 August 2017 passed by the learned Single Judge whereby a petition filed by the appellant under section 34 of the Act, challenging the award dated 29 July 2016 passed by the Arbitral Tribunal, stands dismissed.

2. The dispute between the parties had arisen under an agreement dated 17 August 2000 which was for the work of laying cables and more particularly in regard to the erection of cables which were actually led in execution of the contract. The appellant claim was on the ground that he had actually undertaken the work of laying cables

which was borne out by the document dated 6 September 2005 which was sent by the Assistant Signal and Telecom Engineer (ASTE) to Deputy Chief Signal and Telecom Engineer (DCSTE). The Arbitral tribunal examining the evidence on record did not accept the contention as urged on behalf of the appellant and disallowed the claims. The Tribunal held that the main plank of the appellant's assertion on the basis of the letter dated 6 September 2005 itself is not proved.

3. The learned Single Judge rejecting the assertion of the appellant on the letter dated 6 September 2005 from the ASTE to DCSTE and taking into consideration the finding in the award has made the following observations:

“5. I find that the impugned award does record consideration of the earlier direction in respect of the aforesaid communication dated 6th September, 2005 addressed by the ASTE to DCSTE in the following terms:

“Arbitral Tribunal has questioned the authenticity of his letter as the original letter is not available with the Respondent's office file. Moreover this letter is without date and neither issued from concerned file (Dy/SG/W/118/173 of Respondent) as no file number is available nor any dispatch particular is available on this letter.”

6. From the above recording in the Award it is clear that the Arbitral Tribunal came to the conclusion that the letter dated 6th September 2005, which was claimed to have been sent by the ASTE to DCSTE was not available in the Respondent's file. This is further supported by the facts that there is neither file number nor dispatch number shown on that letter. In any case this would be matter of evidence. In any case, the letter dated 6th September 2005 has been considered by the Arbitral Tribunal and on the basis of the evidence on record has come to the particular conclusion. This conclusion, only because it is adverse to the Petitioner, would not make the impugned Award contrary to a

public policy.”

4. The learned Counsel for the appellant in assailing the impugned order has reiterated the submissions as urged before the learned Single Judge. It is contended that the Arbitral Tribunal has hurriedly undertaken the exercise in making the award. Secondly it is contended that the communication dated 6 September 2005 from ASTE to DCSTE ought to have been taken into consideration by the arbitral tribunal which according to the appellant proved the fact that the cables were led and the appellant was entitled for payment from the respondent.

5. We have heard the learned Counsel for the parties. We have also perused the impugned order as also the documents placed on record as also the impugned order. We are not persuaded to accept the contentions as urged on behalf of the appellant. It is clear that the appellant could not prove the letter dated 6 September 2005 addressed by ASTE to DCSTE. The appellant is not in a position to show any material, that efforts were taken to examine the author of the letter or of any other steps taken by him to prove the letter by any other method known to law. If the said document was a material document/evidence on the basis of which the appellant thought that he would succeed in his claim before the arbitral tribunal then in such situation definitely he ought to have proved the said document. In any event, the observations as made by the arbitral tribunal in regard to authenticity of the said letter, the original letter being not available in the respondent's file and that the letter was without date and having no file number as also there was no dispatch, particulars etc., were factors for the arbitral tribunal to rightly not accepted the said document. The learned Single Judge,

therefore, would be correct in making the observations in paragraphs 4 to 6 of the impugned order.

6. As regards the contention that the Arbitral Tribunal had hurriedly undertaken the exercise of adjudicating the dispute also cannot be accepted. As observed by the learned Single Judge in paragraph 3 of the order, the appellant has not shown any prejudice whatsoever, which can be said to have occurred to the appellant in the arbitral tribunal making the award. In any event a perusal of the award indicate that the arbitral tribunal has taken into consideration each and every aspect of the rival contentions qua the claims, and in an appropriate manner on examining the evidence has held that the claim as made by the appellant could not have succeeded.

7. In the circumstances, the contention as urged on behalf of the appellant that the award is perverse and was required to be set aside on the ground that it is opposite to public policy relying on the decision of the Supreme Court in “*Associate Builders Vs. Delhi Development Authority*”¹ is required to be stated to be rejected.

8. For the above reasons, we see no reason to interfere in the impugned order. The appeal is accordingly dismissed. No costs.

9. In view of dismissal of the appeal, nothing survives in the pending Notice of Motion. It is accordingly disposed of.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]

Prashant
Vilas
Rane

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by Prashant
Vilas Rane
Date: 2018.08.08
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1 (2015)3 SCC 49