

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

ARBITRATION APPEAL NO.4/2017

1. National Cooperative Consumers Federation of India Ltd., through its Managing Director, "DEEPALI", 5th Floor, 92 Nehru Place, New Delhi, 110 019.
2. The Branch Manager, National Cooperative Consumers Federation of India Ltd., 65-68 Sitaram Mill Compound, N.M. Joshi Marg, Chinchpokli, Mumbai 400 011.
3. The Branch Manager, National Cooperative Consumers Federation of India Ltd., 217, Wardhaman Nagar, Bhandara Road, Nagpur 440 008.

..Appellants.

..Vs..

1. Rajan Trading Company, a Proprietary concern through its sole Proprietor Manoharlal S/o Sonraj Dhadda, through LR's Shri Rajan S/o Manoharlal Dhadda.
2. Manoharlal S/o Sonraj Dhadda (Dead) through LR's Shri Rajan S/o Manoharlal Dhadda being Proprietor of Rajan Trading Company.

Both R/o 299, Nandanwan Layout,
Nagpur.

..Respondents.

 Shri S.S. Khadse, Advocate for the appellants.
 Shri S.V. Purohit, Advocate for the respondents.

CORAM : Z.A. HAQ, J.

DATE : 27.4.2018.

ORAL JUDGMENT

1. Heard Shri S.S. Khadse, Advocate for the appellants and Shri S.V. Purohit, Advocate for the respondents.

2. **Admit.**

3. Considering the nature of dispute and as record and proceedings are received, the appeal is taken up for final hearing.

4. The appellants have challenged the order passed by the learned Principal District Judge dismissing the application filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 and maintaining the award passed by the learned Arbitrator.

5. The impugned award passed by the learned Arbitrator and the order passed by the learned Principal District Judge are challenged on the following grounds:

(i) *That the award is without jurisdiction as the arbitration proceedings itself are bad in law having been taken up, on appointment of the learned Arbitrator, without there being any arbitration agreement between the parties.*

(ii) *Alternatively, if at all the arbitration proceedings were required to be taken up, same should have been at Mumbai or Delhi and the proceedings should not have been taken up at Nagpur.*

(iii) *The amount which the appellants are required to pay as per the impugned award is already paid to a Society - Shagun Mahila Udyogik Sahakari Sanstha which was appointed independently by the appellants to execute the work in question.*

6. The impugned award and order passed by the learned Principal District Judge is defended by the respondents. The learned Advocates for the respondents has pointed out from the impugned award, the findings on the point that there was an arbitration agreement and on the point of jurisdiction. Further submission on behalf of the respondents is that Mrs. Rupa Rai was representative on behalf of respondents to execute the work in question and she was the President of the society - Shagun Mahila Udyogik Sahakari Sanstha through which the work is executed. According to the respondents, as per the agreement between the parties, the work which is executed through the Society - Shagun Mahila Udyogik Sahakari Sanstha is done on behalf of the respondents and, therefore, the respondents are entitled to receive the remuneration for execution of that work and, therefore, the award passed by the learned Arbitrator upholding the claim of the respondents for that amount cannot be faulted with.

7. In paragraph No.10 of the impugned award, the learned Arbitrator has recorded that the National Co-operative Consumers Federation (present

appellants) had filed a pursis in the arbitration proceedings stating that they had given up the preliminary objection raised on the point of territorial jurisdiction. Therefore, the rejection of this objection by the learned Arbitrator cannot be faulted with.

8. As far as the submission made on behalf of the appellants on the point that there was no arbitration agreement between the parties, I find that the conclusions of the learned Arbitrator recorded in paragraph No.13 of the impugned award are proper cannot be faulted with. After assessing the evidence on record, the learned Arbitrator has observed that the existence of arbitration agreement is accepted by Shri S.K. Jha who was working as Branch Manager of National Cooperative Consumers Federation at the relevant time and who had signed the statement of defence. Relying on the admission given by Shri S.K. Jha about execution of agreement at Mumbai on 16th August, 2000 learned Arbitrator has recorded the finding that arbitration agreement existed between the parties. The appellants have not been able to point out that this finding of fact recorded by the learned Arbitrator suffers from any illegality or perversity.

9. As far as the third point is concerned, attempt on the part of the appellants is to show that Mrs. Rupa Rai or the Society - Shagun Mahila Udyogik Sahakari Sanstha had not executed the work as representative of the

respondents. The appellants relied on stray admissions given by Rajan Dhadda, son of original claimant No.2. Considering the nature of defence of the appellants, in my view, burden to show that the work was executed by the Society - Shagun Mahila Udyogik Sahakari Sanstha, as an independent contractor having been appointed by the appellants, was on the appellants. The appellants have not produced any evidence on record to show that earlier agreement dated 16th August, 2000 executed between the appellants and the respondents for the work in question was revoked, cancelled or modified. The appellants have not produced any evidence on record to show that the Society - Shagun Mahila Udyogik Sahakari Sanstha was appointed to execute the work in question. In my view, the appellants have failed to discharge the burden of showing that the work executed by the Society - Shagun Mahila Udyogik Sahakari Sanstha or Mrs. Rupa Rai (President of that society) was executed as independent contractor and not as representative of the respondents.

10. All the facts are rightly considered by the learned Arbitrator as also by the learned District Judge. I do not find any illegality or perversity in the findings recorded in the impugned award and in the order passed by the learned Principal District Judge.

The appeal is **dismissed**. In the circumstances, the parties to bear their own costs.

CIVIL APPLICATION (CAM) NOS.11/2018 AND 22/2017

In view of disposal of the arbitration appeal, these applications praying for remanding the matter, and stay to the impugned award and the order passed by the learned Principal District Judge do not survive and are **disposed** accordingly. No costs.

JUDGE

Tambaskar.