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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 66/2018, CM APPL. 6446/2018, CM APPL. 6447/2018

BALLOONS & ANR

..... Appellants

Through: Mr. Prem Kumar Sharma, Advocate.

Versus

RAM LAL PRAHLAD KUMAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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16.04.2018

This appeal under section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') impugns an order dated 12.07.2017 passed by the learned Additional District Judge, Delhi in a proceeding under section 34 of the Act directing payment of certain monies to the respondent. The Award dated 07.07.2014 was challenged on various ground. The impugned order did not find any merit in the petition and reasoned:-

"8. The contention of the petitioners that there was no arbitration agreement between them and the respondent and so, the matter could not have been referred to the Arbitrator is also dealt by the Arbitrator for which he had framed an issue and gave his findings. Further, as per ratio decidendi in the case M/s Luda Ram Ved Prakash (supra), the Hon'ble High Court of Delhi, New Delhi has categorically observed that in such matters, Delhi Hindustani Mercantile Association (Regd.) can conduct arbitration.

9. The petitioners have not shown anything on record if at all the Arbitral Award deals with a dispute not

contemplated by or not falling within the terms of the submission to arbitration, or if it contains decision on matters beyond the scope of the submission to arbitration. Further, nothing is shown on record if the arbitration proceedings were conducted in conflict with law or if the said matter of dispute was not capable of settlement by Arbitrator under the law for the time being in force or if the Arbitral Award was in conflict with the public policy of India or if the said award was induced or was affected by fraud or corruption or was in violation of section 75 or section 81.

10. In the facts and circumstances of the case and on the basis of the material as placed on record, in considered opinion of the court, there is nothing on record to show if at all the Arbitrator Shri Sharad Banuda was biased while conducting the arbitration proceedings or if sufficient opportunity was not afforded to the petitioners to participate in the proceedings or to present their case. It also needs to be mentioned that from the record of Arbitrator, it is revealed that the petitioners remained absent on various occasions despite knowledge of the proceedings and the application of petitioners dated 29.10.2013 was also dealt with by the Arbitrator which does not seem to suffer from any infirmity.”

The learned counsel for the appellant contends that their application dated 29.10.2013 was never considered on merits and they were never given a chance to argue the case. The Award itself records the conduct of the appellant and notices that on 08.01.2013, the appellant had been granted one last opportunity to cross-examine the plaintiff. There was default in appearance and hence, the right to cross-examination was closed. The case was next listed for defendant's evidence on 22.01.2013, when at the appellants' request, the case was adjourned to 13.02.2013. On the

appellants' request and in the absence of any objections from the respondents, they were permitted to cross-examine the plaintiff on 09.04.2013. This date too was wasted because the appellant did not cross-examine the plaintiff and their right to do so was closed. The case was next listed for 28.05.2013. Even on the later date, no cross-examination of the plaintiff was done and the case was adjourned to 23.07.2017. In effect, till 08.10.2013, the appellants did nothing to lead evidence on their behalf. Hence, the case was fixed for final arguments on 29.10.2013. Evidently, the learned Arbitrator had considered that after almost 10 months having been given chance twice over to cross-examine the plaintiff and to lead evidence, they had failed to do so.

In these circumstances, the learned Arbitrator had rejected the application and reasoned as under:-

“ After filing of the evidence of the plaintiff the date was fixed on 8/1/2013 as last opportunity to cross examine the plaintiff. On 8/1/2013 the defendant did not appear despite intimation and thereafter their right of cross examination was closed and the date was fixed for the evidence of the defendant on 22/1/2013. On 22/1/2013 on the request of the defendant he was given the date for 12/2/2013. On 12/2/2013 an application was given by the defendant and thereby the prayer was made to cross examine the plaintiff. The plaintiff did not raise any objection on application of the defendant and the said application of the defendant was allowed on 5/3/2013 and the date was fixed as 9/4/2013 to cross examine the plaintiff by the defendant. The defendant did not cross examine the plaintiff till 30/4/2013 and on 30/4/2013 the right of the defendant to cross was again closed and the next date was given as 28/5.2013 for evidence of the defendant. The defendant did not cross examine the plaintiff from 28/5/2013 to 23/7/2013 but on 29/10/2013 the defendant again gave an application in the

office of association and the same was again dismissed on 23/7/2013 and next date was given as 6/8/2013 for evidence of the defendant. The defendant did not give his evidence from 6/8/2013 to 8/10/2013 and only has been demanding the dates on one pretext or the other. The defendant has only passed the time and has not cooperated and has not filed any documents or statement of accounts etc along with reply and only taken the objection in the reply. The defendant was given sufficient time to put his side but due to non cooperation the evidence of the defendant is closed on 8/10/2013 and next date was fixed for 29/10/2013 for final argument. On 29/10/2013 the defendant remained absent but on 29/10/2013 an application was again filed in the office of association in which prayer was made to open cross examine, I reject the same because the purpose of the defendant by moving the application again and again is to prolong the suit and pass time so I reject all the objections raised by the defendant and I accept the suit of plaintiff as true and correct. I pass the Award in favour of the plaintiff and against the defendant for Rs.2,47,635/- as principal and Rs. 1,24,380/- as interest at the rate of 24% per annum upto 31/3/2009 total amounting to Rs.3,72,015/-.”

Apart from their letter of 29.10.2013 to the Arbitrator, the appellants have not referred to any document to substantiate their argument of procedural irregularity or denial of natural justice. In view of the above and specifically the reasoning in para 8, 9 and 10 of the impugned order, no ground is made out for maintaining this appeal under section 37 of the Act.

In view of the above, the Court finds no reason to interfere in the impugned order, being without merits. The appeal alongwith pending applications stands disposed off accordingly.

NAJMI WAZIRI, J.

APRIL 16, 2018/sb