

ORDER SHEET
APO/118/2021
WITH
AP/156/2020
IA NO: GA/1/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

FAIR DEAL SUPPLIES LIMITED
VS
R. PIYARELALL IRON AND STEEL PVT LTD.

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 16TH SEPTEMBER, 2021.

Appearance :
Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Joy Saha, Sr. Adv.
Mr. B. Ghosh, Adv.
Ms. N. Adhya, Adv.
Mr. D. Mukherjee, Adv.
Mr. K. Banerjee, Adv.
Ms. S. Paul, Adv.
...For the appellant

Mr. Ratnanko Banerji, Sr. Adv.
Mr. D. N. Sharma, Adv.
...For the respondent

The Court : At the outset, Mr. Ratnanko Banerji, learned senior counsel submits on a preliminary point that the appeal is not maintainable under Section 37 of the Arbitration & Conciliation Act, 1996 as the subject matter of the order does not fall within the type of orders from which an appeal is allowed under that Section. To this, Mr. Jayanta Kumar Mitra, learned senior counsel appearing for the appellant submits that this Court had no jurisdiction to correct an error in the award under any of the provisions of the said Act. Therefore, the order could not have been said to be made under the Arbitration & Conciliation Act, 1996 and is a nullity. This Court had jurisdiction to declare such an order as null and void on appeal which could only be considered as one under Clause 15 of the Letter's Patent.

We will deal with the preliminary point at the time of disposal of this appeal.

The award in question was made and published on 16th December, 2019. On 5th October, 2020 an application was made before the arbitral tribunal comprising of three learned senior counsel of this Court to correct the name of the award debtor in the records of the arbitral proceedings under Section 33 of the said Act. On 9th November, 2020, the tribunal rejected this application as beyond time.

In the meantime, the appellant/award debtor had filed an application under Section 34 of the said Act in this Court. From the said refusal of the tribunal, a revisional application was made before this Court which on 7th December, 2020 disposed of the same with the observation that such remedy was available under Section 34 of the said Act. On 4th March, 2021, an application was filed in the Section 34 application for making necessary correction in the records of the arbitral proceedings.

Mr. Ratnanko Banerji, learned senior counsel appearing for the respondent submits that in the Section 34 application, the name of the award debtor was correctly stated.

The learned single judge by her ladyship's judgement and order dated 23rd August, 2021 directed the department of this Court to carry out the correction. The only ground taken by Mr. Mitra is that the applicant before the Court had asked for the matter to be remitted to the arbitrators for correction and that the Court had no jurisdiction to order correction by its department.

Mr. Banerji, learned senior counsel submits that since the order was made, the necessary correction has been effected by the department.

It is a matter of great concern to us that for such a ministerial mistake in the records, so many proceedings had to be undertaken by the parties. It is high time that these procedural problems are overcome and the merits of the matter adjudged in the proper forum.

The learned single judge has held that Section 34(4) does not envisage correction of this type but nevertheless has held :

“The application is outside the purview of Section 34 (4) since it is not the respondent’s case that the matter needs to be heard by the Tribunal for eliminating the grounds for setting aside the award. Although the present application has been incorrectly presented and conceived of, the Court can direct correction of the error in the award. The name of the petitioner in the Arbitration Petition shall accordingly be corrected from “Fair Deal Suppliers Pvt. Ltd.” To “Fair Deal Supplies Ltd.” in the award dated 16th December, 2019.

The concerned department is directed to carry out the correction as indicated above. The petitioner/award-debtor shall also be at liberty to make necessary corrections to the extent of the present order in its application for setting aside the award, if required. The petitioner/award-debtor shall also be at liberty to take this point as a ground of challenge in the Section 34 application, if permitted by law.

GA/2/2021 is disposed of in terms of the above.”

This is where the learned judge has fallen into an error. We are of the view that the Court had no jurisdiction to direct correction of the arbitral records as there is no such mandate in the statute. Thus, Section 33 of the said Act is as follows:

“33. Correction and interpretation of award; additional award.—(1) *Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—*

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.”

Section 33 requires the arbitral tribunal to correct the mistake complained of.

Therefore, prima facie, we hold that the order was without jurisdiction and also not fall within any of the provisions of the Arbitration & Conciliation Act, 1996. Therefore, an appeal lies under Clause 15 of the Letters Patent. Otherwise a litigant would be remediless.

To put an early end to this procedural issue arising out of a very minor ministerial error in the arbitration records, we direct as under :

(a) The records of the arbitral proceedings before the Arbitral tribunal, including the Award, in the records of this Court, shall be placed in a sealed cover by the learned Registrar, High Court, Original Side.

(b) An officer of this Court should be deputed by the said learned Registrar to carry the said sealed cover to the meeting convened by the arbitral tribunal, after making an appointment with the learned arbitrators and requesting them to convene a meeting of the tribunal for the purposes of this order. The officer shall be accompanied by the advocates on record for the parties or their assistants.

(c) The seal be opened in the presence of the learned arbitrators who shall endorse the corrections made by the department further to the order dated 23rd August, 2021 by putting their seal and signature thereon and hand back the records to the said officer of the Court to be carried back by him to the department. Any delay in approaching the tribunal shall be deemed to have been condoned by it.

(d) This exercise should be completed by 30th September, 2021.

The parties may take steps for hearing of the Section 34 application.

The impugned order is set aside.

The appeal (APO No.118 of 2021) and the connected application (GA No.1 of 2021) are disposed of accordingly.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)