

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.M.A.NO.829 of 2007

JUDGMENT:

This Civil Miscellaneous Appeal has been preferred by the appellant, who was petitioner in Arbitration O.P.No.45 of 1996 on the file of III Senior Civil Judge, City Civil Court, Secunderabad.

2. As could be seen from the averments made in the present Civil Miscellaneous Appeal and as per the other record, it shows that the appellant had entered into an agreement with the 1st respondent railways for execution of work namely "Extension to Platform, Panel Cabin and providing masonry drains, toilet block in Hyderabad yard" covered by an agreement No.16/DEN/C/SC dated 30-08-1979. The appellant has claimed that there were some disputes and differences between the parties thereby, by invoking the Arbitration clause of the agreement, the disputes were referred to the Joint Arbitrators, who are shown as respondents No.2 and 3 in the present appeal, for adjudication. The learned Arbitrators conducted enquiry and after considering pleadings and documents of both parties, passed an award on 25-07-1996.

3. Being aggrieved by the findings of the respondents/arbitrators, the appellant herein filed two separate

arbitration O.Ps. vide O.P.No.44 of 1996 and O.P.No.45 of 1996, whereas, the petition vide O.P.No.5 of 1997 was filed by Union of India, Central Railways represented by Union of India against the Contractor. O.P.No.44 of 1996 was filed with a request to make the award passed by respondents No.2 and 3/Joint Arbitrators as a 'Rule of Court'. O.P.No.45 of 1996 was also filed by the appellant/petitioner to set aside the award to the extent that it was held against the appellant/petitioner herein, whereas, the other petition vide O.P.No.5 of 1997 was filed by the Railways with a prayer to set aside the award. The learned Senior Civil Judge disposed of the three (3) petitions vide common order dated 20-02-2007 and accepted the claim of appellant/petitioner to make the award the rule of law but refused to accept the contention of the petitioner raised in O.P.No.45 of 1996, consequently dismissed the 3rd petition.

4. Being aggrieved by the orders of the learned Senior Civil Judge, the appellant herein filed the present appeal on the following grounds.

5. The appellant has claimed that the lower Court ought to have seen that the appellant executed many items of works not contemplated in the contract and consequently the very scope of the work was changed thereby, it is to be treated as separate work

and respondent No.1 made payments as demanded by the appellant in his letter dated 26-12-1981. The learned Senior Civil Judge ought to have seen that there were negotiations between the petitioner and respondents after completion of the work and respondents have paid at 200% above SSR/1970 as against agreement rate of 106% above SSR/1970 by taking into consideration of hike in the cost of material and labour charges etc., but the learned Arbitrators without examining the above facts failed to award 175% excess over the SSR rates as claimed which is equated to above 300% above SSR/1970 rates or at least they ought to have awarded 200% above SSR/1970 rates in the given circumstances. The appellant further claimed that the observations made by the Arbitrators while calculating and fixing the percentage was not based on the prevailing circumstances under which the additional value of which Rs.1,93,000/- was executed beyond the original value of Rs.1,42,482/-. The appellant has pleaded that the Arbitrators has committed an error in not accepting the rate of 200% above SSR/1970 into consideration which is already accepted by department based on the inflation that was occurred during the prolongation of the work beyond the original period of 3 months.

6. The appellant has further claimed that the learned Senior Civil Judge ought to have seen that the Arbitrators committed an error in not adjourning the claim No.2 in respect of work executed and not paid on the ground that it was not figured in terms of reference issued by Chief Administrative Officer/S.C. Railway, Secunderabad. He has also pleaded that the Court below ought to have seen that his claim was figured in the list of claims made to General Manager on 16-05-1991, it was not disputed nor it was rejected, but the Chief Administrative officer while appointing the Joint Arbitrators omitted this claim arbitrarily, illegally being in dominate position and in contravention of the Court orders. He has also pleaded that he brought the omission to the notice of Chief Administrative Officer with a request to add the claim to his request but it was not considered.

7. According to the appellant, the claim No.2 relates to 'work done and not paid' thereby, the same cannot come under 'excepted matter' under any stretch of imagination. It is not the case of railways that the appellant has not carried out the said works or the said works also been measured and there is any finality on the aspect in terms of the contract conditions. The appellant has pleaded that the arbitrators ought to have seen that they were appointed for the purpose of adjudicating all the claims

in respect of the contract works. The non-payment and non-finalization of claim No.2 itself is a dispute to be adjudicated by way of arbitration thereby, it cannot be excluded from the purview of the dispute as such, the case is liable to be remitted back to the Arbitrators for adjudication.

8. He has also pleaded that the learned Arbitrators while granting interest on non-payment of security deposit allowed interest only for a period of 57 months, attributing delay of 19 months from the appellant's side on the plea that the claimant did not sign final bill between period of preparation of final bill and date of signing the final bill but there was no basis for coming to the said conclusion thereby, according to appellant it is an error on the face of the record. The appellant has further pleaded that the Arbitrators ought to have granted interest on the final bill for the period from date of completion of work and the reasons mentioned there in also applies to claim No.4.

9. The appellant further averred that the Court below ought to have seen that the appellant under claim No.5 sought for a sum of Rs.15,000/- towards transportation charges, and clerical establishment was claimed at Rs.2,500/- "per year" instead of "per month" which is typographical error and by over sight it has been shown as above. Therefore, on that account, he was entitled to

Rs.1,80,000/- apart from Rs.15,000/- towards transportation charges but his claim was not accepted by the Arbitrators.

10. Heard the learned counsel for the appellant and respondent.

11. Now the points for consideration in this appeal are :

1. Whether the order of learned Senior Civil Judge in the common Judgment impugned in this appeal is incorrect and liable to be set aside?
2. Whether there are grounds for remanding the matter to the Court below?

12. The present Civil Miscellaneous Appeal is filed by the Contractor with a prayer to set aside the findings of the learned III Addl. Senior Civil Judge, City Civil Court, Secunderabad in the common order dated 20-02-2007 in O.P.Nos.44 of 1996, 45 of 1996 and 5 of 1997, where under his prayer to set aside the award of the Arbitrator in respect of some of his claims was denied.

13. There was a contract agreement between the appellant herein (Contractor) and 1st respondent (Railway) on 30-08-1979 for a proposed work of "Extension to Platform, Panel Cabin and providing masonry drains, toilet block in Hyderabad yard". Subsequently, there arose some disputes between appellant and 1st respondent in respect of said work. The appellant herein filed O.P.No.96 of 1997 and sought for appointment of Arbitrator to

adjudicate the disputes. Therefore, upon Respondents No.2 and 3 herein were appointed as Joint Arbitrators.

14. Both the Arbitrators called for the claims and counter statements of both parties. Both parties have submitted their claims and counters. There upon, the Joint Arbitrators having considered the evidence and arguments advanced by both parties passed an award on 25-07-1996. As per the award, it seems that out of the 8 Claims raised by the appellants, the Arbitrators negatived 3 of his Claims i.e., 2, 6 and 8 and no amount was ordered. Whereas, in Claim No.1, they have ordered Rs.12,145/- against the Claim of Rs.1,73,986/-, they have awarded Rs.16,229/- against Claim No.3 of Rs.73,170/-, and Rs.18,200/- against Claim No.4 of Rs.52,480/-, Rs.5,000/- against the Claim No.5 of Rs.15,000/- and against Claim No.7 i.e., towards interest on all Claims, the Arbitrators awarded Rs.52,090/-.

15. The appellant herein has filed two petitions before the Court vide O.P.No.44 of 1996 and O.P.No.45 of 1996. O.P.No.44 of 1996 has been filed by the appellant to make the award as a 'Rule of Court' and O.P.No.45 of 1996 was filed with a prayer to set aside the award to the extent it was held against the appellant. Not satisfied with the award, the respondent No.1/Railways filed O.P.No.5 of 1997 with a prayer to set aside the award.

16. The learned Senior Civil Judge disposed of the three petitions by a common order on 28-02-2007. He has allowed O.P.No.44 of 1996 and made the award as Rule of Court and dismissed the remaining petitions vide O.P.No.45 of 1996 and O.P.No.5 of 1997.

17. Being aggrieved by the said finding in so far as it is relates to his petition vide O.P.No.45 of 1996, the appellant has filed the present appeal with a prayer to set aside the order.

18. As per the material available on record, O.P.No.45 of 1996 has been filed by the appellant before the learned Senior Civil Judge on 09-10-1996. The petition was filed under Section 17 of the Arbitration Act, 1940 which herein after will be referred as the Act. Section 17 of the Act reads as follows :

“ Judgment in terms of award. Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award”.

19. The present appeal as could be seen from the cause title was filed under Section 39 of the Act which reads as follows :

39. Appealable orders.

(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order:- An order-

(i) superseding an arbitration;

(ii) on an award stated in the form of a special case;

(iii) modifying or correcting an award;

(iv) filing or refusing to file an arbitration agreement;

(v) staying or refusing to stay legal proceedings where there is an arbitration agreement;

(vi) setting aside or refusing to set aside an award; Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court. CHAP MISCELLANEOUS CHAPTER VII MISCELLANEOUS.

20. Since the arbitral proceedings in this particular matter commenced prior to 1996, the provisions of Act of 1940 only applicable. As per Section 17, it provides no appeal shall lie from such decree except on the ground that it is in excess, or not otherwise in accordance with the award.

21. As per Section 30 of the Act, the award shall not be set aside except on one or more grounds set out in the said Section namely that an Arbitrator or Umpire has misconducted himself or

proceedings that an award has been passed after suspension of arbitration by a Court order or an award was improperly procured.

22. It is not the case of appellant that the award was passed after the suspension of Arbitrator. It is not his case that the award was improperly procured. Therefore, it has to be verified whether Arbitrators have misconducted themselves.

23. The learned Senior Civil Judge passed a reasoned order for dismissing the request of appellant for setting aside the award as per the request of the appellant. The Arbitrator rejected his Claim Nos.2 and 8 on the ground that those two Claims were not there in the list of Claims referred to them. With regard to other Claim, the Arbitrator gave reasoning for awarding particular rate of interest or for rejecting the Claim of appellant. The learned Senior Civil Judge dismissed the petition on the ground that there is no unreasonableness or arbitrariness in the award. The appellant cannot raise any claim beyond the scope of reference. In this case, the appellant could not establish any ground as provided under Section 39 of the Act for setting aside the award.

24. In a Judgment between “**State of U.P. V. Allied Constructions**”¹ the Hon’ble Apex Court held that

¹ (2003) 7 SCC 396

“the power of the Court to interfere is restricted by virtue of Section 30, Court cannot reappraise the evidence, interpreting a contract is matter within the jurisdiction of the Arbitrator and unless one or the other conditions under Section 30 of the Act is satisfied, the award cannot be set aside”.

25. In another Judgment between **“Sudarsan Trading Co., V. Govt. of Kerala”²**, it was held that

“Section 30 of Arbitration Act, 1940, providing for setting aside an award is restrictive in its operation. Unless one or the other conditions contained in Section 30 is satisfied, an award cannot be set aside. The Arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from re-appraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the Judgment is based on wrong proposition of law. An error apparent on the face of the records would not imply closer scrutiny of the merits of documents and materials on record. Once it is found that the view of the Arbitrator is plausible one, the Court will restrain itself from interfering”.

26. In another Judgment between **“Ravindra Kumar Gupta and Company V. Union of India”³**, “the Hon'ble Apex Court held that the findings recorded by Arbitrator on evidence

² (1989) 2 SCC 38

³ (2010) 1 SCC 409

giving elaborate reasons cannot be said to be either perverse or based on no evidence and it cannot be set aside.

27. ***In Oswal Woolen Mills Limited Vs. Oswal Agro Limited***⁴ also the same view was taken.

28. In a recent Judgment between “***NTPC Ltd., and M/s Deconar Services Private Limited***” in Civil Appeal No.6483 of 2014, the Hon’ble Supreme Court held that

“In order to succeed in a challenge against the Arbitral Award, the party challenging the award must show that the Arbitrators award suffer from perversity or an error of law or the Arbitrators have otherwise misconducted themselves”.

29. In the case on hand except saying that the Arbitrators did not consider his claims, the appellant could not show any of the above thereby, there are no grounds to set aside the award. There are no grounds even to remand the matter to Arbitrator for fresh consideration. Therefore, the appeal is liable to be dismissed.

30. Therefore, the C.M.A. is dismissed.

Consequently, Miscellaneous applications if any, are closed.
There shall be no order as to costs.

JUSTICE SAMBASIVA RAO NAIDU

Date: 01.09.2022
PLV

⁴ (2018) 16 SCC 219

