RVWO No. 31 of 2022
APO No. 120 of 2019
with
AP No. 1341 of 2015
AP No. 1502 of 2015
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Standard Chartered Bank & Anr.
Versus
Tilak Mehra & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice ANIRUDDHA ROY
Date: 6th October 2023

Appearance:
Mr. Anindya Kr. Mitra, Sr. Advocate
Mr. Jishnu Saha, Sr. Advocate
Mr. Krishna Raj Thaker, Advocate
Mr. Sandip Agarwal, Advocate
Ms. Sulagna Mukherjee, Advocate
Mr. Ishan Saha, Advocate
Ms. Surabhi Banerjee, Advocate
Mr. Chunky Agarwal, Advocate
Ms. Shristi Sharma, Advocate
Ms. Swati Bhattacharya, Advocate
for the applicants

Mr. Anirban Ray, Advocate
Mr. Sourav Ghosh, Advocate
Mr. Snehashis Sen, Advocate
Mr. Abhishek Banerjee, Advocate
for respondent nos. 1 to 10

Mr. Jayjit Ganguly, Advocate
Mr. Pradeep Sancheti, Advocate
for the proforma respondent

The Court: Perhaps nobody in the legal world could have presented this review application better than Mr. Anindya Kumar Mitra, learned senior advocate appearing for the applicant.

This is an application for review of our judgment and order dated 7th July 2022. This application for review was filed on or about 30th September 2022.

On several grounds our judgment and order has been sought to be reviewed.

The most fundamental point is this : the date of the award is 29th April 2015. The application to set aside the award was filed on or about 28th July 2015. The amendment to section 34 of the Arbitration and Conciliation Act, 1996 was with effect from 23rd October 2015. We are concerned with the insertion of Explanations 1 and 2 of section 34(2)(b) and section 2A of the said amendment. These amendments are as follows:

> "[Explanation 1 : For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,–
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> (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
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> (ii) it is in contravention with the fundamental policy of Indian law; or
>
> (iii) it is in conflict with the most basic notions of morality or justice.
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> Explanation 2 : For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]
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> [(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:
>
> PROVIDED that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]"

Mr. Mitra cites paragraphs 16 and 19 of a judgment in Ssangyong Engineering And Construction Company Limited vs. National Highways Authority of India (NHAI) reported in (2019) 15 SCC 131 to contend that this amendment was applicable to the awards made after the date of the judgment of that case i.e. 8th May 2019 and not to earlier awards. Since in our order we had relied upon some grounds on which an award could be challenged introduced by the amendment, we had made an error apparent on the face of the record and that the judgment and order should be set aside on review. A particular paragraph of the judgment and order was highlighted which is as follows:

> "On the grounds urged in this appeal, our scrutiny of the impugned award is limited to whether it is in contravention with the fundamental policy of Indian law or in conflict with our notions of justice or morality or there is patent illegality on the face of the award or is perverse or so unreasonable that no reasonable person would support it."

Learned counsel submits that before the amendment and the said judgment of the Supreme Court the grounds of challenge were much broader. If these were applied, the award was liable to be set aside.

Learned counsel also relied upon the following finding made by us:

> "If one goes by a strict legal view of the relationship of the parties, a new lease could not have been created even by implication, in the absence of agreement between the two parties on these two fundamental points. The parties subsequently agreed that the lease could be renewed in favour of the appellant No. 2 and as to the amount of rent payable on execution of a fresh lease."

He argues that since we were following the amended act, inspite of the "strict legal view" of the matter, we had been compelled to uphold the finding of the arbitral tribunal. If the law prior to the said amendment and judgment was applied the award could not be sustained.

At the end of our discussion, we had observed the following in our judgment and order:

> "In whatever way you take it, this amount determined by the arbitrator for occupation by the appellant No. 2 is a plausible view. In no way, can I describe it as illegal or perverse or unreasonable. In fact, it is a most reasonable view of the matter."

Having made this observation we are able to uphold our judgment and order irrespective of whether the Act was amended or not and irrespective of whether we followed the unamended Act or amended Act as interpreted by the Supreme Court in the said judgment. On the above observation, the award was liable to be upheld.

At any rate, even if we have made a mistake in the appreciation of the law, it is not an error of law on the face of the order rectifiable on review. In our considered opinion, the remedy of the applicant, if at all available lies elsewhere in some other jurisdiction.

With these observations, this review application is dismissed.

However, since the judgment and order sought to be reviewed was made on 7th July 2022, two execution applications are pending but substantive steps in the execution are yet to be taken, we direct that such state of affairs be maintained till 23rd November 2023 to enable the applicant to avail of any remedy that may be available to them in law.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

R. Bose