

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO.2 OF 2020

Union of India through Chief Engineer Vs.	...	Appellant
M/s. Parhar Enterprises and another	...	Respondents

WITH
INTERIM APPLICATION NO.1874 OF 2019
IN
ARBITRATION APPEAL NO.2 OF 2020

Mr. Niranjana P. Shimpi for Appellant.
Mr. Ketan Dhavle for Respondent No.1.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 09, 2023

P.C. :

. Heard finally with consent of learned counsel appearing for the rival parties.

2. By this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellant - Union of India has challenged judgement and order dated 18.07.2019 passed by the District Judge, Pune, whereby an application filed by the appellant under Section 34 of the said Act was dismissed. By the impugned order, an arbitral award passed in favour of respondent No.1 stood confirmed.

3. In the present case, respondent No.1 was engaged by the appellant for completion of construction of a mess. There was an arbitration clause in the said agreement and pursuant to disputes that arose between the parties, the matter was referred to arbitration. Upon completion of the arbitral proceedings and after appreciating the evidence and material on record, the arbitral tribunal held in favour of respondent No.1, directing the appellant to pay specific amounts along

with interest.

4. Aggrieved by the said award, the appellant filed Civil Miscellaneous Application No.392 of 2014, before the District Court, Pune, under Section 34 of the aforesaid Act. As noted hereinabove, by judgement and order dated 18.07.2019, the District Court dismissed the application, thereby confirming the award passed by the arbitral tribunal.

5. In the present appeal, upon service, respondent No.1 has appeared through counsel. Respondent No.2, being the arbitrator, is a formal party.

6. Mr. Shimpi, learned counsel appearing for the appellant - Union of India submitted that in the present case, considering the nature of dispute raised on behalf of respondent No.1 while making claims against the appellant, the arbitral tribunal ought not to have allowed the claims. The principal ground raised before this Court is that since respondent No.1 claimed that it was forced into signing the final bill, the basic issue sought to be raised on behalf of the said respondent could not be said to be arbitrable. It was submitted that the nature of contentions raised on behalf of respondent No.1 had the colour and shade of alleging fraud and coercion, in support of which there was hardly any material produced before the arbitral tribunal, and that therefore, the award deserved interference within the limited scope of jurisdiction available under Section 34 to the District Court. It was submitted that the District Court, in the impugned judgement and order, failed to appreciate this aspect of the matter, while dismissing the application and confirming the award of the arbitral tribunal.

7. In this regard, learned counsel for the appellant invited attention of this Court to the final contract bill, submitting that although at one

place, the representative of respondent No.1 had signed under protest, the certificate appended to the said bill was signed without demur on behalf of the said respondent, which included a clause that the disputed part of the final bill was 'Nil'. It was submitted that, therefore, the respondent No.1 could not have turned around and claimed that either by coercion or by fraud or misrepresentation, the appellant had got the final bill signed from the representative of the said respondent. Another aspect on which learned counsel for the appellant placed emphasis was that there was controversy as to whether the bill was to be prepared on running meter basis or cubic meter basis and that was an aspect, the arbitral tribunal could not have gone into, which the District Court also failed to appreciate.

8. Learned counsel for the appellant placed reliance on the judgement of the Supreme Court in the case of *Union of India Vs. Master Construction Company*, **(2011) 12 SCC 349**.

9. On the other hand, Mr. Ketan Dhavle, learned counsel appearing for respondent No.1 submitted that no case is made out by the appellant for exercising jurisdiction under Section 37 of the aforesaid Act. It is submitted that findings of fact have been rendered concurrently by the arbitral tribunal as well as the District Court and that therefore, the appeal deserves to be dismissed.

10. Heard learned counsel for the rival parties in the backdrop of the material placed on record. The contentions raised on behalf of the appellant are in a narrow conspectus. The submission appears to be that the respondent No.1 had specifically claimed that the appellant had got the final bill dated 08.06.2010 signed from the representative of respondent No.1 by coercion and that therefore, the dispute was not arbitrable. It was submitted that the very basis of the claim made on behalf of respondent No.1 regarding coercion, having shades of fraud,

could be said to be a dispute or controversy which the arbitral tribunal could not have entertained, for the reason that dispute of such nature was not arbitrable. Reliance was placed on judgement of the Supreme Court in the case of **Union of India Vs. Master Construction Company** (*supra*).

11. Perusal of the aforesaid judgement shows that in such cases where it is alleged that the final bill or full and final settlement of amounts payable is alleged to have been signed by the recipient under coercion, sufficient material needs to be placed on record. It is held that such a dispute has the shades of alleging fraud, coercion and undue influence and that in such a situation, it needs to be examined as to whether such a dispute can be arbitrable and if so, only a bald plea of fraud, coercion or undue influence would not be enough.

12. In the present case, the arbitral tribunal found that the plea raised on behalf of respondent No.1 that the final bill was got signed by the appellant on 08.06.2010 was acceptable for the reason that even after the said date, the appellant had placed as many as 11 deviation orders upon respondent No.1. On this basis, the arbitral tribunal found that there was substance in the contentions raised on behalf of respondent No.1 that mere signing of the final bill would not amount to respondent No.1 having given up its right to raise dispute against the appellant. This aspect was appreciated by the District Court in the impugned judgement and order in paragraph 14 where, upon going through the arbitral proceedings, the District Court came to the conclusion that if the contention raised on behalf of the appellant was to be accepted, the contractor, meaning the respondent, would have raised a bill on the lower side. The District Court found that this was not in harmony with the material available on record and that even the contention pertaining to the dispute raised on behalf of the appellant about the basis of the bill,

being running meter or cubic meter, could not be accepted.

13. This Court has considered material on record and the conclusions rendered by the arbitral tribunal as well as the District Court and it is found that the findings are based on a proper appreciation of the material on record. It cannot be said that in the present case, the respondent No.1 raised a bald plea of fraud, coercion or undue influence. The material on record does indicate that the appellant got signed the final bill from the representative of respondent No.1 and even thereafter, deviation orders were issued. This factor was correctly appreciated by the arbitral tribunal as well as the District Court to hold in favour of the respondent.

14. The District Court was conscious of the limited scope of jurisdiction available under Section 34 of the said Act, while considering the correctness or otherwise of the arbitral award. No error can be attributed to the District Court in having exercised its jurisdiction while dismissing the application filed by the appellant. It is settled law that when an appeal under Section 37 of the said Act is under consideration, the scope of jurisdiction available to the appellate court is the same as available to the court exercising jurisdiction under Section 34 of the said Act. Considering the limited scope of jurisdiction available to this Court, it is found that no ground is made out for interference with the impugned judgement and order passed by the District Court.

15. Accordingly, the appeal is dismissed. No order as to costs.

16. Pending applications stand disposed of.

(MANISH PITALE, J.)