

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 30 OF 2022**

M/s. Pal Construction, Through its proprietor: Mr. Sukhwant S. Sachar	...	Appellant
vs.		
Hindustan Aeronautics Limited	...	Respondent

Mr. Pralhad Paranjape and Mr. Manish Kelkar for appellant.

Ms. Shristi Shetty, i/by. M. V. Kini & Company for respondent.

CORAM : MANISH PITALE, J

DATE : 3rd JANUARY, 2023

P.C. :

1. By this appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996, the appellant (original claimant) has challenged judgment and order dated 29th July, 2019, passed by the Court of Principal District Judge, Nashik, whereby an application filed under Section 34 of the said Act was dismissed, thereby confirming the arbitration award passed by the sole arbitrator.

2. The brief facts leading to filing of the present appeal are that the appellant, being a proprietary firm, was engaged by the respondent for the work of replacement of old A.C. sheets with new pre-coated sheets. The contract contained an arbitration clause for resolution of disputes that may arise between the parties.

3. It is an admitted position that during the course of execution of the said contract, unfortunately, an unskilled labour employed by the appellant suffered from an accident and received multiple injuries, leading to his death. At the time of settling of the final bill, the respondent deducted an amount of Rs.7,17,000/- from the amount payable to the appellant on the ground that the said amount was paid to the next of kin of the deceased unskilled labour towards compensation. The appellant claimed that such a deduction could not have been made and therefore, a dispute arose between the parties.

4. As per the arbitration clause, the matter was referred to a sole arbitrator, being an officiating General Manager (AMD) of the respondent. Since the matter pertained to a period prior to the amendment brought about in Section 12 of the aforesaid Act, the sole arbitrator, although being an employee of the respondent, could continue with the arbitration proceedings.

5. The documents on record show that the parties were intimated to attend the proceedings before the sole arbitrator on 20th September, 2014. The preliminary sitting of the arbitrator was held on 5th November, 2014, in which, both the parties participated. The appellant was directed to file its statement of claim within six weeks from the receipt of documents from the respondent, as claimed by the appellant. The respondent was supposed to file defence statement within four weeks from the date of filing of statement of claim by the appellant. It is recorded in the award passed by the sole arbitrator that the appellant claimed that respondent had failed to provide the necessary documents, but this was disputed by the respondent by producing a letter and claiming that all necessary documents were made

available to the appellant. It was then recorded that despite sufficient opportunities being granted to the appellant, it had failed to file its statement of claim and therefore, no relief could be granted in the matter and the award was accordingly passed on 18th April, 2015.

6. Aggrieved by the same, the appellant filed application under Section 34 of the Arbitration and Conciliation Act, 1996 before the Principal District Judge, Nashik and on 29th July, 2019, the application was dismissed. Aggrieved by the same, the appellant filed the present appeal. Upon notice being served, the respondent appeared in the present appeal. The appeal is taken up for final hearing.

7. Mr. Paranjape, learned counsel appearing for the appellant submitted that in the facts of the present case, appropriate ground was made out by the appellant under Section 34(2)(a)(iii) of the aforesaid Act for setting aside of the arbitral award and yet the Court of Principal District Judge, Nashik, failed to appreciate the same. It was submitted that a proper appreciation of the material on record would show that the appellant was unable to present its case before the learned arbitrator due to factors beyond its control and also, because of default on the part of the respondent, inasmuch as the relevant documents were not provided to the appellant. It was submitted that the appellant was seriously handicapped and hampered in submitting the statement of claim and that hardly six months period had elapsed from the preliminary sitting in the arbitration proceeding, thereby indicating that the learned arbitrator hurriedly passed the impugned award, without affording appropriate opportunity to the appellant to file the statement of claim.

8. It was submitted that the appellant had nothing to gain by not filing the statement of claim before the learned arbitrator and that the Court of Principal District Judge, Nashik, could have examined the said aspect of the matter, particularly the relevance of the documents sought by the appellant from the respondent, before dismissing the application filed under Section 34 of the said Act. It was submitted that the appellant had made out a case for opportunity to the parties to go to arbitration afresh, so that the grievance of the appellant could be addressed in accordance with law.

9. On the other hand, Ms. Shetty, learned counsel appearing for the respondent submitted that the learned arbitrator as well as the Principal District Judge, Nashik, had recorded findings of fact to indicate that despite sufficient opportunities being granted, the appellant had failed to file the statement of claim and therefore, no ground was made out in that regard.

10. This Court has considered the rival contentions in the backdrop of the material placed on record. It is an admitted position that the preliminary sitting in the arbitration proceeding took place on 5th November, 2014 and that therefore, till the impugned award was passed on 18th April, 2015 by the learned arbitrator, the appellant failed to file its statement of claim. The only ground raised on behalf of the appellant in the application was under Section 34(2)(a)(iii) of the said Act to the effect that in the absence of specific documents demanded by the appellant from the respondent, the statement of claim could not have been filed at all. It is on this basis that the appellant claims that it was unable to present its case, thereby indicating that the Court below ought to have exercised power under Section 34(2)(a)(iii) of the said Act, to set aside the impugned award.

11. The admitted facts of the present case indicate that the appellant was clearly aware about the exact amount deducted from the final bill i.e. Rs.7,17,000/- towards compensation, allegedly paid by the respondent to the next of kin of the unskilled labour, who died in the accident. It was not as if there was any scope for confusion as to the quantum of amount deducted, which was clearly the basis for the claim sought to be raised on behalf of the appellant.

12. It is claimed by the appellant that the said amount could not have been deducted for the reason that the appellant had settled the matter with the next of kin of the deceased unskilled labour and a specific amount was paid by the appellant to such persons. Thus, it was well within the knowledge of the appellant itself as to the amount it had allegedly paid to the deceased unskilled labour. It was further claimed on behalf of the appellant that there was an insurance policy, whereunder the next of kin of the deceased unskilled labour may have been compensated on behalf of the respondent. This appears to be the only factor, which may not have been in the knowledge of the appellant with exact details.

13. But, this Court is unable to accept the contention raised on behalf of the appellant that in the absence of the documents supplied by the respondent, the appellant was handicapped in raising its claim before the arbitrator. Nothing prevented the appellant from filing its statement of claim, reserving its liberty to amend such statement of claim, after reply affidavit that could have been filed by the appellant or upon receiving documents relevant to the matter. It was not as if the appellant was totally unaware of the basis of its own claim and that Section 34(2)(a)(iii) of the said Act could have been invoked in the facts of the present case.

14. This Court is not in agreement that the learned arbitrator conducted the proceedings in a hurried manner, merely because the preliminary sitting was conducted on 5th November, 2014 and the final award was passed on 18th April, 2015. A perusal of the impugned award shows that the dates of sitting and meetings of the learned arbitrator have been recorded. This Court is not convinced that sufficient opportunity was not granted to the appellant for filing its statement of claim. Insofar as the aspect as to whether the respondent correctly claimed that it had produced the letter, demonstrating that all the documents demanded by the appellant had been provided, this Court is of the opinion that the same qualifies as a disputed question of fact, which cannot be gone into by this Court exercising jurisdiction under Section 37 of the said Act, particularly when no glaring error is demonstrated by the appellant while challenging the impugned judgment as well as the award. None of the grounds available under Section 34 were made out and therefore, the Court below was justified in dismissing the application.

15. In view of the above, there is no merit in the present appeal. Accordingly, the appeal is dismissed.

16. No costs.

(MANISH PITALE, J)

Priya Kambli