

12.12.2024
SI No.1
Court No.37
(gc)

**In the High Court at Calcutta
Civil Appellate Jurisdiction
(Commercial Division)**

**FMAT (ARBAWARD) 21 of 2024
CAN 1 of 2024**

**Oriental Gems Pvt. Ltd.
Vs.
Renuka P. Gandhi**

Mr. Dipayan Kundu,
Mr. Proshit Deb
...for the Appellant.
Mr. Dwaipayan Basu Mallick,
Mr. Rajesh Upadhyay
...for the Respondent.

1. We have carefully read the order under appeal.
2. The learned Counsel for the appellant has urged before the Commercial Court that the learned Arbitral Tribunal has travelled beyond its jurisdiction and dealt with the issues raised before Arbitrator that the constituted attorney was not authorised to depose as witness on behalf of the respondent in the arbitration proceeding.
3. The agreement on which reliance has been placed is registrable and could not have been admitted in evidence. The appellant has duly paid the monthly rent and accepted by the

respondent without any objection whatsoever. From the impugned order it appears that the learned Commercial Court after recording the submission of the parties and discussing the law on the point has made some general observations in Paragraph 13 of the impugned order. There has been no discussion on any of the issues urged by the appellant before the learned Commercial Court. The mechanical reproduction of various authorities on the scope and ambit of Section 34 and without indicating the applicability of such *ratio decidendi* in the facts of the case makes the order an unreasoned order. The learned Commercial Court is required to apply its mind to the facts and circumstances of the case and give a reason, however brief it may be, for not accepting the contention of the appellant keeping in mind that the scope of review of an award is limited to the extent indicated in Section 34 of the Arbitration and Conciliation Act, 1996.

4. Reasons introduce clarity in an order. In deciding the said application the learned Judge Commercial Court is expected and required to indicate its reasons, howsoever brief, in its order so as to disclose its mind. It

is all the more necessary when its order is amenable to further avenue of challenge. Failure to give reasons amounts to denial of justice. In the celebrated case of ***Alexander Machinery (Dudley) Ltd. v. Crabtree*** reported at **1974 LCR 120** it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at”. Reasons substitute subjectivity by objectivity. In a recent judgment ***State Project Director, UP Education for All Project Board & Ors. v. Saroj Maurya & Ors.*** reported at **2024(8) SCR 733** the Hon’ble Supreme Court observing that no decision could be legally sustainable in the absence of reasoning set aside the decision of the Division Bench of the High Court as the said decision failed to disclose and furnish any reason.

5. In view of the fact that the said impugned order is unreasoned, we set aside the impugned order and direct the learned Judge, Commercial Court at Alipore for South 24 Parganas, Purba Medinipore, Paschim

Medinipur & Jhargram to hear afresh the application for setting aside of the award.

6. We make it clear that we have not gone into the merits of the award.
7. We also make it clear that in the event any prayer for stay of operation of the award is made, the appellant shall be directed to put in security to secure the amount awarded by the learned Arbitrator, failing which, the appellant shall be at liberty to proceed with the execution of the award.
8. With the aforesaid observation, the appeal and the application are disposed of.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)