

Veer Finance Co. Vs. Ram Lachan Sharma Etc.

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Court : Delhi

Decided On : Jan-08-1969

Reported in : ILR1969Delhi368

Judge : Jagjit Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 10

Appeal No. : Original Suit Appeal No. 459 of 1966

Appellant : Veer Finance Co.

Respondent : Ram Lachan Sharma Etc.

Advocate for Pet/Ap. : S.P. Gupta and; R.K. Agarwal, Advs

Judgement :

Jagjit Singh, J.

(1) On a reference made privately and out of Court to Shri Chet Ram Mittal, Advocate, Delhi, regarding dispute between Messrs Veer Finance Co. on the one side and Shri Ram Lachan Sharma and Shri Shambhu Dayal Pachauri on the other, he made an award, on February 28, 1966. According to that award Shri Ram Lachan Sharma and Shri Shambhu Dayal Pachauri were liable to pay Rs. 36,517.27 p. to Messrs Veer Finance Co.

(2) A petition under sections 14 and 17 of the [Arbitration Act, 1940](#), hereinafter referred to as the Act, was made by Messrs Veer Finance Co., 9-E, Connaught Place, New Delhi, to be called for facility of reference as the petitioners. On being directed, the arbitrator filed the award in the Court. Notices regarding filing of the award were issued to the parties. Before the notices could be served the counsel for Shri Ram Lachan Sharma (respondent No. 1) appeared, on August 2, 1966, and accepted notice regarding filing of the award. Service of notice was affected on Shri Shambhu Dayal Pachauri (respondent No. 2) by registered post, on May 24, 1967, but he neither appeared in the court nor filed any objections to the award.

(3) Respondent No. 1 applied, on August 31, 1966, under sections 30 and 33 of the Act, for setting aside the award. One of the grounds taken in his application was that the arbitrator had no jurisdiction to enter on the reference as the reference to him was made nto by both the parties but only by the petitioners. In the reply submitted on behalf of the petitioners a plea was taken that it was wrong to suggest that a unilateral reference had been made to the arbitrator. It was, however, admitted that on the failure of the respondents to either pay the amount due from them or to join

the reference the matter was referred by the petitioners to the 'appointed arbitrator'.

(4) Issues in the case were framed on August 9, 1967. At the request of the counsel for the parties the first two issues, as reproduced below, were treated as preliminary issues :-

1. Whether the objections filed by respondent No. 1 are time barred ?

2. Whether the arbitrator had jurisdiction to enter upon the reference, even without the consent of respondent No. 1

(5) On behalf of the petitioners their managing partner, Shri Tilak Raj, appeared as a witness. He deposed that respondent No. 1 as the hirer and respondent No. 2 as the guarantor had entered into a hire purchase agreement (Exhibit P/1) with the petitioners and that he had signed the agreement for and on behalf of the petitioners. He added that clause 26(b) in the agreement provided for arbitration of all disputes by Shri Chet Ram Mittal. It was further mentioned by him that in terms of the agreement the respondents were to pay Rs. 31,680.00 in Installments as hire purchase money but had paid Rs. 3,700.00 only. The petitioners were said to have given notices to the respondents on 20-9-1963 but as these were not accepted and were received back the petitioners referred the dispute to the arbitrator for his award.

(6) The contention of the learned counsel for the petitioners that the application made on behalf of respondent No. 1 was timebarred has no force. It has already been stated above that the counsel for the respondent had appeared in the Court before notice regarding filing of the award could be served on the party. The learned Sub-Judge, who was dealing with these proceedings before their transfer to this Court in pursuance of the provisions of the Delhi High Court Act, 1966, therefore, ordered that the service of the notice on the respondent will be deemed to have been made on August 2, 1966. The application for setting aside the award was filed within thirty days of that date and was undoubtedly within limitation.

(7) The objection of respondent No. 1 that the arbitrator had no jurisdiction to enter upon the reference without his consent has next to be considered. Clause 26(b) of the agreement, to which reference was made by Shri Tilak Raj witness, was in the following terms:-

'(B)All questions and matters of difference between the parties hereto or their representatives touching the construction hereof or any act or thing regard to the rights, duties and obligations or their enforcement or performance including the failure to pay the claim under the severalhereinbefore recited clauses and/or arising out of or relating to this agreement or to the subject matter hereof shall, at the owners' discretion be referred to the sole arbitration of Shri Chet Ram Mittal, Advocate, Delhi or his nominees for arbitration in accordance with the Indian Arbitration Act 1940. In such case the party raising the question or matter in difference shall give 10 day's notice thereof to the other party or parties and to the Arbitrator addressed to his or their usual last notified address and the notice shall be deemed to have been served when it would have been delivered ordinarily and the party raising the question or the matter shall deposit Rs. 50.00 as arbitration fees with the Arbitrator. Costs shall be in the discretion of the Arbitrator. The award thus obtained shall be final and binding on all the parties concerned.'

(8) It will be noticed that all questions and matters of difference between the parties arising out of or relating to the agreement were to be referred to the sole arbitration of Shri Chet Ram Mittal or his nominee for arbitration in accordance with the Act. Of course the arbitration clause provided that the party raising the question or matter in difference had to give ten days notice thereof to the other party and to the arbitrator and had also to deposit Rs. 50.00 as arbitration fee with the arbitrator. It no where provided that if after issue of notice the other party did nto give his assent to the reference to the arbitrator still the arbitrator could enter on the reference and make a binding award. On the contrary it was specifically provided that the reference was to be in accordance with the Act.

(9) The Supreme Court has held in the case Thawardas Pherumal and another v. Union of India that a reference requires the assent of both sides. If one side is nto prepared to submit a given matter to arbitration when there is an agreement between them that it should be referred, then recourse must be had to the Court under section 20 of the Act and the recalcitrant party can then be compelled to submit the matter under sub-section (4). It was also observed that in the absence of either, agreement by 'both' sides about the terms of reference, or an order of the Court under section 20(4) compelling the reference, the arbitrator is nto vested with the necessary exclusive jurisdiction. In Chabba Lal v. Kallu Lal and others') their Lordship of the Privy Council remarked that if there is no valid reference the purported award is a nullity and can be challenged in appropriate proceedings.

(10) When notices issued by the petitioners to the respondents, intimating their intention to refer the dispute to the arbitrator, were received back unserved then it was necessary to have recourse to the Court under section 20 of the Act. The unilateral reference made by the petitioner company could nto vest the arbitrator with the necessary jurisdiction.

(11) The learned counsel for the petitioners relied upon M/s. Shri Vallabh Pitte v. Narsingdas Govindaram Kalani That case, however, can be of no help to him. There the learned Judges of the Bombay High Court were considering the different alternatives which were available to the parties when there was a dispute as to the existence of a contract of arbitration and did nto help that a reference does nto require the assent of both sides.

(12) The award made by Shri Chet Ram Mittal was, thereforee, invalid and was made without jurisdiction. The plea about the application of respondent No. 1 being time-barred is also nto tenable. Both the preliminary issues are, thereforee, decided against the petitioners. In the result the application of Shri Ram Lachan Sharma is accepted and the award of Shri Mittal dated 28-2-1966 being invalid and without jurisdiction is set aside. The application made on behalf of the petitioners for pronouncement of judgment according to the award fails and is. dismissed. In the circumstances of the case the parties are left to bear their own costs.