

PETITIONER:
JAGDISH CHANDER BHATIA

Vs.

RESPONDENT:
LACHHMAN DAS BHATIA

DATE OF JUDGMENT 11/01/1993

BENCH:
SHARMA, L.M. (CJ)
BENCH:
SHARMA, L.M. (CJ)
AHMADI, A.M. (J)

CITATION:
1993 SCR (1) 51 1993 SCC (1) 548
JT 1993 (1) 232 1993 SCALE (1) 66

ACT:
Arbitration Act, 1940:
Sections 14, 17, 30 and 33--Award--When can be set aside--Non-consideration by the Arbitrator of all documents submitted by party--Whether amounts to misconduct--Interference by Court--Whether called for--Court not to sit in appeal or re-assess evidence.

HEADNOTE:
The dispute between the appellant and the respondent in respect of their Interests In certain properties, was referred to arbitration by this Court and a retired Chief Justice of a High Court was appointed as the sole Arbitrator with direction to make a speaking award, and the Arbitrator submitted his Award. Against this award the appellant-objector filed objections under Section 30 of the Arbitration Act, 1940, contending that the Arbitrator had misconducted himself in that he did not take into consideration several documents which were placed on record before him to support the objector's case and, hence, the award was invalid under clauses (a) and (c) of Section 30. Disposing of the Appeal, this Court

HELD : 1.1. There is no infirmity on the face of the award which would entitle this Court to exercise jurisdiction under Section 30 of the Arbitration Act. The Arbitrator has made a speaking award setting out his reasons for the conclusions reached by him and has thus complied with the direction of this Court given earlier. [56D, 55E]

12. The documents in question mainly relate to the rights and interests of the parties In the properties situate in that part which now belongs to the Dominion of Pakistan. Since they were refugees they had made certain claims under the law governing rehabilitation of displaced persons in respect of the properties left behind by them. The claim was sanctioned in the joint same of the objector's predecessor-in-Interest and the respondent in respect of the properties left behind by the family. On the strength of that

52
claim, one of the houses was purchased in the said name. The Arbitrator, however, came to the conclusion, that the property in question was purchased from the funds

contributed by the objector's predecessor-in-interest and the respondent. The share of the objector was held to be 1/7th in the share of the predecessor-in-interest, since deceased. Since the contribution made for payment of the price was not equal, the Arbitrator allotted a larger share to objector's predecessor-in-interest and consequently, the objector has got a share on the basis thereof, when inheritance opened on the death of the predecessor-in-interest. [55B-D.H, 56A]

1.3. It is clear from the award that the Arbitrator did not go into the rights and interests of the parties including the HUF in the properties left behind in the Dominion of Pakistan. That was not necessary because the fact that the claim was sanctioned in the joint name of the Objector's predecessor-in-interest and the respondent was never in dispute. The short question, which the Arbitrator was required to consider, was as regards the title of the properties, which were the subject matter of the reference, which included a house purchased on the strength of that claim. It is not necessary for the Court to go into the question of the rights and interests of the parties in the properties left behind in the Dominion of Pakistan since the Arbitrator was right that he was called upon to decide the interest of the parties in respect of two houses alone, which were the subject matter of the reference. Therefore, the Arbitrator had not misconducted himself by refusing to enumerate all those documents in question in his award because he was bound by the scope of the reference which was limited to the two houses and not the properties left behind in the Dominion of Pakistan by the parties. [55F, 56B-C]

2. In order to interfere with an award, the Court must find out whether the Arbitrator has misconducted himself or there was any infirmity in the procedure, such as, the Arbitrator having travelled beyond the terms of the reference or there being an error apparent on the face of the award. It is not misconduct on the part of an Arbitrator to come to an erroneous conclusion on a disputed issue. The Court does not sit in appeal and does not reassess the evidence. Even if the Court feels that had it been left to it, it would have assessed the evidence differently that would not be a valid ground for setting aside the award. [56E, G]

3. Therefore, in the facts and circumstances of the case, there is no reason to interfere with the award, which is made the rule of the

53

Court. [56H, 57A-B]

Food Corporation of India v. Joginder pal Mohinderpal & Anr., [1989] 2 S.C.C. 347 and Hind Builders v. Union of India, [1990] 3 S.C.C. 338, relied on.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 32 of 1982.

From the Judgment and Order dated 1.10.1981 of the Delhi High Court in Criminal Misc. (Main) No. 304 of 1980.

S.L. Chowdhary and Pradeep Misra for the Appellant.

Rakesh K. Khanna and R.P. Singh for the Respondent.

The following order of the Court is delivered:

Even though the dispute between the parties came to this Court from an initial order passed under Section 145 of the Code of Criminal Procedure, this Court realising that the dispute was between close relatives in respect of their

interests in certain properties which were also the subject matter in a Civil Suit No. 434/78 (Remand) of the Court of Sub-Judge, First Class, Delhi, advised the parties to have the same resolved through an Arbitrator. On the parties agreeing, this Court passed an order on September 5, 1986 recording the agreement to refer the dispute to arbitration and appointed Mr. Justice V.D. Misra, retired Chief Justice of the High Court of Himachal Pradesh, as the Sole Arbitrator. The parties had agreed to deposit a sum of Rs. 3,000 each with the Arbitrator to meet with his expenses and remuneration subject to further directions that may be made in that behalf. It was further directed that the learned Arbitrator will render a speaking award within four months. In view of the said agreement, the appeal was allowed and the High Court's impugned order was set aside. It appears that thereafter one of the parties, namely, Jagdish Chander Bhatia, did not deposit the expenses with the Arbitrator and raised objection in regard to the arbitration proceedings on the plea that the property in dispute was proposed to be resumed by the Union of India. In the meantime, it appears that the sole Arbitrator passed away and in his place Mr. Justice M.S. Gujral retired Chief Justice of the High Court of Sikkim, was appointed the Sole Arbitrator. This Court did not approve of the conduct of Jagdish Chander Bhatia in not depositing the amount and 'in trying to avoid adjudication of the dispute through arbitration. After this

54
order was passed on October 12, 1990 by which a further sum of Rs. 8,000 was directed to be deposited with the Arbitrator, subject to the Arbitrator deciding who should bear the cost, the newly appointed Arbitrator entered upon the reference and submitted his award on November 14, 1991. This concluding part of his Award reads as under:

"House No. 17 would entirely belong to Lachhman Das Bhatia whereas House No.18 would be jointly owned by Lachhman Das and Jagdish Chander. Lachhman Das would have 76.50% share whereas Jagdish Chander would have 23.50% share in House No.18. As House No.17 has entirely been given to Lachhman Das Bhatia in all fairness, Jagdish Chander Bhatia should give vacant possession of House No.17 to Lachhman Das Bhatia."

The parties were directed to bear their own costs of the arbitration proceedings except that Jagdish Chander Bhatia had to pay Rs. 4,000 to Lachhman Das Bhatia as his share of the Arbitrator's fees which he had initially failed to deposit. Against this award, Jagdish Chander Bhatia (hereinafter called 'the objector') has filed objections under Section 30 of the Arbitration Act, 1940 which provision reads as under:

"An award shall not be set aside except on one or more of the following grounds, namely
(a) that an arbitrator or umpire has misconducted himself or the proceedings;
(b) that an award has been made after the issue of an order by the Court superseding the arbitration proceedings have become invalid under Section 35;
(c) that an award has been improperly procured or is otherwise invalid."

It was conceded by the learned counsel for the Objector that clause (b) would not be attracted. His main submission was that the Arbitrator had misconducted himself, in that, he did not take into consideration several documents which were

placed on record before him which support the Objector's case and hence the Award was invalid. He, therefore, partly relied on clauses (a) and (c) for setting aside the Award.

55

The documents to which the learned counsel for the objector invited our attention, are to be found in Vol.2 of the paper book placed before us. These documents are 31 in number and they mainly relate to the rights and interests of the parties in properties situate in that part which now belongs to the Dominion of Pakistan. Since they were refugees they had made certain claims under the law governing rehabilitation of displaced persons in respect of the properties left behind by them. These documents show that the claim was sanctioned in the name of Punnu Ram Lachhman Das in respect of the properties left behind by the family. On the strength of that claim, House No.18 was purchased in the said name. The Arbitrator, however, came to the conclusion, as is evident from the discussion from paragraph 26 and onwards of the Award, that the property in question was purchased for Rs. 12,850 from the funds contributed by Punnu Ram and Lachhman Das, the former paying Rs. 9,233 and the latter Rs. 3,617. This is the conclusion reached by the Arbitrator as is evident from paragraph 37 of the Award. The share of the Objector was held to be 1/7th in the share of Punnu Ram, since deceased. It was on this finding recorded by the Arbitrator that he passed the ultimate order extracted above.

The arbitrator has made a speaking award setting out his reasons for the conclusions reached by him. He has thus complied with the direction of this Court given earlier. On a perusal of the award, it becomes clear that the Arbitrator did not go into the rights and interests of the parties including the HUF in the properties left behind in the Dominion of Pakistan. That was, in our opinion, not necessary because the fact that the claim was sanctioned in the name to the Punnu Ram Lachhman Das was never in dispute. The short question, which the Arbitrator was required to consider, was as regards the title of the properties which were the subject matter of the reference which included the property purchased for Rs. 12,850 on the strength of that claim. In dealing with that question the Arbitrator came to the conclusion that Punnu Ram and Lachhman Das had contributed the entire consideration of Rs. 12,850 and hence they were the owners of the property and on the death of Punnu Ram inheritance opened insofar as his share in the property was concerned and the Arbitrator came to the conclusion that the Objector was entitled to 1/7th out of the share of the deceased. Since the contribution made for payment of the price was not equal, the Arbitrator allotted a larger share to Punnu Ram and consequently the Objector has got a share on the basis thereof. Practically, all the documents included in Vol.2 relate to the interest of the

56

parties and their HUF in the properties left behind in the Dominion of Pakistan. The learned counsel for the Objector then tried to take us into the rights and interests of the parties in those properties, but we declined to go into the same as we thought that the Arbitrator was right that he was called upon to decide the interest of the parties in Houses Nos. 17 and 18 alone which were the subject matter of the reference. We are, therefore, of the opinion that the Arbitrator had not misconducted himself by refusing to enumerate those documents in Vol.2 in his award because he was bound by the scope of the reference which was limited to Houses Nos. 17 and 18 and not the properties left behind in

the Dominion of Pakistan by the parties. For this reason, we are of the opinion that there is no infirmity on the face of the award which would entitle us to exercise jurisdiction under Section 30 of the Arbitration Act.

This Court pointed out in Food Corporation of India v. Joginderpal Mohinderpal & Anr., [1989] 2 SCC 347 that an award of an Arbitrator can only be interfered with or set aside or modified within the four corners of the procedure provided by the statute. The Court must find out whether the Arbitrator has misconducted himself or there was any infirmity in the procedure, such as, the Arbitrator having travelled beyond the terms of the reference or there being an error apparent on the face of the award. It is not misconduct on the part of an Arbitrator to come to an erroneous conclusion on a disputed issue. In case of error apparent on the face of the award, the award can be set aside only if there is any proposition of law on which the award is based which is in conflict with law. It must be demonstrated to the Court that the reasons given by the Arbitrator are so palpably erroneous in law that they have resulted in the Arbitrator taking a view which cannot be sustained in law. To put it differently the Court does not sit in appeal and does not re-assess the evidence. Even if the Court feels that had it been left to it, it would have assessed the evidence differently that would not be a valid ground for setting aside the award. In Hind Builders v. Union of India, [1990] 3 SCC 338, this Court pointed out that where on an interpretation of any contract or document, two views are possible and the Arbitrator accepts one view while the other view is more appealing it would not be open to the Court to interfere with the Award. We, therefore, in the facts and circumstances of this case, see no reason to interfere with the award of the Arbitrator.

The Suit No. 434/78 pending in the Court of the Sub-Judge, Delhi

57

was disposed of by that Court, and an appeal, being Civil Appeal No. 211 of 1979 (Jagdish Chander Bhatia v. Lachhman Das Bhatia) preferred on April 23, 1979 against that decree, is pending in the Court of the District Judge, Delhi. We transfer that appeal to our file and make the Arbitrator's award the rule of the Court. The decree of the trial court is set aside and a decree in terms of the award will be drawn up in the appeal proceedings arising out of Suit No. 434/78. We, however, do not make any order as to costs in the present proceedings.

N.P.V.

Appeal disposed of.

58