

CASE NO.:

Appeal (civil) 3683 of 1996

Appeal (civil) 4144 of 1996

PETITIONER:

PARADIP PORT TRUST AND OTHERS

Vs.

RESPONDENT:

UNIQUE BUILDERS

DATE OF JUDGMENT: 30/01/2001

BENCH:

S. Rajendra Babu & Shivaraj V. Patil.

JUDGMENT:

Shivaraj V. Patil, J.

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These two appeals are directed against the order dated 25.8.1992 passed by the High Court of Orissa in Miscellaneous Appeal No. 228/1987. For convenience, we will refer to Paradip Port Trust as the Trust and Unique Builders as the Company. 2. The Trust entered into an agreement with the Company on 31.3.1981 for sale of scrap. Certain disputes arose between the parties. Pursuant to the arbitration clause contained in the said agreement they came to be referred to an arbitrator. Shri B.P.Das, Advocate, was appointed as Arbitrator; he entered into reference and after conducting the proceedings passed the award on 1.6.1985 to the effect that the Company was entitled to receive a sum of Rs. 8,51,315/- together with the interest @ 18% per annum from 28.9.1992 from the Trust. The parties did not lead any oral evidence before the Arbitrator and relied only on the correspondence between them. The award passed by the Arbitrator did not contain any reasons and is a non-speaking one. The Court of Subordinate Judge, Jagatsinghpur, on receipt of the award, issued notices to the parties. The Trust filed objections challenging the award on various grounds. The court after considering the objections under sections 30 and 33 of the Arbitration Act, 1940 (for short the 'Act') upheld them and set aside the award. Aggrieved by the same, the Company filed the Miscellaneous Appeal before the High Court. The High Court allowed the appeal and made the award a rule of the court subject to the modification as to the award of interest as indicated in the order. Hence the Trust has filed this Civil Appeal No. 3683/1996 challenging the same in this court. The Company has filed Civil Appeal No. 4144/1996 to the extent it was denied interest.

3. Shri Gobind Das, learned senior counsel for the Trust urged that (1) the High Court was not right in reversing the order of the learned Subordinate Judge when

the award had been passed in violation of principles of natural justice inasmuch as certain documents were received without notice to the Trust, after the closing of the proceedings before the Arbitrator and thereafter the award was passed; (2) The award passed by the Arbitrator was beyond the scope of the arbitration agreement, as it could not be made in respect of certain claims, the High court was not right in upholding the award; (3) although recording of reasons in the award could not be insisted and on that account itself, award could not be vitiated, yet no award could be passed arbitrarily.

4. Per contra, Shri Raj Kumar Mehta, learned counsel for the Company made submissions supporting the impugned order upholding the award. He added that the impugned judgment of the High court is based on the well-settled principles of justice in the light of the law laid down by this Court. He urged that there was no justification for the High Court to deny pendente lite and future interest.

5. We have considered the submissions made by the learned counsel for the parties carefully. In para 11 of the impugned judgment, the High Court has recorded thus :-

11. some arguments were advanced by the learned counsel for the respondents that the arbitrator has violated the principles of natural justice as he accepted some documents after closing the argument and the respondents were not given any opportunity thereafter either to explain the said document or adduce fresh evidence in relation thereto. This argument was abandoned after perusal of the order-sheet of the arbitrator which shows that at each stage adequate opportunity was given to both parties. Thus the award in hand cannot be set aside on any of the grounds relied on by the learned court below.

6. The learned senior counsel for the Trust was not in a position to say that the statement made in the above paragraph is incorrect. If that be so, his contention that the arbitrator passed the award in violation of the principles of natural justice, cannot be accepted. It may be added that the parties did not lead any oral evidence and they were satisfied with the documents placed before the Arbitrator.

7. In the operative portion of the award it is stated thus: -

Having perused and considered by the statements of claim filed by the claimants, written statement and counter claim filed by the opposite parties, documents filed by parties and having considered the objections raised by the parties at different stages of hearing and having carefully considered the documents/evidence on record and arguments of learned advocates of the parties assisted by their respective clients I make the following awards.

M/s. Unique Builders Ltd., the claimant is entitled to receive from Paradeep Port Trust (Respondent No. 3) a sum of Rs. 8,51,315.00 (Rupees Eight lakhs, fifty one thousand three hundred fifteen only) with interest at the rate of 18% per annum with effect from 28th September, 1982. The opp. Party are directed to pay the aforesaid amount within 60 days.

The counter claim made by the opp. Parties 1, 2 and Paradeep Port Trust is disallowed.

8. The contents of this award also clearly indicate that fair and sufficient opportunity was given to the parties by the Arbitrator. This again shows that there was no violation of principle of natural justice in passing the award.

9. The arbitration clause contained in the agreement entered into between the parties reads thus: -

In the event of any dispute or difference of opinion between the Port Trust and the Purchasers as to the respective rights and obligations of the parties hereunder or as to the true intent and meaning of those presents or any articles or conditions thereof, such dispute or difference of opinion (except the matter regarding which the decision has been specifically provided for in the terms & conditions) shall be referred to the sole arbitration of an officer of the Port Trust who shall be nominated for the purpose for the time being and his decision shall be final, conclusive and binding on the parties. For the purpose of this contract, the Chairman will mean the head of the Organization.

10. The clause relating to the arbitration extracted above, is wide enough to cover all disputes or differences of opinion between the parties as to their respective rights and obligations or as to the true intent and meaning of those presents or any articles or conditions thereof (except the matter regarding which the decision has been specifically provided for in the terms and conditions). The claims made in the statement by the Company, in our view, are clearly covered and they fall within the scope of arbitration clause. The learned counsel, referring to the claim nos. 2 and 7 urged that these claims were outside the terms of agreement. The Company made a claim for Rs.12,93,260/- against various heads and the Arbitrator granted Rs.8,61,315/- with interest as stated in the award. It is an award made in lump sum. It is not possible to say whether the Arbitrator awarded any amount under claim nos. 2 and 7 when the award was made only for Rs.8,61,315/- as against the total claim of Rs.12,93,260/-. It is not possible to read mental process of the Arbitrator as to how he came to the conclusion in passing the award for lump sum amount. Further the award passed by the Arbitrator cannot be set aside assuming that another view is possible. Thus we are unable to agree with the contention of the learned counsel that the award passed by the Arbitrator was beyond the scope of either the arbitration clause or the terms of the contract or it was in excess or opposed to the terms of reference. In view of what is stated above, it is not possible to take a view that the award passed by the Arbitrator was arbitrary or unsustainable.

11. From several decisions of this Court and the provisions contained in the Act, it is clear that generally an award passed by the arbitrator is considered binding between the parties for the reason that the parties select the arbitrator and powers of the court to set aside the award are restricted to cases set out in Section 30 of the Act. It is not open to the courts to guess or speculate

reasons for the award, when it is non-reasoned. Courts cannot attempt to investigate the mental process by which the arbitrator arrived at conclusion where it is not visible from the award. The jurisdiction of courts including High Courts is not independent of the statute. The arbitrator's award is final both on facts as well as law. There is no appeal from his verdict. However, an award can be set aside only in situations specified in Sections 30 and 33 of the Act. In the light of law already settled by this Court, we consider it unnecessary to cite long list of decisions in this regard. We will refer to few of them, including those relied upon by the learned counsel for the parties in support of their respective contentions, hereinafter.

12. In *Jivarajbhai Ujamshi Sheth and others vs. Chintamanrao Balaji and others* [AIR 1965 SC 214], this Court, in para 18, has stated that An award made by an arbitrator is conclusive as a judgment between the parties and the Court is entitled to set aside an award if the arbitrator has misconducted himself in the proceedings or when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under S. 35 of the Arbitration Act or where an award has been improperly procured or is otherwise invalid (S. 30 of the Arbitration Act). An award may be set aside by the Court on the ground of error on the face of the award, but an award is not invalid merely because by a process of inference and agreement it may be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.

13. This Court in *Puri Construction Pvt. Ltd. Vs. Union of India* [(1989) 1 SCC 411], has taken the view that Even on accepting the suggestion and interpreting the objection petition of the respondent liberally, the decision of the High Court cannot be maintained. When a court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the court is limited, as expressly indicated in the Arbitration Act, and it has no jurisdiction to sit in appeal and examine the correctness of the award on merits.

14. This Court in *State of Orissa and others vs. M/s. Lall Brothers* [(1988) 4 SCC 153], has held that the fact that there is a non-reasoned award, is no ground to set it aside and that lump sum award is not bad per se, as such.

15. In *Gujarat Water Supply and Sewerage Board vs. Unique Erectors (Gujarat) (P) Ltd.* And another [AIR 1989 SC 973], in para 11 of the judgment it is observed by this Court that Reasonableness as such of an award unless the award is per se preposterous or absurd is not a matter for the court to consider. Appraisal of evidence by the arbitrator is ordinarily not a matter for the court.

16. In a recent decision this Court in *Rajasthan State Mines and Minerals Ltd. Vs. Eastern Engineering Enterprises and another* [(1999) 9 SCC 283], after referring to large number of decisions on the subject, in para 44 has reiterated the position of law as stated above. The learned counsel for the Trust, when specifically asked under which clause of para 44 the case of the Trust falls, pointed out

to clauses (h) and (i) of para 44 of the said judgment. Clause (h) refers to the award made by the arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract and states that in such a case it would be jurisdictional error, which requires ultimately to be decided by the court. This has no application to the present case as it is not shown to us how the award was made by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract. Clause (i) also does not help the Trust having regard to the facts of the case in hand and the award made by the Arbitrator based on documentary evidence. It is not a case where the arbitrator has acted arbitrarily, irrationally, capriciously or independently of the contract. It is difficult for us to take a view that there has been a deliberate departure or conscious disregard of the contract to say that the arbitrator misconducted himself. The other clauses contained in the same paragraph, if applied to the facts of the case on hand, support the Company.

17. This Court in *Firm Madanlal Roshanlal Mahajan vs. Hukumchand Mills Ltd.* [AIR 1967 SC 1030], has held that the arbitrator could give a lump sum award and that he would not be bound to give a separate award for each claim; his award on both fact and law is final; there is no appeal from his verdict.

18. The learned counsel for the Company pointed out that the High Court, placing reliance on the judgment of this Court in *Executive Engineer, Irrigation, Galimala and others vs. Abnaduta Jena* [AIR 1988 SC 1520], denied interest pendente lite. But in a subsequent decision by the Constitution Bench of this Court in *Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy* [(1992) 1 SCC 508], it is held that the decision in *Abnaduta Jena's* case did not lay down good law on this aspect. The Constitution Bench decided the case on 12.12.1991. The impugned order of the High Court was passed on 25.8.1992. We agree with the submission of the learned counsel for the Company as to the power of the arbitrator to award interest pendente lite. However, the High Court having denied the interest on the ground that there was no claim for interest pendente lite before it nor any argument was advanced in that behalf, we are not inclined to upset that part of the order of the High Court in relation to denial of interest to the Company. However, we do not find any good ground or valid reason to deny future interest from the date of the decree to the Company. Hence, having regard to the facts and circumstances of the case we consider it just and appropriate to award future interest @ 12% per annum from the date of decree till payment. The award of interest from 28.9.1982 to 10.1.1985 was justified by the High Court in the impugned judgment. The contention that there was no basis for choosing the date 28.9.1982 is answered in the judgment of the High Court itself stating that it was on 28.9.1982 that the Trust repudiated the contract and forfeited the deposit made by the Company and that the Arbitrator entered into reference on 10.1.1985. We agree with the reasons recorded by the High Court in this regard. Further as already noticed above, the award is made in lump sum. As rightly observed by the High Court, unless there appears to be a mistake on the face of the award and the documents appended or incorporated thereto which form part of the award, it cannot be set aside even with respect to interest part of it. In this view of the matter, we hold

that the Company is entitled for interest @ 18% per annum from 28.9.1982 to 10.1.1985 and future interest @ 12% per annum from the date of decree till payment.

19. The learned senior counsel for the Trust drew our attention to the order dated 26.7.1993, passed by this Court, which reads:

Issue notice.

Since the respondent is represented by counsel, no further notice to the respondent is necessary.

The money would be paid to the respondent subject to the respondent furnishing sufficient security to the satisfaction of the executing court.

He added that the Trust has paid money to the Company pursuant to the said order. If the amount is paid to the Company, that shall be taken into consideration in satisfying the amount awarded to the Company.

20. For the reasons stated hereinabove Civil Appeal No. 3683 of 1996, being devoid of any merit, is dismissed. Civil Appeal No. 4144 of 1996 is allowed to the extent indicated in para 18 above in regard to the payment of interest and the order of the High Court to that extent stands modified. In the facts and circumstances of the case the parties shall bear their own costs.