

CASE NO.:
Appeal (civil) 3365-3366 of 2002

PETITIONER:
SANGAMNER BHAG SAHAKARI KARKHANA LTD.

Vs.

RESPONDENT:
M/S KRUPP INDUSTRIES LTD.

DATE OF JUDGMENT: 07/05/2002

BENCH:
R.C. Lahoti & B.N. Agrawal

JUDGMENT:

R.C. Lahoti, J.

Leave granted in both petitions.

The appellant is a co-operative sugar factory manufacturing sugar from sugarcane. On 17.11.1992 an agreement was entered into between the appellant and the respondent for design, manufacture, procurement and supply of machinery and equipments for modernisation with continuous fermentation process based on "Encillium Process", developed and patented by Council for Scientific and Industrial Research, New Delhi and National Chemical Laboratory, Pune. Disputes arose between the parties. The agreement dated 17.11.1992 contained an arbitration clause pursuant where to the disputes were referred for arbitration by two arbitrators, one appointed by each of the parties. By their award dated 20th June, 1999, the learned Arbitrators directed an amount of Rs.151.97 lacs to be paid by the respondent to the appellant in full and final settlement of all claims by and between the parties.

The award was filed in the Court of the Civil Judge, Senior Division, Sangamner. Both the parties preferred objections against the award. After hearing the learned counsel for the parties, by its judgment dated 6.5.2000 the learned Civil Judge directed the award to be remitted back to the learned arbitrators for rendering a fresh award consistently with the directions given by the learned Civil Judge. The appellant preferred a revision laying challenge to the direction of the Court remitting the award while the respondent preferred an appeal submitting that on the view taken by the learned Civil Judge, Senior Division the award itself should have been set aside and there was no occasion for remitting the award to the arbitrators. The learned Single Judge of the High Court heard the revision and the appeal together. By the impugned order the learned Judge has dismissed the civil revision and allowed the appeal. As a result the order of the learned Civil Judge, Senior Division remitting the award to the arbitrators has been set aside and the award to the extent of Rs.107.54 lacs and the interest thereon in the sum of Rs.28.74 lacs has been set aside. The rest of the award has been made a rule of the Court. Feeling aggrieved by the impugned judgment of the High Court these petitions have been filed by the appellants seeking leave to file appeals by special leave.

We have heard the learned counsel for the parties at length who have apart from making legal submissions carried the Court through the pleadings, the relevant correspondence between the parties, several documents and the proceedings before the arbitrators. However, it is not necessary for us to deal with the same in very many details as we have formed an opinion that the impugned judgment of the High Court deserves to be set aside and the order of the learned Civil Judge deserves to be restored.

A perusal of the judgment of the learned Civil Judge, Senior Division shows the learned Judge having formed an opinion that the award suffered from an error apparent on its face. There was an omission on the part of the learned arbitrators to consider a few relevant documents available on record which in the opinion of the learned Civil Judge if taken into consideration the finding of the arbitrators would not have been what it is. The learned Civil Judge also formed an opinion that there was a violation of the principles of natural justice inasmuch as the parties were not afforded a hearing on the issue on which the learned arbitrators had based their decision. The learned Civil Judge was of the opinion that on totality of the facts and circumstances of the case instead of setting aside the award the same deserved to be remitted to the arbitrators with the request to render the award afresh. The High Court has however formed an opinion that to the extent to which the award has been set aside by the High Court it was beyond the scope of reference to the arbitration and hence there was no question of the parties being afforded an opportunity of re-arguing the same question before the arbitrators as the arbitrators could not assume jurisdiction over an issue which was not referred to them.

On 19th October, 1994 the appellant served a notice on the respondent setting out several disputes arising between the parties. One of the disputes raised therein reads as under :

"Till today, we have spent Rs.107.54 lakhs on the said plant, which it is abundantly clear that will not give required results as agreed not even optimum to the norms laid down by the excise rules. Therefore, Rs.107.54 lakhs will be straight way loss to my client and there will be also loss of interest at the rate of 18% per year from 1st May, 1993 onwards. In the circumstances my clients have instructed me to call upon you which I hereby do to reimburse the loss suffered by my clients to the tune of Rs.237.83 lakhs within a week from today."

On 26.12.1994 once again a notice was served by the appellant on the respondent appointing its own arbitrator calling upon the respondent to appoint its and in the contents of the notice it was specifically stated that they were the questions, disputes and differences mentioned in the notice dated 19.10.1994 which shall be referred to the arbitration. During the pendency of the arbitration proceeding, on 24th July, 1995, a memorandum of understanding was arrived at between the parties which suggests that it was the dispute referred to in the notice dated 19.10.1994 for which trial-runs were being conducted. The notice dated 12.9.1995 served by the appellant on the respondent reiterates that it was the failure on the part of the respondent to manufacture and supply the plant and comply with the terms of agreement that had caused total failure entitling the appellant for refund of total amount of advance paid by the appellant to the respondent. In its reply dated 30.9.1995 the respondent had told the appellant that the matter was already before the arbitrators and the respondent reserved the right to file an appropriate written statement before the arbitrator disputing the claim made by the appellant and it

was not necessary to give a detailed reply in response to the appellant's notice. We have also perused the statements of claim and their responses filed by the parties before the arbitrators. We find that the claim for Rs.107.54 lacs and the interest thereon raised by the appellant against the respondent was very much before the arbitrators and the parties also proceeded on the assumption that this dispute was before the arbitrators and liable to be adjudicated upon by them.

Issues no. 10, 11 and 12 framed by the arbitrators are:

"10) Does the claimant prove that it spent Rs.107.54 lacs on the plant and the plant has gone waste for not getting the guaranteed performance?

11) Is the claimant entitled to Rs.107.54 lacs as actual damages?

12) Is the claimant entitled to Rs.45.46 lacs as interest on the said amount of Rs.107.54 lacs?"

The issues are widely worded and include within their sweep the dispute arising for decisions and as was adjudicated upon by the award.

The arbitration agreement between the parties opens as under:

"18.0 Arbitration

If at any time there should be any question, dispute or difference between the parties in respect of any matter arising out of or in relation to this agreement, either party may give to the other party notice in writing of the existence of such question, dispute or differences and the same shall be referred to arbitration "

In *Renusagar Power Co. Ltd. Vs. General Electric Company & Anr.*, (1984) 4 SCC 679, this Court has held : "Whether a given dispute inclusive of the arbitrator's jurisdiction comes within the scope or purview of an arbitration clause or not primarily depends upon the terms of the clause itself; it is a question of what the parties intend to provide and what language they employ. Expressions such as 'arising out of' or 'in respect of' or 'in connection with' or 'in relation to' or 'in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude." In our opinion, it is the substance of the claim made before arbitrators which has to be seen. The Court would not construe the nature of claim by adopting too technical an approach or by indulging into hair-splitting. Else the whole purpose behind holding arbitration proceedings as an alternate to civil court's forum would stand defeated. We have carefully perused the arbitration clause and the disputes referred and adjudicated upon by the arbitrators. We find it difficult to sustain the finding of the High Court that the arbitrators had determined an issue which was beyond the scope of reference to the arbitration. The disputes did arise out of the contract between the parties and the arbitrators were seized of the disputes within the scope of reference to them. The parties have also joined in the contest before the arbitrators having understood the scope of controversy, as already stated hereinabove.

Clause (c) of sub-section (1) of Section 16 contemplates an award being remitted to the arbitrators or Umpire for reconsideration upon such terms as the Court thinks fit where an objection to the legality of the award is apparent upon the face of it. As held recently by this Court in *Ramachandra Reddy & Co. Vs. State of A.P. & Ors.*

(2001) 4 SCC 241 the jurisdiction to remit an award by the Court to the arbitrators is a discretionary jurisdiction conferred on the Court

and so long as the said discretion has been judicially exercised an Appellate Court would not be justified in interfering with the exercise of discretion unless the discretion is misused. In our opinion no fault can be found with the discretion exercised by the learned Civil Judge, Senior Division. The High Court has erroneously formed an opinion that part of the award was beyond the jurisdiction of the arbitrators.

For the foregoing reasons the appeals are allowed. The judgment of the High Court is set aside and that of the learned Civil Judge, Senior Division is restored. The award shall stand remitted to the arbitrators in the terms as directed by the learned Civil Judge, Senior Division. However, the time of six months appointed for giving the award shall run from the date of communication of this order to the arbitrators.

The appeals stand disposed of in the terms abovesaid. No order as to the costs.

.....J
(R.C. LAHOTI)

.....J.
(B.N. AGRAWAL)

May 7, 2002.