

CASE NO.:

Appeal (civil) 1382 of 2002

Appeal (civil) 1384 of 2002

PETITIONER:

Narayan Prasad Lohia

RESPONDENT:

Nikunj Kumar Lohia and others

DATE OF JUDGMENT: 28/01/2003

BENCH:

N. SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:

J U D G E M E N T

B.P. SINGH, J..

Civil Appeal No. 1382 of 2002 is directed against the judgment and order of the High Court of Calcutta dated 18th May, 2000 in A.P.O. No.620 OF 1999 whereby the Division Bench of the Calcutta High Court while affirming the order of the learned Single Judge dismissed the appeal of the appellant and affirmed the finding of the learned Single Judge that the purported arbitral award made and published by the 5th and 6th respondents on October 6, 1996 was void and unenforceable and was not binding on the parties.

Civil Appeal No. 1384 of 2002 is directed against the judgment dated 14th July, 2000 whereby the High Court dismissed A.P.O. No. 619 of 1999 following its earlier judgment dated 18th May, 2000.

The facts not in dispute are that the appellant and the respondents belong to the same family. On disputes and differences arising in respect of family business and properties, they agreed to get them resolved through one Shri Pramod Kumar Khaitan. Later, on 29th September, 1996 the parties agreed to the disputes being resolved by the aforesaid Shri Pramod Kumar Khaitan and one Shri Sardul Singh Jain. The parties accordingly submitted their respective claims before the aforesaid two persons and took part in the proceedings which resulted in an award dated 6th October, 1996.

The award was challenged by the first and the second respondents who prayed for setting aside of the award. Several grounds were urged in support of the applications, one of them being that the arbitration by two arbitrators was not permissible under the provisions of the Arbitration and Conciliation Act, 1996 as it prohibited arbitral tribunal consisting of even number of members. Several other grounds were urged in support of the applications for setting aside the award.

The learned Single Judge, who heard the applications, allowed the same and set aside the award. In doing so he recorded his findings which may be summarized thus :-

1. It appeared from the original Award filed with the Registrar (Original Side) by the Arbitrators that the Memorandum of Understanding was neither annexed thereto nor had it been initialled by them. The award was, therefore, incomplete and could not be given

effect to.

2. The award was not signed by the 3rd respondent signifying her acceptance.

3. A perusal of the award disclosed that the 5th and the 6th respondents, the arbitrators, intended the award to form the basis of further negotiation between the parties and that the same was not to be made a rule of the court.

4. The arbitrators in their award did not record reasons nor did they specify the place of arbitration, and hence the award was invalid being contrary to the provisions of section 31 of the Act.

5. The provisions of the award were uncertain, vague and unworkable, in that it purported to record that the third respondent will have no concern with profit and loss of any company owned or controlled by the parties, without specifying which are the companies and/or businesses that are owned and controlled by the parties and by whom. Further the award directs that the guarantee given by the parties in respect of company/business of the other parties, shall be released from financial institutions and banks, it does not specify the companies or the businesses concerned or the financial institutions or the banks. It further directs payment of Rs.375/- in favour of the second respondent without specifying as to who has to pay the said amount.

6. That the provisions of section 30 of the Act do not apply to the award in question. If it was a settlement between the parties, there would have been no occasion for the arbitrators to reject the claim of the parties as they had purported to do by their award. Moreover paragraph 13 of the award made it abundantly clear that the arbitrators treated the same as "our award".

On all these grounds the learned Single Judge set aside the award and allowed the applications filed by the first and the second respondents.

As noticed earlier, a Division Bench of the High Court has affirmed the order of the learned Single Judge but while doing so, the Division Bench considered only two questions, namely - (1) whether the reference, if at all made to two arbitrators, was valid in law; and (2) whether the fact that the arbitrators did not give reasons in support of their award would make the award bad in the eyes of law. Both these questions were answered in favour of the contesting respondents. The appellant has moved this Court by way of special leave.

At the thresh-hold, a question arose as to whether, having regard to the provisions of the Arbitration and Conciliation Act, 1996, there cannot be an even number of arbitrators and that arbitration by two arbitrators was against the statutory provision of the said Act and, therefore void and invalid. This Court noticed in its order dated 16th January, 2000 that the question being an important question of law which was likely to arise in future cases, it was only appropriate that this issue be decided by a larger Bench of at last three Hon'ble Judges. This Court noticed that earlier a similar question was referred to a larger Bench but the question

was not decided since that matter was decided on other grounds. Accordingly the matter was placed before the Hon'ble the Chief Justice for suitable orders, who directed that the matter be heard by a Bench of 3 Hon'ble Judges of this Court. Accordingly the matter was heard by a Bench of 3 Hon'ble Judges who by their judgment dated February 20, 2002 held that section 10 of the Act was a derogable provision and respondents 1 & 2 not having raised any objection to the composition of the arbitral tribunal, as provided in section 16, they must be deemed to have waived their right to object. The question was, therefore, answered in favour of the appellant, but the Bench directed that the appeal be placed before a Bench of two judges for consideration of other aspects of the matter.

Before us, it was submitted by Mr. K. Parasaran and Mr. Kailash Vasdev, Senior Advocates appearing on behalf of the respondents, that the appellate Bench of the High Court has considered only two of the grounds on which the learned Single Judge set aside the award, namely the ground pertaining to the objection raised on the basis of section 10 of the Act, and the ground pertaining to failure of the arbitrators to record reasons for their award. Apart from these two grounds, there were other grounds also on which the learned Single Judge had held the award to be void and ineffective. Those questions have not at all been considered by the appellate Bench and, therefore, it was only appropriate that the matters be sent back to the High Court for its decision on those questions. We are of the view that the request made by learned counsel for the respondents is fair and also in the interest of justice. Since there are more grounds available to the respondents to challenge the award, apart from the two grounds, on which the appellate Bench disposed of the appeals before it, it is only appropriate that the Division Bench of the High Court should consider the other grounds also on which the award had been set aside by the learned Single Judge. This is necessary because in the event of our holding in favour of the appellant on the second ground, the Court will be deprived of the view of the High Court on other grounds on which the award was invalidated by the learned Single Judge.

Accordingly we dispose of these appeals with the direction that the matters be remitted to the High Court for the Division Bench to consider the other grounds on which the learned Single Judge had set aside the award by its judgment and order dated 17th November, 1998, which have not been considered by the Division Bench in its judgment and order dated 18th May, 2000. These appeals are disposed of accordingly. There will be no order as to costs.

Two Contempt Petitions No. 368 and 369 of 2002 have been filed in these two appeals alleging that respondent No.2 in both the appeals has willfully and intentionally disobeyed the order of this Court dated 21st August, 2000 directing maintenance of status quo with respect to the implementation of the award. Since we have remitted the matters to the High Court for its findings on other questions involved in the appeals, we do not consider it necessary to pass any order on these contempt petitions and they are accordingly disposed of.