

Malay Kumar Chatterjee Vs. Capstan Shipping and Estates Limited.

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Court : Kolkata

Decided On : May-02-2013

Judge : Banerjee

Appellant : Malay Kumar Chatterjee

Respondent : Capstan Shipping and Estates Limited.

Judgement :

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ORDER

SHEET APOT No.117 of 2013 G.A.No.742 of 2013 A.P No.808 of 2012 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE MALAY KUMAR CHATTERJEE Versus CAPSTAN SHIPPING & ESTATES LIMITED.

BEFORE: The Hon'ble JUSTICE BANERJEE The Hon'ble JUSTICE DR.

MRINAL KANTI CHAUDHURI Date :

2. d May, 2013.

Appearance:Mr.Pramit Ray with Mr.Rajib Mallick and Mr.S.Ghosh Ld.

Advocates for the appellant.

Mr.Pratap Chatterjee, Sr.Advocate, Mr.Malay Ghosh with Mr.Arabinda Bhattacharjee, Mr.S.Dutta Id.

Advocates for the respondents.

The friends from childhood.

Court They :- Parties subsequently are became foe.

The appellant had a land at Prince Anwar Shah Road measuring about 4 cottahs of land, which he entrusted his management construct and a friend, control multi-storied the of person the having respondent, building.

the to Accordingly, the respondent constructed a four storied building having ground, mezzanine, fiRs.and second flo ORS.Second floor was sold to outsider.

The respondent admittedly appropriated the entire proceeds.

Ground, mezzanine and fiRs.floor would belong to a Company called Emkay International Ltd., which has since gone into liquidation.

However, three floors would admittedly belong to the persons having management and control appearing of for possession.

the them Hence respondent would at the admit, end of and Mr.they the Ghosh are day, in the appellant received nothing out of the said property.

Mr.Ghosh appearing for the respondent would submit, appellant was in deep slumber and did not co-operate with the respondent for getting the accounts settled.

The Arbitrators awarded a sum of Rs.1.2 crore in favour of the appellant.

However, two of the Arbitrators did not sign the award.

It was signed by the third Arbitrator who designated himself as Umpire.

The learned Judge set aside the Award on the said ground alone.

Pertinent to note, the Arbitration & Conciliation Act, 1996 did not recognize a post of Umpire.

According to the said Act of 1996, the number of members of the Tribunal should be odd.

Accordingly, the parties nominated their respective nominees, who appointed the Third Arbitrator.

Hence, the Third Arbitrator could not be designated as Umpire.

On this technical ground award was set aside.

We kept the appeal pending for days together.

Initially, we kept it pending on the ground, the learned Judge recorded the concession made by the appellant, which the appellant denied before us.

The appellant made an application before the learned Judge.

The learned Judge dismissed it with cost of Rs.51,000/-.

Subsequently, we adjourned the matter for an amicable settlement.

However, despite best effort of the learned Counsel appearing for the parties, the parties could not come to an amicable solution.

We have also enquired about the settlement.

The difference is too much, which we cannot bridge.

We, thus, proceed to hear the appeal.

Mr.Pramit Ray, learned Counsel appearing for the appellant would contend, on the technical ground learned Judge should not have set aside the Award.

Even if the learned Judge was of the view, the Award Arbitrators was wrongly describing signed by one of the himself as Umpire, His Lordship should have sent it back to the Tribunal for eliminating the ground of setting aside that is provided

under Sub-section (4) of Section 34 of the Act.

Mr.Ray still insists, the appellant did not make any concession before His Lordship.

Per Counsel contra, being led Mr.Malay Mr.Jayanta by Ghosh, Mitra, learned learned Senior Counsel would contend, the said Act of 1996 did not have any scope for any member of the Tribunal to act as Umpire.

Hence, the learned Judge set aside the order.

We have considered the rival contention.

We have carefully perused Section 34(4) of the Act.

Section 34(4) of the Arbitration and Conciliation Act, 1996 is quoted below: Sec.34(4).On receipt of an application under sub-section (1).the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such order action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

If we closely read the aforesaid provision, we find, the Legislature thought it fit to give the Award full credence to the extent possible.

Hence, the duty was cast on the Court to remit the Award to the Tribunal for eliminating the ground, meaning thereby, in case the learned Judge would return the Award back to the Tribunal and other two Arbitrators would sign the same, the defects in the Award would be rectified.

We, however, observe, this is our prima facie view.

We feel, His Lordship should send it back to the Tribunal and consider the application on merits after it is remitted back to the Court by the Tribunal.

The judgment appeal and order succeeds and is aside.

set is allowed.

The award The is remitted back to the Tribunal for consideration of the Tribunal as to whether all the three Arbitrators are agreeable to sign the award or not.

In case they would agree, they may put their signatures, otherwise, they may offer their views to be sent to the learned Judge taking arbitration matter.

The entire process must be completed by the Tribunal within a period of 2 weeks from the date of receipt of the Award.

We are told, the Tribunal sent signed copy to both the parties.

Possibly the original is retained by them.

Hence, they may send a fresh copy after their signatures, if they so wish to put in terms of this order or send their views along with the fresh copy of the Award.

Upon receipt of the said Award from the Tribunal, the learned Judge would consider the same in accordance with law.

His Lordship will give liberty to the parties to file affidavits, in case asked for, taking additional ground for setting aside, if they so want.

The Registrar, Original Side, High Court Calcutta is directed to communicate this order to the members of the Tribunal and offer inspection to the parties Department after from the the report is Tribunal received in terms by of the the foregoing order.

So far as the order of April 4, 2013 is concerned, Mr.Ghosh in his usual fairness submits, he would not insist upon payment of cost, on instruction from his client.

The learned Judge has also asked the appellant to deposit a sum of Rs.25,000/- to the State Legal Public Services Welfare Authority.

Organization, we Since that would is ask a the appellant to deposit a sum of Rs.5,000/- instead of Rs.25,000/- and file receipt with our Officers within one week from date.

Since the said order was passed as and by way of clarification needed by this Court, in view of the foregoing order, the said order is also set aside.

Both disposed of the application accordingly and without the any appeal order costs.

[BANERJEE,J].[DR.MRINAL KANTI CHAUDHURI,J].dg/ as are to

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