

P.P.C. Constructions Vs. National Buildings Construction Corporation Ltd.

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Court : Mumbai

Decided On : Jan-20-1995

Reported in : 1996(5)BomCR397

Judge : T.K. Chandrashekhara Das, J.

Acts : [Arbitration Act, 1940](#) - Sections 5 and 20

Appeal No. : Civil Revision Application No. 148 of 1994 and Civil Application No. 239 of 1994

Appellant : P.P.C. Constructions

Respondent : National Buildings Construction Corporation Ltd.

Advocate for Def. : B.F. D'Souza, Adv.

Advocate for Pet/Ap. : C. Mascarenhas, Adv.

Disposition : Application dismissed

Judgement :

T.K. Chandrashekhara Das, J.

1. Rule. By consent to be heard forthwith.

2. The petitioners are a partnership firm who have undertaken some work with the respondent. It appears that disputes have arisen during the execution of the contract and the petitioners wanted to get an Arbitrator appointed invoking the relevant Arbitration Clause contained in the contract. The petitioners filed an application under section 20 of the Arbitration Act to appoint an Arbitrator as Special Civil Suit No. 152/1993 on the file of Civil Judge, S.D. at Margao. By Order dated 15-2-1994 the Court has directed the respondent to appoint an Arbitrator in terms of the Arbitration Clause contained in the contract within one month. Even after the lapse of one month, no information was received by the petitioners of having appointed an Arbitrator in terms of the order of the Court. Then the petitioners had to file another application on 18-3-1994 to appoint an Arbitrator by the Court. But in the meantime the appointment of Arbitrator was done by the respondent in terms of the order passed by the Court and intimation to that effect was received by the petitioners on 21-3-1994. As per the appointment order the Chief Project Manager of the respondent one Shri Prasad was appointed as Arbitrator. Then the petitioners filed Civil Misc. Application No. 114-A/94 to revoke the authority of the Arbitrator presumably under section 5 of the Arbitration Act. The Court below considered the application and found that no ground has been made out by the petitioners to grant leave to revoke the authority of the Arbitrator under section 5 of the Arbitration Act and the application was therefore dismissed.

3. The petitioners came up with this Revision Application before this Court to challenge the said order of the Court below dated 18-8-1994.

4. I have heard counsels for the petitioners and the respondent. The petitioners' Counsel has argued before me that the Court below ought to have exercised its discretion in favour of the petitioners and to withdraw the authority of the Arbitrator appointed by it. He also elaborated his argument and cited a decision of the Supreme Court in the case of *M/s. Amarchand Lalitkumar v. Shree Ambica Jute Mills Ltd.*, reported in : [1963]2SCR953 . I do not find anything in this decision to support the contention of the petitioners. In fact going by that decision it is more confirmed in my mind that what the Court below has done was quite correct. At this juncture it is profitable to refer to paragraph 13 of the said judgment of the Supreme Court which reads thus :

'We now turn to the legal position which seems to us to be quite clear. Before the Court exercises its discretion to give leave to revoke an arbitrator's authority, it should be satisfied that a substantial mis-carriage of justice will take place in the event of its refusal. In considering the exercise by the Court of the power of revocation it must not be forgotten that arbitration is a particular method for the settlement of disputes. Parties not wishing the law's delays' know, or ought to know, that in referring a dispute to arbitration they take arbitrator for better or worse, and that his decision is final both as to fact and law. In many cases the parties prefer arbitration for these reasons. In exercising its discretion cautiously and sparingly, the Court has no doubt these circumstances in view, and considers that the parties should not be relieved from a tribunal they have chosen because they fear that the arbitrator's decision may go against them. The grounds on which leave to revoke may be given have been put under five heads:....'

5. The learned Counsel for the petitioners argues that great miscarriage of justice would result if the authority is not revoked for the simple reason that the Arbitrator would be biased. The petitioners' further contention is that the reference made to the Arbitrator was not a reference which he has prayed for before the Court. In other words, it is contended that the reference is not in consonance with the direction contained in the order made by the Court. He says that only one dispute has been referred by the respondent to the Arbitrator and the other disputes which have been enumerated in the application before the Court has not been included in the reference and therefore he says that he has no remedy available under the law to include these disputes under the said reference. I cannot agree with this contention made by the petitioners. Remedy is very much available for them to challenge the Award if it is not passed in consonance with the order passed by the Court. Therefore, it cannot be said that he is left without any remedy. Be that as it may, the learned Counsel for the respondent has graciously conceded that if the petitioners have got any complaint about the extent of the reference under which the disputes have been referred, he is prepared to advise his client to include all the disputes enumerated in the claims made by the petitioners before the Court below. In view of this circumstance one of the grievances of the petitioners stand redressed.

6. Regarding the legal aspect, namely, jurisdiction of the Court for granting leave to revoke the authority of the Arbitrator under section 5 of the Act, as I pointed out earlier, in view of the Supreme Court decision referred to above, none of the grounds as enumerated by the Supreme Court has been made out by the petitioners warranting the exercise of the power under section 5 of the Arbitration Act. The Supreme Court has clearly laid down the scope of the power of the Court to revoke the jurisdiction of the Arbitrator. It has in categorical and emphatic terms held that power under section 5 of the Act has to be exercised very cautiously and sparingly. Before exercising such power the elements to be established before the Court also has been categorised by the Supreme Court. Unless these elements are satisfied the Court cannot revoke the authority of the Arbitrator.

7. In view of the above, I cannot hold that the Lower Court has committed any error in exercise of its jurisdiction in refusing to grant leave to revoke the power of the Arbitrator. There is no ground to interfere with the orders of the Court below. The Civil Revision Application is dismissed subject to the observations made above. Rule discharged.

There shall be no order as to costs.

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