

Durga Construction Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Nov-12-1993

Reported in : 1994(1)ALT545; 1994(2)ARBLR88(AP)

Judge : Y. Bhaskara Rao, J.

Acts : [Arbitration Act, 1940](#) - Sections 14 and 20; Andhra Pradesh Arbitration (Amendment) Act, 1990 - Sections 17; [Code of Civil Procedure \(CPC\), 1908](#) - Section148

Appeal No. : Appeal Against Order No. 293 of 1991

Appellant : Durga Construction

Respondent : State of Andhra Pradesh

Advocate for Def. : None

Advocate for Pet/Ap. : R. Ramanujam and ;Vinayakaswamy, Advs.

Judgement :

Y. Bhaskar Rao, J.

1. This Civil Miscellaneous Appeal is filed against the order dated 22.10.1990 passed in O.P. No. 299 of 1988 on the file of the Principle Subordinate Judge, Narasaraopet.

2. The brief facts of the case; that the appellant there in sought for reference under Arbitration Act; that the 3rd respondent herein is appointed as an Arbitrator and he passed the Award on 17.8.1988; that thereafter, the present appellant filed a petition under Sections 14 and 20 of the Arbitration Act to make the Award a Rule of Court; thereafter the court issued a notice to the Arbitrator to give a reasoned award as per the amended provisos to Sections 14 and 17 of the Arbitration (A.P. Amendment Act 1 of 1990) Act, 1940; that the same was despatched to the Arbitrator on 3.9.1990 and the Arbitrator received the same on 6.9.1990 by post; thereafter the Arbitrator gave a reasoned award and sent the same through a letter by post 5.10.1990 which was received on 9.10.1990 by the Court below; while sending the reasoned award, the Arbitrator enclosed a letter dated 5.10.1990 seeking extension of time for 15 days for the reasons stated in the letter; that court below has rejected the extension of time by its letter dated 15.10.1990 and thereafter the impugned order was passed on 22.10.1990 in O.P. No. 299 of 1988. The impugned order reads as follows :

'Petition is dismissed as award with reasons is not received within the 30 days granted and as no extension is given for 15 days or any petition by Arbitrator within 30 days times : Parties shall go to fresh arbitration according to Arbitration Agreement and Act. No Costs.'

3. Aggrieved by the said order, this Civil Miscellaneous Appeal is filed before this court.

4. The learned Counsel for the appellant contended that the arbitrator has sent the reasoned award though post within 30 days from the date of receipt of the order of the court to file a reasoned award to the Court below; that the same was received by the court below on 9.10.1990 and for the reason the petition cannot be dismissed; Further the arbitrator sought for grant of 15 days time as provided under the second proviso to Section 17 of the Arbitration (A.P. Amendment Act 1 of 1990) Act and that the court below erred in not granting extension of time. The learned Counsel for the appellant further contended that even the petition for extension of time was filed after the expiry of the period of 30 days, the same can be granted and that as per Section 148, C.P.C. the lower court can enlarge time

after the expiry of 30 days period.

5. The learned Government Pleader for the respondents contended that Section 148, C.P.C. is not applicable to the Arbitration proceedings, that further the reasoned award is not filed within the time as contemplated under the proviso to Section 17 of the Arbitration Act and that the court below has rightly rejected the extension of time; therefore there are no merits in the appeal.

6. In view of the above contentions, the only question that has to be decided is : Whether the reasoned award filed by the Arbitrator is in time as contemplated under the provisos to Section 17 of the Arbitration Act

7. It is relevant to refer to the provisions of Section 14(1) and Section 17 of the Arbitration Act as amended.

'Section 14(1) : When the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

Provided that the arbitrators or umpire shall give reasons for any award made under this section and no award shall be valid unless reasons therefor are given as aforesaid.'

Section 17 : Where the court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with the award.

Provided that where an award pending in the court at the commencement of the Arbitration (Andhra Pradesh Amendment) Act, 1990 or an award filed in the Court, thereafter does not contain reasons therefor as required by the proviso to sub-

section (1) of Section 14, the court shall not proceed to pronounce the judgment according to the award, but shall remit the award to the arbitrators or umpire for giving reasons therefor as required by the said proviso and thereupon the arbitrators or umpire shall, within thirty days from the date of remittance of the award to them by the court give reasons for the award and file the same in the Court.

Provided further that on the application of the arbitrators or the umpire and for reasons to be recorded in writing, it shall be competent for the court, to extend the period of thirty days aforesaid for a further period not exceeding fifteen days;

Provided also that where as award pending in the court as aforesaid does not contain any reasons and there is no possibility to remit the award to the arbitrator or panel of arbitrator or umpire due to their incapacity, negligence, refusal to act or death, the court shall set aside the award and direct the parties to initiate fresh arbitration in accordance with the terms of the agreement.'

8. By analysing the provisions of Sections 14 and 17, prior to amendment and after amendment, it emerges that Section 14 of the Act provided for making an award and signing the award by the arbitrator or umpire and further providing for filing of the award into the court and Section 17 of the Act provided for passing judgment in terms of the award. It was felt that as there was no obligation on the part of the arbitrator for giving a reasoned award, the arbitrator was passing award without assigning reasons, though stakes were very high, and the matter were very complicated. Therefore, it was felt necessary to bring an amendment to the Act. So Act 1 of 1990 was passed providing amendments to Sections 14 and 17. Act 1 of 1990 came into force on 19.2.1990 and one proviso was added to sub-section (1) of Section 14 provided that the arbitrator or umpire shall give reasons for any award made by him or them and the award shall not be valid unless reasons therefore are given. Three provisos are added to Section 17 where the award is pending before the court and such award does not give reasons empowering the court to remit the award to the arbitrator directing to pass a reasoned award and file it into the court. Further providing that the arbitrator after remittance of the award to him has to pass a reasoned award and to file it into the

court within 30 days and in case he has not filed, he can seek extension of time not exceeding 15 days. It is further provided in the provisos that where it is not possible to the court to remit the award to the arbitrator or panel of arbitrators or umpire due to incapacity, negligence, refusal to act or death, the court shall set aside the award and direct the parties to initiate fresh arbitration in accordance with the terms of the agreement. Thus, the above provisos are inducted into the Act to make it obligatory on the part of the arbitrators to pass a reasoned award.

9. In the instant case, the letter sent by the arbitrator along with the reasoned award clearly shows that the papers relating to the award were received by him on 6.9.1990 from the court and he sent the reasoned award by post on 5.10.1990 to the court which was received by the court on 9.10.1990. No doubt, the reasoned award was received by the court after the expiry of 30 days from the date of receipt of remittance order to the arbitrator. Under the Arbitration Act or the Rules, there is no procedure how to file the award into the court and the practice prevailing is that the award can be sent through post and this is not disputed. Admittedly in the instant case, the papers were sent to the arbitrator through post and the arbitrator sent the reasoned award through post on 5.10.1990 with 30 days from the date of receipt of remittance order from the court. There is a postal delay in receiving the reasoned award by the court and, in fact, the court received the same on 9.10.1990. The intention and object of the Arbitration Act is to settle the disputes quickly avoiding delays by the arbitrator selected by the parties. While deciding the cases, the court should not forget the scope of the Act and merely because there is some postal delay in filing the award, the court cannot direct to seek fresh reference which will take 4 or 5 years time to complete the proceedings and if it is so, the aim and object of the Arbitration Act will be frustrated. Therefore, while interpreting the time limit of 30 days from the date of remittance of the award, the time taken by the postal department to deliver the same to the court has to be excluded. If that time is excluded, the award was filed into the court within time as contemplated under the proviso. If the court below was of the opinion that the application of the arbitrator for extension of time was received after the expiry of time to file the award into the court, it ought to have considered to delay of postal department.

10. In view of the circumstances, the appeals is allowed, the order of the lower court is set aside and the matter is remanded back to the lower court for disposal according to law. In pursuance of impugned order, if the O.P. filed by the other side to set aside the award is disposed of, the lower court is directed to restore the same to its file and decide the matter in accordance with law after giving opportunity to both the parties.

11. Appeal allowed. Matter remanded.

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