

Government of A.P. and ors. Vs. P. Krishna Prasad and anr.

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Court : Andhra Pradesh

Decided On : Mar-04-2003

Reported in : 2003(5)ALD77

Judge : G. Rohini, J.

Acts : [Arbitration Act, 1940](#) - Sections 14(2), 15, 16 and 17

Appeal No. : CRP No. 913 of 2002

Appellant : Government of A.P. and ors.

Respondent : P. Krishna Prasad and anr.

Advocate for Def. : K. Prabhakar, Adv. for Respondent No. 1

Advocate for Pet/Ap. : Adv. General and ;Government Pleader

Disposition : Petition allowed

Judgement :

G. Rohini, J.

1. This Revision Petition is directed against the Judgment and decree dated 4.6.2001 in O.S. No. 1026 of 1990 on the file of the Court of the Additional Judge, City Small Causes Court, Hyderabad-cum-VI Senior Civil Judge, City Civil Court, Hyderabad making the Award dated 26.9.1990 Rule of the Court.

2. The defendants 1 to 3 are the Revision Petitioners. The plaintiff/ 1st respondent herein, who is a Class-1 contractor, entered into an agreement with the Government of A.P. for execution of the works namely widening the carriage-way to two lanes in Mile 75/0 to 100/0 of Hyderabad Kurnool Road, NH7. In view of certain disputes arose during the execution of the said works and thereafter the plaintiff filed O.P. No. 344 of 1985 in the Court of the 1st Addl. Judge, City Civil Court, Hyderabad and got appointed the 4th defendant Arbitrator (respondent No. 2 herein). After conducting due enquiry the Arbitrator passed an Award dated 26.9.1990. Thereafter on 15.9.1990 the plaintiff filed O.S. No. 1026 of 1990 seeking a direction to the Arbitrator to produce the original Award and to make the said award rule of the Court and for consequential reliefs.

3. The 2nd defendant, Superintending Engineer filed a written statement admitting that an award was passed by the Arbitrator on 26.9.1990, however, stating that he is not aware whether the award was filed into the Court or not. He also reserved his right to question the correctness of the award by filing a petition after receipt of notice of filing of the award into Court, The defendants 1 and 3 i.e., the Government of A. P. and the Executive Engineer filed a memo adopting the written statement filed by the 2nd defendant. However, the defendants have not filed any further objections nor any application to set aside the award was filed.

4. The Court below settled the following issues for trial:

1. Whether the award dated 26.9.1990 can be made rule of the Court?
2. Whether the plaintiff is entitled for direction in respect of arbitration fees?
3. Whether the plaintiff is entitled for the interest claimed?
4. To what relief?

5. No evidence either oral or documentary was adduced by either party. The Court below on issue No. 1 held that inasmuch as no petition is filed by the defendants challenging the correctness of the award, there is no other objection for holding that the award can be made rule of the Court. It is also held that the plaintiff is entitled to recover Rs. 13,000/- from the defendants 1 to 3 towards the fee and

expenses payable by the defendants. So far as the interest is concerned though the plaintiff claimed at the rate of 24% per annum from the date of the decree, the Trial Court held that the plaintiff is entitled to interest at 18% per annum. Accordingly by judgment dated 4.6.2001 the suit was decreed making the award rule of the Court. The correctness of the said judgment and decree is assailed by the defendants 1 to 3 by filing this Revision Petition.

6. The learned Advocate-General appearing for the revision petitioners contended that the judgment under revision which is not a speaking order and passed without application of mind to the issues involved in the case is erroneous and liable to be set aside. The learned Advocate-General further contended that whether objections were filed or not by the defendants, it is the duty of the Court to pass a speaking order after being satisfied that the award was proper and justified in the context of Sections 15 and 16 of the [Arbitration Act, 1940](#). Therefore according to the learned Advocate-General the impugned judgment making the award rule of the Court only on the ground that the defendants failed to file objections nor made application to set aside the award within the statutory period of limitation is not in conformity with the statutory provisions and on that ground alone the impugned judgment is liable to be set aside.

7. On the other hand, the learned Counsel for the respondent Sri K. Prabhakar submitted that a perusal of the judgment under revision makes it very clear that the findings recorded by the Court below are based on proper appreciation of the material on record and it cannot be said that the suit was decreed making the award rule of the Court without application of mind. The learned Counsel contended that in the facts and circumstances of the case there is absolutely no reason to hold that there is any violation of the requirement of Sections 17 of the Arbitration Act and therefore the judgment under revision does not warrant any interference.

8. Having regard to the rival contentions raised by the parties the only question that arises for consideration is whether the Court below is justified in making the award rule of the Court merely on the ground that the defendants failed to make an application to set aside the award, without applying its mind whether there is

any cause to modify or remit the award under Sections 15 and 16 of the Act.

9. For proper appreciation of the issue in question it is necessary to refer to the relevant provisions of the [Arbitration Act, 1940](#) (for short 'the Act').

15. Power of Court to modify award :--The Court may by order modify or correct an award-

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

16. Power to remit award :--(1) The Court may from time to time remit the award or any matter referred to Arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit-

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any not matter referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.

(2) Where an award is remitted under Sub-section (1) the Court shall fix the time within which the arbitrator or umpire shall submit his decision to the Court:

Provided that any time so fixed may be extended by subsequent order of the Court. (3) An award remitted under Sub-section (1) shall become void on the failure of the arbitrator or umpire to reconsider it and submit his decision within the

time fixed.

17. Judgment in terms of award :--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.

30. Grounds for setting aside award :--An award shall not be set aside except on one or more of the following grounds, namely :--

(a) that an arbitrator or umpire has misconducted himself or the proceedings;

(b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35;

(c) that an award has been improperly procured or is otherwise invalid.

33. Arbitration agreement or award to be contested by application :--Any party to an arbitration agreement or any person claiming under him desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits: Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such orders for discovery and particulars as it may do in a suit.

10. In the light of the aforesaid provisions the learned Advocate-General appearing for the petitioners contends that notwithstanding the fact that the defendants failed to submit any objections to the award nor filed any application under Section 33 of the Act to set aside the award, the Court is required to consider the provisions of Sections 15 and 16 and can pronounce a judgment only when it comes to a conclusion that there is no cause to remit the award or any of the matters referred

to arbitration for reconsideration or to set aside the award. In support of his contention the learned Advocate-General placed reliance on a Judgment of the Supreme Court in Union of India v. Jain and Associates, : [2001]1SCR889 .

11. The following observations made by the Apex Court in the said case are relevant for the purpose of the present case.

' before pronouncing judgment, the Court has to apply its mind to arrive at the conclusion whether there is any cause to modify or remit the Award. Further the phrase 'pronounce judgment' would itself indicate judicial determination by reasoned order for arriving at the conclusion that decree in terms of Award be passed. One of the meanings given to the word 'Judgment' in Webster's Comprehensive Dictionary [International Edition, Vol. I (1984)] reads thus ; 'the result of judging; the decision or conclusion reached, as after consideration or deliberation'. Further, Order XX Rule 4(2) C.P.C. in terms provides that 'Judgment' shall contain a concise statement of case, the points for determination, the decision thereon, and the reasons for such decision. This is antithesis to pronouncement of non-speaking order.'

' when the Court is required to proceed without objection application under Section 30 or 33 of the Act, it cannot pronounce the judgment without considering the provisions of Sections 15 and 16 of the Act, which provide, as stated above, for modification or correction of any award or for remitting it to the Arbitrator for reconsideration on the ground that (i) there is any error of law apparent on the face of the award, (ii) the award is incapable of being executed, (in) the award has left undetermined any of the matters referred to arbitration, (iv) that a part of the award is upon a matter not referred to arbitration and (v) the Award contains any obvious error. Jurisdiction of the Court to pronounce judgment depends on exercise of its power to modify or remit the award.'

12. In the present case the award was passed by the Arbitrator on 26.9.1990. Thereafter, the plaintiff filed O.S. No. 1026 of 1990 seeking a direction to the Arbitrator to file the award into the Court and to make the same rule of the Court. A written statement was filed on behalf of the defendants reserving their right to question the correctness of the award after receipt of the notice of filing of the

award from the Court. However, it appears that no notice was served on the defendants as to the filing of the award into the Court and the Court below recorded that as pointed by both the Counsel a notice under Section 14(2) was prepared on 12.3.2001, but the defendants did not choose to file any petition to set aside the award even after expiry of 30 days from 12.3.2001. Hence the Court below held that the award can be made rule of the Court.

13. The relevant portion from the judgment of the Trial Court may be extracted for better appreciation of the facts actually transpired.

'The suit record shows that after award was filed into Court in 1991 issuance of notice about the filing of the award was ordered by the Court, but there is nothing on record to show that the notice was served immediately thereafter. When it was pointed by both the Counsel a fresh notice under Section 14(2) of the Arbitration Act about the filing of the award was prepared by 12.3.2001. At that stage the Counsel for the plaintiff raised the contention that the defendants had oral intimation about the filing of the award. However, at the request of the both sides, the question of receipt of notice of filing of the award by the defendants was deferred for being considered in the petition to be filed by the defendants to set aside the award. From 12.3.2001 on which date it was brought to the notice of the Assistant Government Pleader about the fact that the award was filed into the Court long ago, even after expiry of 30 days till 12.4.2001 the defendants did not choose to file petition to set aside the award. Thus, the defendants did not file the petition to set aside the award within statutory period of 30 days. Inasmuch as no petition challenging the correctness of the award is filed there is no any other objection for holding that the award can be made the Rule of the Court. I, therefore, hold that the award can be made the rule of the Court. I answer this issue accordingly.'

14. On a perusal of the above para it appears that no notice was served on the defendants as to the filing of the award in the Court, however, since no application was filed by the defendants under Sections 30 and 33 even after expiry of 30 days from the date of admitted knowledge of the Assistant Government Pleader appearing for the defendants, the Court pronounced the judgment holding that

there is no other objection for holding that the award can be made rule of the Court.

15. Obviously the Court below while pronouncing the judgment and making the award rule of the Court did not consider the requirement under Sections 15 and 16 of the Act and did not examine whether there is any cause to remit the award or any of the matters referred to Arbitration for reconsideration. Absolutely no reasons were assigned in the context of Sections 15 and 16 of the Act.

16. Therefore, the principle laid down by the Apex Court in Jain and Associates case (supra), directly attracts to the facts of the present case and on that ground alone the Judgment is liable to be set aside.

17. However, the learned Counsel for the respondent while drawing my attention to various provisions of the Act submitted that under Section 17 of the Act, where no application was made to set aside the award it is mandatory on the Court to pronounce the judgment in terms of the award. The learned Counsel also contended that Sections 15 and 16 of the Act are only enabling provisions under which the Court is competent to exercise the power either to modify the award or to remand the matter to the Arbitrator even without any application by the parties, but it cannot be said that in every case it is mandatory on the Court to consider Sections 15 and 16 of the Act. I am unable to agree with the said contention in view of the clear proposition laid down in Jain & Associates case (supra).

18. Though the learned Counsel for the respondent raised a contention that the ratio laid down in the Jain and Associates case cannot be taken as binding in view of the decision in Nilkantha Sidramappa Ningashetti v. Kashinath Somanna Ningashetti and Ors., : [1962]2SCR551 , which is rendered by a bench of four-Judges, I am unable to accept the said contention. In Nilkantha's case (supra) the Supreme Court has not adverted to the question whether it is mandatory on the Court to comply with the provisions Sections 15 and 16 while pronouncing the judgment under Section 17. In the said case, the Court was dealing with a question whether oral intimation of filing of award to the pleader of the party can be taken as 'service of notice' and whether the limitation starts from such date for filing objections and held as follows:

'...Sub-section (1) of Section 14 of the [Arbitration Act, 1940](#) (X of 1940) requires the Arbitrators or umpire to give notice in writing to the parties of the making and signing of the award. Sub-section (2) of that section requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two sections with respect to the giving of notice is significant and indicates clearly that the notice which the Court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. The communication of the information that an award has been filed is sufficient compliance with the requirements of Sub-section (2) of Section 14 with respect to the giving of the notice to the parties concerned about the filing of the award.We are of opinion that the expression 'give notice' in Sub-section (2) of Section 14, simply means giving intimation of the filing of the award, which certainly was given to the parties through their pleaders on 21-2-1948. Notice to the pleader is notice to the party, in view of Rule 5 of Order III, Civil Procedure Code, which provides that any process served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

'When the Legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice. If its intention were to exclude the latter sense of the words 'notice' and 'service' it would have said so explicitly. It has not done so here. Moreover, to construe the expression as meaning only a written notice served formally on the party to be affected, will leave the door open to that party, even though with full knowledge of the filing of the award he has taken part in the subsequent proceedings, to challenge the decree based upon the award at any time upon the ground that for want of a proper notice his right to object to the filing of the award had not even accrued. Such a result would stultify the whole object which underlies the process of arbitration-the speedy decision of a dispute by a Tribunal chosen by the parties.'

19. The principle laid down in Nilkantha's case (supra) has been consistently reiterated in several later decisions of the Supreme Court. In Indian Rayon Corporation Ltd., v. Raunaq and Constitution Pvt. Ltd., : AIR 1988 SC2054 , it is held that the period of limitation begins upon the date of service of notice as to the filing of the award in proper Court and that the form of notice is irrelevant, though the notice of the award having been filed in the Court is necessary. It is further held that there is no statutory requirement of any technicality under Section 14(2) of the Act.

20. In Secy. to Govt. of Karnataka v. Harishbabu, : AIR 1996 SC3421 , it is held that the period of limitation for filing objections seeking setting aside of an arbitration award commences from the date of service of notice issued by the Court upon the parties regarding the filing of the award under Section 14(2) of the Act. Such a notice need not be in writing but what is essential is that the notice or intimation or communication of filing of the award must be issued by the Court to the parties and served upon the parties concerned. Date of service of a notice issued by the Arbitrator under Section 14(1) of the Act or the date of obtaining an endorsement on the award by the Arbitrator from the party concerned is irrelevant for determining the question of limitation for filing objections under Article 119(b) of the Limitation Act.

21. In East India Hotels Ltd. v. Agra Development Authority, : [2001]2SCR582 , it is held that notice under Sub-section (2) of Section 14 of the Act need not be in writing and that it can also be oral. It is further held as follows:

'.....What is essential is that there must be service of notice or intimation or communication of the filing of the award to the parties, mode of service of such a notice being immaterial. But such information, communication and knowledge must be by or pursuant to order of the Court. However, after filing of an award by the Arbitrator or the Umpire in the Court, if it merely records the presence of the parties or their Counsel but does not indicate that notice of filing of the award be given to the parties, no service of notice can be attributed from that fact, as notice must be referable to an act of the Court.'

22. In *Deo Narain Choudhury v. Shree Narain Choudhury*, : (2000)8SCC626 , the principles have been reiterated and it is held that the notice need not be in writing and can be oral, however, the notice must be some act of Court.

23. As can be seen all the aforesaid decisions dealt with the question relating to validity and sufficiency of notice under Section 14(2) of the Act and they are not of any assistance for determination of the question involved in the present case regarding compliance with Sections 15 and 16 of the Act while pronouncing the judgment under Section 17 making the award rule of the Court.

24. The learned Counsel for the respondent while strongly placing reliance upon the expression 'shall' incorporated in Section 17 of the Act contended that after issuing notice under Section 14(2) informing the filing of the award, if no application is filed to set aside the Award within the limitation prescribed it is mandatory for the Court to pronounce a Judgment according to the award and therefore the judgment under revision cannot be said to be erroneous. The learned Counsel also contended that even if any objections are filed beyond the limitation prescribed they cannot be taken into consideration by the Court and that the Court is not entitled to exercise any suo motu power to set aside the award under the scheme of the Act. In support of his contention the learned Counsel relied upon *Madan Lal v. Sunder Lal*, : [1967]3SCR147 , wherein a Bench of three Judges held as follows: ...It is clear therefore from the scheme of the Act that if a party wants an award to be set aside on any of the grounds mentioned in Section 30 it must apply within 30 days of the date of service of notice of filing of the award as provided in Article 158 of the Limitation Act. If no such application is made the award cannot be set aside on any of the grounds specified in Section 30 of the Act. It may be conceded that there is no special form prescribed for making such an application and in an appropriate case an objection of the type made in this case may be treated as such an application, if it is filed within the period of limitation. But if an objection like this has been filed after the period of limitation it cannot be treated as an application to set aside the award, for if it is so treated it will be barred by limitation.'

25. There can be no dispute about the ratio laid down in the said case. But the question with regard to the duty of the Court to apply its mind to the requirement of Sections 15 and 16 did not fall for consideration in the said case. On the other hand, in Jain and Associates case (supra) the said question has been specifically considered and it is held as follows:

'.....The power of the Court to modify the award under Section 15 or to remit the award to the Arbitrator for reconsideration under Section 16 varies from the jurisdiction of the Court to set aside the award under Section 30 or to determine the validity of the arbitration agreement or an award under Section 33.'

26. Therefore undoubtedly the ratio laid down in Jain and Associates case (supra) squarely applies to the case on hand.

27. The learned Counsel raised yet another contention that where the award cannot be said to be without jurisdiction and where the defendants failed to file any objections to the award it is not open to them to raise any objections as to the correctness of the judgment making the award rule of the Court nor to plead that the judgment was passed without application of mind. In support of his contention the learned Counsel relied upon Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises, : AIR 1999 SC246 . In the said case the Award was filed into the Court on 23.3.1999 by the Arbitrator and notice was issued to the respondent to show-cause as to why the award should not be made rule of the Court. Admittedly the notice was served on the respondent, but he failed to contest the proceedings and did not file any objection under Section 30 of the Act. Consequently, the Court passed a decree on 2.6.1999. While the said decree was being executed the respondent filed objections under Section 47 of Civil Procedure Code contending that the decree was a nullity as it was barred by limitation. The objections were overruled by the executing Court. Ultimately when the matter was carried to the Supreme Court it is held that even if the decree was passed beyond the period of limitation it would be an error of law, which can be corrected in appellate proceedings but not in the executing Court which was bound by such a decree. It is held that the executing Court cannot go beyond the decree unless it is shown that it is passed by the Court having inherent lack of jurisdiction,

which would make it a nullity.

28. The case on hand is clearly distinguishable on facts and the above decision is not of any assistance to decide the issue in question since this is not a case where any objection as to the validity of the decree was raised before the executing Court.

29. Much reliance has been placed by the learned Counsel for the respondent on the decision of the Apex Court in *Union of India v. Aradhana Trading Co.*, : [2002]2SCR847 , contending that the facts in the said case are almost identical to the case on hand. I am unable to agree with the submission of the learned Counsel. In the said case the Apex Court was dealing with a question as to the maintainability of the appeal before a Division Bench against the order of the Single Judge of the High Court rejecting an application under Order 9 Rule 13 of Civil Procedure Code for setting side the ex parte decree making the award rule of the Court. The question raised in the present case that the judgment under revision is vitiated since the Trial Court failed to take into consideration the provisions of Sections 15 and 16 of the Act was not raised nor decided by the Apex Court in the said case and therefore the ratio laid down in *Union of India v. Aradhana Trading Co.* (supra), does not apply to the case on hand.

30. Similarly two other decisions relied upon by the learned Counsel for the respondent namely *Paradip Port Trust and Ors. v. Unique Builders*, : [2001]1SCR668 and *W.B. State Warehousing Corporation v. Sushil Kumar Kayan*, : AIR 2002 SC2185 , which deal with the questions whether the award passed by the Arbitrator in violation of the principles of natural justice can be accepted and whether the award made by an Arbitrator can be set aside if the Arbitrator acts beyond jurisdiction are also distinguishable on facts and are not applicable to the question raised in the instant case.

31. For the aforesaid reasons I am of the opinion that the case on hand is squarely covered by the ratio laid down in *Jain and Associates case* (supra). The impugned judgment does not reflect the application of mind to the aspect whether there is any cause to modify or remit the award in the context of Sections 15 and 16 of the Act. The Court below failed to record its satisfaction that there it is no cause to

remit the award or any of the matters referred to arbitration for reconsideration while pronouncing the judgment under Section 17 of the Act. The Court cannot dispense with such requirement even where the defendants failed to file any objections nor made any application to set aside the award under Sections 30 and 33 of the Act. Therefore, the order under revision is liable to be set aside and the matter shall be remitted back for consideration afresh.

32. However, the learned Counsel for the respondent submits that in the absence of any material on record it cannot be presumed that the defendants had no notice about the filing of the award. It is made clear that this Court shall not be understood to have expressed any opinion regarding the validity or sufficiency of the notice on the defendants under Section 14(2) of the Act. Apparently the Court below has not considered the said question on merits and has not recorded any finding. The judgment shows that at the request of both sides the question of receipt of notice of filing of the award was deferred for being considered in the petition to be filed by the defendants to set aside the award, however, without going into the said question the Court below pronounced the judgment on the ground that even after expiry of 30 days from the date of the knowledge of the Assistant Government Pleader the defendants did not choose to file petition to set aside the award. Hence, I am not inclined to express any opinion on the said question. Similarly I am also not inclined to express any opinion on the question whether the defendants are entitled to file objections or to application under Sections 30 and 33 of the Act at this stage, since the said question has to be decided on the basis of the finding as to the service of notice under Section 14(2). It is made clear that if any such application is made it is open to the Court to consider the same in accordance with law.

33. Having regard to the facts and circumstances of the case, the impugned judgment and decree are set aside and the matter is remitted back with a direction to the Court below to consider the matter afresh in terms of the principles laid down by the Supreme Court in Jain and Associates case (supra) and to pass appropriate orders within six weeks from the date of receipt of this order after affording opportunity to both the parties.

34. Accordingly the Civil Revision Petition is allowed. No costs.

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