

Niranjan Kumar Mittal Vs. Promod Kumar Mittal

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Court : Delhi

Decided On : Jan-27-1986

Reported in : 1986(1)ARBLR413(Delhi); 29(1986)DLT363; 1986(10)DRJ280

Judge : D.K. Kapur, C.J. and; N.N. Goswami, J.

Acts : [Arbitration Act, 1940](#) - Sections 16

Appeal No. : First Appeal No. 148 of 1985

Appellant : Niranjan Kumar Mittal

Respondent : Promod Kumar Mittal

Advocate for Pet/Ap. : Y.P. Narulla and; S.C. Nigam, Advs

Judgement :

D.K. Kapur, C.J.

(1) This appeal is directed against the Judgment in suit No. 564-A/82. The said judgment was delivered in relation to an award made by Shri Kishan Chand Mittal on 24th March, 1982. The Arbitrator was the father of the parties Promod Kumar Mittal and Niranjan Kumar Mittal. Objections were filed to the award which were decided. It was held that the arbitrator was in error in proceeding to decide the case in the absence of the objector Niranjan Kumar Mittal. The learned single Judge held that if the Arbitrator wanted to proceed ex-parte, it was necessary to

give a notice and hence the award had to be set aside and accordingly the same was remitted for decision afresh by the arbitrator.

(2) At the hearing, the learned counsel for the appellant urged that the award should not be remitted back to Shri K.C. Mittal on the ground that he was biased against the objector. The learned single Judge rejected this contention on the ground that Shri K.C. Mittal, was the father of the two parties and no question of bias was involved. At the hearing of this appeal the learned counsel for the appellant, who is successful objector, has raised another point to the effect that the award should not have been remitted back to Shri K. C Mittal but should have been sent to some other arbitrator. He contends that actually Shri K C. Mittal had some interest in the partnership property at an earlier stage and he is likely to be prejudiced against the appellant. It has been further urged that if the award was set aside then it could not be remitted..

(3) Although it appears to be a technicality, learned counsel relies on the old decision of Patna High Court in Satish Chandra Base v Paliram Aggarwala. Air 1921 Pat 161, which was delivered under the unamended Code of Civil Procedure which corresponds in some substantial way with the provision of [Arbitration Act, 1940](#). In that case, the Court came to the conclusion that if the award was set aside, a fresh reference could not be made by the Court without the consent of the parties and the same was invalid. Learned counsel states that this is an authority for the proposition that the award cannot be remitted back if it is set aside.

(4) It seems doubtful that the said judgment has this effect or was intended to have this effect. The facts of the case before the Patna High Court were that the reference to the arbitration had been made through Court by appointment of arbitrators under para 17(4) of the Second Schedule of Civil Procedure Code . This award was set aside. The learned sub Judge thought that after the award was set aside he could make a reference to another arbitrator of his choice. It was this appointment of the arbitrator without an application of the parties and even without the consent which was found to be illegal The judgment is not at all an authority for the proposition that an award which is found illegal cannot be remitted. In fact, the correct legal position is to be found on an interpretation of Section 16 of the

Arbitration Act. That Section gives the Court the power to remit the award but it opens with the words :

'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.'

(5) Below this there are three conditions which may occur and which would entitle the Court to remit the award. The third of these conditions is:-

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

(6) Thus, this provision comes into operation when the award is found to be illegal. This is exactly what has happened in this case. The award had been found to be illegal because it was decided ex-parte without giving the second notice that the Courts have found necessary for arbitrators to give. In other words, the Courts have interpreted the powers of an arbitrator to be such that he can only proceed ex-parte if he has warned the party concerned that he intends to proceed ex-parte if the said party does not appear. Otherwise, the arbitrator cannot proceed ex-parte. The arbitrator did not give any such notice in this case and so the error is apparent on the face of it. This means that the award has to be remitted back for reconsideration. When so remitted, it means that the previous award has to be 'set aside'. We cannot imagine a case in which the award is remitted back for reconsideration and yet remains alive. In any case of remission of an award the previous award, or part of it becomes non-operative and in that sense it is 'set aside'.

(7) We are of the view that the learned single Judge when deciding the case from which this appeal has arisen has used the words, 'set aside' in the sense that the award is sent back for reconsideration and, therefore, ceases to exist. The words 'set aside' are not used in the same sense in which the Patna High Court used these words in the judgment reported as Air 1921 Pat 161. In that case not only the award was 'set aside', the appointment of the arbitrators. also came to an end.

(8) In the present case, the appointment of the arbitrator does not come to an end because he was appointed by the parties. The arbitration agreement is contained in the partnership deed which names the father of the parties as the named sole arbitrator. There is no other arbitration clause. So, the Court cannot appoint any other arbitrator, it can only supercede the arbitration, which has not been done. No other point was argued or raised before the learned single Judge. So, the appeal has to fail.

(9) We agree with the learned single Judge that in these circumstances the objections of the appellant have to succeed, and we see no substance in the cross-objections filed by the respondent to the effect that the award should be upheld. In fact, the respondent has prayed that his cross-objections should be allowed to be withdrawn. The same are dismissed as withdrawn.

(10) We may mention that at the hearing, the learned counsel for the appellant wanted to argue other points, re validity of the reference, and other questions, which he never seems to have raised before the single Judge or even in the grounds of appeal. We find no ground to permit these objections to be raised at this stage. As both the parties are present, they are directed to appear before the Arbitrator on 24th February, 1986 at 11 A.M. at his residence. The arbitrator will have four months time to give the award. If time is to be extended, the extension should be sought from the original Court.