

Vidya Grover Vs. D.D. Grover

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Court : Delhi

Decided On : May-21-1985

Reported in : 1986(1)ARBLR21(Delhi); 1985RLR449

Judge : J.D. Jain, J.

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

Appeal No. : Original Miscellaneous Petition No. 47 of 1982

Appellant : Vidya Grover

Respondent : D.D. Grover

Judgement :

J.D. Jain, J.

(1) Ved Raj and D.D. Grover were brothers. They were jointly doing some businesses etc. since 1967. Ved Raj died on 17.1.78 leaving behind mother, wife and a daughter. Widow and daughter filed arbitration cases u/s 20 against surviving partner (brother) on the basis of arbitration clause in partnership deeds. 2 married sisters were joined as parties on their application u/0. 1 R. 10, CPC. On 8.4.80, parties jointly requested appointment of Shri I.D. Dua (Retired) as arbitrator. They also agreed that widow & daughter would be paid by D.D. Grover Rs. 3000.00 p.m. for using factory premises. Arbitrator entered upon reference on

27.8.80 and as he could not conclude within 4 months, parties jointly got time extended u/s 28. Last extension expired on 31.3.82, Petitioners applied for extension. D.D. Grover did not join them and instead applied for removal of arbitrator and revocation of reference on the plea that proceedings were being protracted and arbitrator was acting beyond jurisdiction by entertaining pleas of fraud and forgery against him. After detailing above facts, judgment proceeds:

(2) Section 5 of the Act lays down that the authority of an appointed arbitrator shall not be revocable, except with the leave of the court, unless a contrary intention is expressed in the arbitration agreement. Admittedly, in the instant case, there is no stipulation in the arbitration agreement itself for the revocation of the authority of the arbitrator appointed by the court with the consent of both the parties, Hence, his authority is irrevocable except by leave of the court. The Section itself is silent as to the ground on which such leave can be granted. However, it is well settled that leave to revoke is to be granted in a sparing and cautious manner, for the parties are, particularly speaking not to be relieved of the obligation entered into by them to have their disputes decided by a tribunal of their own choice merely because anyone of them entertains an apprehension that the arbitrator's decision may go against him. In the well-known treatise on the subject 'Russell on Arbitration' (16 Edition, page 54), the following proposition of law is enunciated :

'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 the arbitrator for the better or for 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, therefore, the court no doubt has these circumstances in view, and considers that parties should not be relieved from a tribunal they have chosen because they find they are likely to lose owing to mistakes in the arbitrator's decision, which they have agreed to be bound by.'

(3) This passage has been quoted with approval by the Supreme Court in M/s Amarchand v. Shree Ambica Jute Mills Ltd. Air 1965 Sc 1036, and the Supreme

Court has amplified the legal position by stressing further that :

'BEFORE the Court exercises its discretion to give leave to revoke an arbitrator's authority, it should be satisfied that a substantial miscarriage of justice will take place in the event of its refusal. The grounds on which leave to revoke may be given have been put under five heads : (a) Excess or refusal of jurisdiction by arbitrator; (b) Misconduct of arbitrator; (c) Disqualification of arbitrator; (d) Charge of Fraud; (e) Exceptional cases.'

(4) The principal ground pressed into service by the learned counsel for the respondent is that a number of documents have been put forward by the parties which have altered the nature of proceedings as serious allegations of fraud and forgery have been allowed to be leveled for the first time during arbitration proceedings and were not the subject matter of the above suits. The allegations made by the petitioners against him are of so grave a nature as to expose him to criminal liability besides, of course, unduly widening the scope of reference. So according to him, an arbitrator is not a suitable tribunal to decide and adjudicate upon questions which involved serious allegations of fraud and forgery because the parties are left without a right of appeal on questions of fact and of law which would inevitably entail serious consequences. In this context he has drawn my attention to the following documents, authenticity and genuineness of which has been called in question : [5 documents are then detailed which are will of 10.6.78 by mother. Memo of 10.11.77 between brothers, will of 27.6.78 by deceased. Gift deed of 31.3.58 by father; letter of 5.2.78 by Respdt. to deceased.

(5) It is, no doubt, true that the petitioners have challenged the genuineness and due execution of the documents which were allegedly made in favor of the respondent and his sisters. At the same time, one cannot be oblivious to the fact that the petitioners could 'hardly be expected to admit their genuineness because they vitally and adversely affect their right and interest in the assets and properties of Ved Raj Grover (deceased). Not only that this stance of the petitioners was too obvious to have escaped notice of the respondent when he arrived at the compromise with the petitioners and agreed to the submission of all the disputes to the sole arbitration of Shri I.D. Dua. Indeed, it may be noticed that in his reply to

I.A. 3948/79 he specifically stated that serious allegations of fraudulent conduct, mis-appropriation and theft etc. having been made against him, he was entitled to vindicate his character in court and the arbitral forum was not appropriate for determination of such allegations and controversies. He reiterated the same sentiment in his reply to I.A. 156/83. That apart, as pointed out by the learned counsel for the petitioners, all documents were specifically relied upon by concerned parties and specifically challenged by opponents in their pleadings before arbitrator. Issues were framed keeping in view charges and counter-charges and both parties actively participated in the arbitration proceedings for over a year without demur. Indeed, almost the entire evidence of the parties has already been recorded, only respective handwriting experts of the parties and an attesting witness to the will executed by V.R. Grover on 27.6.78 remain to be examined.

(6) No doubt, where fraud is imputed to a party and his character is involved, it would be difficult to say that he ought not to have the opportunity of clearing himself from so grave a personal imputation in open court. The principle that where fraud is alleged in an action that would be a ground on which at the instance of the party charged with fraud the court should refuse a stay of proceedings to allow the matter to go to arbitration and should allow the action to proceed seems to be well settled. (See *Minifidev. Rly. Pass. Ass- Co.* (1881) 44 Lt 552 and *Radford v. Hair and others*, (1971) 2 All Er 1089

(7) However, the Supreme Court has elucidated this proposition further in *Abdul Kadir vs. Madhav Prabhakar*, : [1962]3SCR702 , as under:

'THERE is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference. But it is not every allegation imputing some kind of dishonesty particularly in matters of accounts, which would be enough to dispose a court to take the matter out of the forum which the parties themselves have chosen. We are clearly of opinion that merely because some allegations have been made that accounts are not correct or that

certain items are exaggerated and so on, that is not enough to induce the court to refuse to make a reference to arbitration. It is only in cases of allegation of fraud of a serious nature that the court will refuse as decided in Russell's case (1880) 14Ch. D.471 to order an arbitration agreement to be filed and will not make a reference.'

REFERENCE in this context was made to Minifide vs. Rly. Pass. Co. (Supra) also.

(8) That apart, material consideration for the court as to the order it will make on an application for leave to revoke is the time when the application is made. If it is made at an early stage of the arbitration proceedings the court will more readily grant leave to revoke, assuming always that a good case for revocation is shown. (See 'Russell on Arbitration', 19th Ed., page 161). So, we have to see if there is any such exceptional circumstances in the instant case as would justify the court to come to the conclusion that serious miscarriage of justice is likely to result in the refusal to revoke the reference. There can be no doubt that grant of leave to revoke at this stage would put the clock back by five years i.e to apply the reverse gear at this stage will simply throw the petitioners back to square No 1. As observed by Lord Denman, C.J. in Scott vs. Van Sandau, (1841)1 Q.B. 102

'WE will only observe that the decision of the court to which this appeal is made ought to be exercised in the most sparing and cautious manner, lest an agreement to refer, from which all might reasonably hope for a speedy end of strife, should only open the flood gates for multiplied expenses and interminable delays,'

(9) The principle underlying this proposition obviously is that if an objection is to be taken it must be taken at the earliest possible opportunity or at any rate, at an early stage of the proceedings. Failure to object at an early stage acts as an estoppel Surely there is no equity in favor of the respondent which would entitle him at this stage to leave to revoke the reference in as much as he has been willingly taking part in the proceedings before the arbitrator and has even adduced his evidence with respect to the due execution and genuineness of the will as well as of the memorandum dated 11.10.77. Indeed, it is too late in the day to ask for such a relief. Undoubtedly it will be too hard and unjust to | petitioners to be driven to a stage worse than | they were at time of making petitions u/s 20 of the Act and

they would be literally compelled to file civil suits after a lapse of nearly six years. Needless to say that the arbitrator selected by the parties in the instant case is a distinguished Judge of the Supreme Court having profound knowledge of law and vast experience of arbitration cases. Thus, there is least likelihood of his being influenced by any consideration other than of law and justice.

(10) As for the allegations leveled by the respondent that the arbitrator has misconducted himself and the proceedings, the contention raised by his counsel is three fold. Firstly he has pointed out that the arbitration agreement expressly stipulated vide clause (f) that the arbitration proceedings would be completed in all respects within a period of four months from the date the arbitrator entered upon the reference, but if the said proceedings could not be completed within that period the arbitrator may with the consent of the parties in writing further extend the time for making his award for a period not exceeding four months. Laying considerable emphasis on the words underlined by me, the learned counsel has urged that there could be no extension beyond one extension of four months as postulated in clause (f) of the agreement. However, I do not find any merit in this contention. Indeed, the conduct of the parties themselves in seeking extension of the time for making the award by jointly moving applications u/s 28 of the Act from time to time militates against this argument. admittedly, time was extended by this Court up to 30.6.81 vide order dated 15.4.81 on the joint application of the parties being O.M.P. 57/81 in the first instance. Thereafter another application u/s 28 of the Act was jointly made by them being O.M.P. No. 133/81 and vide order dated 30.9.81 the time for making the award was then enlarged up to 31.3.83. Even otherwise it is well settled that the discretion conferred by S. 28 of the Act on the Court to enlarge time is very wide and while exercising its discretion all that the court has to satisfy itself is that the extension of time is not likely to work injustice or wrong and that the case is a fit one granting the indulgence asked for. In the instant case, the allegation of the respondent is that the arbitrator has failed to use all reasonable dispatch in proceeding with the reference and making an award. The use of words in S. 11(1) of the Act, 'fails to use all reasonable dispatch' simply implies that the arbitrator has not proceeded with arbitration without Vidya Grover vs. D.D. Grover unnecessary delay. However, on going through the record, I find that the learned arbitrator has been moving pretty fast in calling upon the parties to file their

respective claims and to adduce their evidence. On most of the dates of hearing he has devoted nearly an hour and a half or even more. According to the petitioners, the respondent himself has been guilty of causing delay in as much as all adjournments were obtained on behalf of the respondent and as such he being guilty of the laches himself cannot be permitted to take advantage of his own wrong. Moreover, the respondent has been raising frivolous and totally untenable objections from time to time before the arbitrator which naturally caused protraction of the arbitration proceedings. It is, no doubt, true that some adjournments were granted at the request of the respondent and his counsel but likewise the proceeding had to be adjourned on quite a few occasions at the request of the petitioners too. So, not much would turn on this aspect of the matter, the fundamental question being whether the arbitrator can be accused of not conducting the proceedings with reasonable dispatch. As already observed, on going through the entire proceeding I am unable to return such a verdict. It may, however, be noticed that very little progress was made subsequent to 15.10.81 when arguments on the application of respondent dated 1.9.81 raising objections to the corrections made by Miss Manju Grover in her deposition concluded. Statement of Smt. Sushila Narang and her cross examination took two dates of hearing viz. 14.11.81 and 12.12.81. Thereafter an application was made by the respondent for a direction to call upon Smt. Vidya Grover to appear in the witness box. The matter was heard on 17.12.81, 21.12.81 and 16.3.82 on which date one witness P.K. Gupta, who was an attesting witness to the will of late Ved Raj Grover (Ex. P1) was examined. Thus virtually no progress was made during the last six months. All the same, it is rather difficult to lay the blame for this slow progress on the shoulders of the learned arbitrator. A perusal of order dated 3.2.82 of the arbitrator would show that several adjournments had to be made on account of the request made by one or the other party. Under the circumstances, while I am constrained to observe that appreciable progress could have been made during the aforesaid period of six months it may not be possible to find fault with the arbitrator because the parties too were prone to ask for frequent adjournments on one pretext or the other. I only wish that the learned arbitrator had handled the proceedings more firmly and made his award within the extended period i.e. by 31.3.82. Anyhow, he cannot be held guilty of legal misconduct on this account.

(11) The next submission made by the learned counsel for the respondent is that on account of inordinate delay on the part of learned arbitrator in making the award as a sequel to the undue prolongation of the arbitration proceedings, he has been subjected to financial burden. It is pointed out that under the interim arrangement contemplated in agreement dated 8th April 1980, the respondent was to pay a sum of Rs. 3,000.00 per month to both the petitioners in equal shares commencing from March, 1980 and he has been scrupulously complying with the same. That besides parties are required to pay Rs. 1100.00 per hearing of duration exceeding one hour to the arbitrator and Rs. 50.00 per hearing to his stenographer. Thus he has already paid more than Rs. 30,000.00 as remuneration to the arbitrator and his stenographer. He has expressed his inability to bear this crushing financial burden any more because with the passage of time the machinery installed at A-15, Naraina Industrial Area, is no longer giving satisfactory service and has become obsolete and unserviceable due to frequent breakdowns. Thus, the financial position of the respondent is deplorable. Be that as it may. I am afraid it will not furnish a legitimate cause for revocation of the reference or refusal to enlarge the period of making the award. Undoubtedly the arbitration proceedings have protracted over a long period resulting in tremendous financial burden on the parties by way of remuneration of the arbitrator and other expenses. The magnitude of the expenditure could no doubt be curtailed considerably by more expeditious hearings of longer duration but that would have been something of an ideal to be cherished. Certainly the Court has to consider the balance of convenience and expense in deciding whether to allow an arbitration to proceed or to grant leave to revoke the arbitrator's authority. However, as observed by Lord Denman C.J. in *Scott V. Van Sandau*, (Supra) :

'ON a balance, therefore, of the conveniences and inconveniences that await our decision on this side or the other, we have no doubt that the continued progress of the inquiry before the arbitrator, with the hope of his coming to a just and satisfactory conclusion, holds out the prospect of greater benefit and lesser evils to both parties.'

(12) These observations, to my mind, sum up the correct position in the case on hand too and I am of the considered view that continuance with the arbitration

proceedings would be more conducive to the interest of the parties rather than revocation of the arbitrator's authority at a stage when the making of the award can be said to be well in sight (except, of course, unforeseen- able reasons).

(13) Yet another allegation of misconduct, of course, legal involving no moral turpitude against the learned arbitrator is that he allowed Miss Manju Grover to incorporate substantial changes in her deposition before the arbitrator under the garb of making corrections therein. She was examined during the period 27.10.80 to 27.12.80. However, her deposition was formally read over to and signed by her after a lapse of about ten months. The gravamen of the charge is that at that time Miss Manju Grover was permitted by the learned arbitrator to make certain far-reaching and vita correction thereby materially altering the original text of her deposition. Not only that, the relevant words and expressions as they stood originally were erased and substituted by so-called corrections. This procedure according to the respondent is wholly unwarranted by law and is bound to lead to serious miscarriage of justice. It is pointed out that the learned arbitrator was carefully dictating to his stenographer her statement, as and when it was made, and as such there was hardly any occasion for making vast changes and alterations therein on the pretext of effecting' corrections. Faced with this situation, the respondent was constrained to lodge his protest by moving a formal application dated 1st September 1981 to this effect and praying to the arbitrator to score off the so-called corrections and restore the text to its original position. However, the learned arbitrator did not accede to his request and allow the text to be restored to its original position and he passed an order on 9.1.82 a a copy of which was made available to him on 14th/16th March 1982, after repeated requests saying that ;

'IN my view, it would be more conducive to the ends of substantial justice that the question now urged regarding the effect and value of the statement made by Miss Manju Grover be left to be finally decided at the time of final arguments of the case. The position adopted by both the parties is on the record in writing and can be equally well pressed at the final appropriate stage. To express any considered opinion at the present interim stage about the credibility or otherwise of any of the witnesses whether parties or non-parties, regarding their recorded statements or

any part of their statements would in my opinion be undesirable and I would in the larger interest of justice refrain without prejudice from expressing any considered opinion on this point at this stage.'

(14) It may be pertinent to notice here that according to the procedure adopted by the learned arbitrator with the consent of the parties corrections were normally made at the time when the deposition of a witness was read over to him/her and he/she was called upon to sign the same. This was normally done on the dates subsequent to those on which the deposition was recorded. No doubt the delay in the instant case was inordinate but it is somewhat difficult to take exception to what has been said by the learned arbitrator in his order dated 9.1.82 regarding the inexpediency of his expressing any considered opinion in this behalf. He is right in saying that the copies of the original deposition having been furnished to the parties the same can be taken into consideration while appraising the testimonial value of her deposition at the stage of final arguments. Obviously the learned arbitrator has kept his mind open on this issue. It may well be hoped that he will eventually take a completely detached view of the matter while appraising her evidence in the light of other material on the record. Hence, it would be premature to hazard an inference *Vidya Grover vs. D.D. Grover* at this stage that serious miscarriage of justice is likely to ensue due to the arbitrator permitting the alleged correction in the deposition of Manju Gover. At any rate, no legal misconduct can be attributed to the learned arbitrator which would warrant his removal or justify revocation of reference.

(15) The last grievance of the respondent is that the learned arbitrator has not so far directed Mrs. Vidya Grover to step into the witness box as her own witness inspire his observation at the commencement of the arbitration proceedings that he would first examine the parties and thereafter decide the future course to be adopted. He has pointed out that Mrs. Vidya Grover being a claimant-petitioner it was imperative for the arbitrator to call upon her to step into the witness-box as her own witness, more so when she was fully conversant with all the relevant facts, being widow of the deceased partner-Ved Raj Grover and her evidence was of utmost importance for a proper and fair adjudication of the matters in controversy. He made even an application dated 16.12.81 specifically praying that

Mrs. Vidya Grover be directed to appear as her own witness. The said application was opposed by the petitioners. Their counsel has earlier made a categorical statement on 17.12.81 that he was not putting Mrs. Vidya Grover in the witness-box in support of the petitioners' case. It would, however, appear that full dress arguments on the said application were addressed by counsel for the parties on 21st December 1981, and 3.2.82, 16.3.82 etc. The opposition to the said application stemmed from the fact that Miss Manju Grover had already appeared as a witness on her own behalf and also as an attorney of her mother Mrs. Vidya Grover and, therefore, it was not at all incumbent on Mrs. Vidya Grover to step in the witness-box personally. So, the learned arbitrator called upon counsel for the respondent to show him the law that the principal party viz. Mrs. Vidya Grover in the instant case could be compelled at the instance of the opposite party even though her attorney Miss Manju Grover had already appeared in the witness box and cross-examined at length. The order sheet contains fairly detailed resume of the arguments advanced by both the parties and even written comments were submitted by the parties on this point on 23.3.82 when the order was reserved. The case was adjourned to 1.4.82. Hence, the petitioners have sought enlargement of time.

(16) It would be seen from the foregoing conspectus of material on the record that the prayer of the respondent that Mrs. Vidya Grover petitioner be called upon to appear in the witness-box as her own witness raises a moot point. It is for the arbitrator, who is judge of both fact and law, to decide the same. He has not yet given his decision. All that is required of an arbitrator is that he must act honestly and judicially, but if while so acting he decides erroneously he cannot be said to be guilty of judicial misconduct. In *Hart v. Duke* (1862) 32 L.J.Q.Q.B 55 the arbitrator had refused to allow certain entries to be read which he did not think relevant, Said Blackburn, J. : You may call it misconduct if you like; but it imputes to him no more misconduct than is continually imputed to every judge in West-Minster Hall'.

(17) This observation, to my mind, would aptly apply to the case on hand. Merely because the arbitrator has not been able to give his decision on this particular question he cannot be dubbed guilty of legal misconduct, more so when the question is pretty moot and debatable one. Surely the court cannot give any

direction to the arbitrator in this matter unless the arbitrator deems it necessary and chooses to state a special case for the opinion of the court u/s 13(b) of the Act.

(18) To sum up, therefore, I do not find any merit in the petition of the respondent (O.M.P.No. 78/82) for leave to revoke the reference or to remove the arbitrator on the grounds stated therein. On the other hand, I am of the considered view that it would eminently meet the ends of justice if time for making the award is suitably enlarged. Nearly five years have already elapsed since the order of reference was made by this Court. The arbitration proceedings were spread over a period of about 18 months.. The interests of justice, therefore, demand that the arbitration proceedings must come to an end as expeditiously as possible and the award be made in as short a time as possible so as to save parties from further financial burden and uncertainty about the course of litigation. Hence, I allow the application of the petitioners u/s 28 of the Act and enlarge the period for making the award up to 31.12.85. It is earnestly hoped that the learned arbitrator shall make every endeavor, ensure that the award is made by the said date and no further extension is sought.