

Anup Kumar Goyal Vs. Chanderkala Goyal

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Court : Delhi

Decided On : Apr-08-1991

Reported in : 1991RLR279

Judge : Jaspal Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : Suit No. 1717 of 1984

Appellant : Anup Kumar Goyal

Respondent : Chanderkala Goyal

Judgement :

Jaspal Singh, J.

(1) Whether the Arbitrator has misconducted himself and the proceedings as alleged in the petition under section 30 of the Arbitration Act and if so, its effect

(2) Whether the impugned award has been improperly procured or the same is otherwise invalid as alleged by the defendants If so, its effects. 2. Mr Arun Kumar Gupta, the learned counsel for the objectors was brief but to the point. He sought the setting aside of the award on three grounds. His first contention was that plaintiff No. 1 had been making frequent visits to Lucknow to meet and influence the arbitrator and that it was during one of those visits that he had managed to

procure the award. His second ground of attack was that the arbitrator had not followed any formal procedure and by neither recording any evidence nor maintaining a record of the proceedings, he had violated the principles of natural justice. In this connection it was submitted that the meeting held by the arbitrator on 22.1.88 was not joint of the parties but in fragments in as much as he had held on that day, a separate and exclusive meeting with plaintiff No. 1. It was also pointed out, in support of the contention, that no measurements had ever been taken of the immovable property in dispute to the notice of or in the presence of the objectors. Lastly it was contended that, in any case, the award was inequitable in as much as the plaintiffs had been awarded much more space than the others and in this connection my attention was drawn to the plan marked which forms part of the award and which outlines the portions awarded separately to the parties.

(3) Mr. Arun Jaitley, who appeared on behalf of the plaintiffs, found the objections unpalatable. As per him, the plaintiff No. 1 had at no stage approached or attempted to approach the arbitrator. It was argued that totally innocent visits of plaintiff No. 1 to Lucknow to meet other relatives and friends were being made to appear unholy and sinister. It was pointed out that plaintiff No. 1 had been visiting Lucknow right from his childhood and that there was nothing on the record to prove or even show obliquely that those visits were actuated or designed to meet the arbitrator or to procure the award.

(4) With regard to the second objection, it was contended that the arbitrator being a close relative of the parties was aware of the background and the issues involved. He spent a whole day with the parties on 22.1.88 and even thereafter held regular meetings and as he had been supplied with the copies of the pleadings and other documents and as none of the parties had at any stage expressed any desire to lead any other oral or documentary evidence, he could not be faulted with merely on the ground that he had not recorded formal proceedings.

(5) As regards the third and last contention it was submitted that there was nothing on the record to show that the award was in any manner inequitable. Rather,

according to Mr. Jaitley, substantial justice had been done by bringing forth the best out of the worst. In short, he found no fault with the portions allotted to the respective parties by the arbitrator.

(6) Time now to examine the nuts and bolts of the contentions raised.

(7) Undoubtedly, Rup Narain Goyal, objector who has entered into the witness box as OW-3 has deposed that during the arbitration proceedings the plaintiffs had been often visiting Lucknow. It is also true that as per the statement of Mr. D.N. Sarup, Office Supdt. of the Indian Airlines (OW-1), plaintiff No. 1 had been issued Rao forms numbers with regard to his Staff On Leave passages pertaining to Delhi-Lucknow-Delhi route in 1985-86 and on 10.3.81 besides two such passages in 1987 and one in 1989, but then, question is as to whether this leads the objectors anywhere Does this evidence lead to the conclusion that all those visits were utilised or even aimed at to meet the arbitrator and to procure a favorable award? Plaintiff No. 1 has deposed that he has been to Lucknow since his childhood and that the number of such visits may come to 80 or 90. It is also in his statement that besides the arbitrator he has other relatives also living in Lucknow besides a friend for whom, in 1987, he had taken medicines. It appears from the evidence that he had been visiting Lucknow even before Mr. Gupta has been appointed as the sole arbitrator and that his visits continued even after the filing of the award. This being the position and there being absolutely no evidence to show that on any such visit he had met the arbitrator or had even attempted to meet him or to exploit his visits for the purpose of influencing the arbitrator and procuring the award, positively nothing can be allowed to be made out of those visits. I say so, because even the objector Rup Narain has admitted in his examination-in-chief itself that he had not been in Lucknow at the time of any of the visits of plaintiff No. 1 to that place. To crown it all he states, and I quote : 'I can only guess that he was visiting Lucknow with a view to meet the arbitrator who was living in Lucknow during those days.' This being the state of evidence, I find myself one with Mr. Jaitley that objectors are merely crying wolf.

(8) Coming to the second objection it appears to be equally devoid of force. It may be re-emphasised that the arbitrator is no stranger to the parties. He belongs to

their kith and kin-a relation. He was appointed as the arbitrator as he was acceptable to all the parties. He had been in contact with the parties and as such presumably was conversant of the background and the issues involved. He was also well equipped in the sense that being admittedly an engineer by profession, he could partition the immovable property with comparative ease. It is in this perspective that we have to examine his conduct. He has informed the court that none of the parties had offered to lead evidence and that he had actually been furnished with the copies of the pleadings etc. Although Rup Narain has deposed that no joint formal meeting had been held by the arbitrator on 22.1.88 this is denied on oath by plaintiff No. 1 and so also by the arbitrator. Rather it appears from the statement of plaintiff No. 1 and the report of the arbitrator that a joint meeting lasting almost the whole day had taken place on that day. From the statement of plaintiff No. 1 it further appears that meetings had taken place subsequently too and that those meetings were attended by the objectors. It also appears from his statement that measurements too had been taken in the presence of the parties. In any case, a comparison with the plan prepared and produced by the objectors (ExOW2/l) itself would go to show that the plan Mark X attached with the award is substantially on the same lines. This being the position, I am not inclined to place reliance on the solitary bald statement of Rup Narain Goyal.

(9) It is true, however, that no formal proceedings were recorded. Does it make any difference I find it to be no defect in procedure. Assuming, for arguments sake, that it really was a defect, as I feel that it does not effect even the fringes of the merits and as substantial justice has been done, it would not provide a ground for setting aside the award. In support, I seek to draw force from *Binayakdas Acharjee vs. Sushec Bhushan* Air 1922 Cal. 226 which was, thereafter, followed in *Beni Dan vs. Baijnath* Air 1938. Oudh 125

(10) It has already been mentioned above, and it may be re-stated even at the risk of repetition that here was an arbitrator who was related to the parties. He was selected by reason of his special knowledge of the affairs of the parties. He was expected, therefore, to take a broad view of the case and give an award. He was expected not to enter into the web of sheer technicalities. He came up to the

expectations. It is time to remind ourselves of the remarks by Lord Cockburn C.J. in *In re Hopper*, (1887) 2 Q B. 367 He said :

'We must not be over-ready to set aside awards when the parties have agreed to abide by the decision of a tribunal of their own selection, unless we see that there has been something radically wrong and vicious in the proceedings.'

I discern not even a speck of any such wrong or viciousness.

(11) The third contention is the bye-product of desperation. The plans on record would show that the arbitrator was actually faced with an uphill task. Only his engineering skills, probably, came to his rescue. Admittedly the portion awarded to the plaintiffs does not exceed their share. Then why complain In fact it is the beneficiary of portion marked D (Plan Mark X) who takes the cake but then probably there was no way out. And, let us not forget that admittedly the plaintiffs had never been given even a chunk of the rents received. No strict rules could be applied here. He took what Privy Council calls a 'broad view' of the dispute and, to quote it again, 'was within his rights in so doing.' (See : *Mohammad Nawaz Khan vs. Alam Khan* (1891) 18 Cal. 414) I find no infirmity. No fault. Nothing inequitable. Both the issues go against the objectors

(12) Award is made the Rule of the Court and a decree is passed in terms thereof However, a word or two more before finally lowering the curtain. The plaintiff No. 1 and Mr. Jaitley, the learned counsel, stated during arguments, and I feel bound to record it, that the plaintiffs give up their claim to the terrace of the building and to all joint movable properties. Let this too be recorded in the decree sheet.

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