

Ranjit Kaur Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-29-1995

Reported in : ILR1996Delhi568

Judge : M.J. Rao and; Anil Dev Singh, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 34

Appeal No. : First Appeal No. 187 of 1995

Appellant : Ranjit Kaur

Respondent : Union of India and ors.

Advocate for Pet/Ap. : Shyam Kishore, ; A.K. Oberoi and; Sandeep Sethi, Advs

Judgement :

M. Jagannadha Rao, C.J.

(1) This appeal is preferred by the plaintiff in Suit No. 3778192 against the order of the learned Single Judge in is No. 5086193 dated 22-2-95 whereby the learned Single Judge granted stay of the suit under Section 34 of the Arbitration Act. 1940.

(2) The facts of the case in brief are as follows: The appellant-plaintiff claims to be the owner of plot No. 37172, Punjabi Bagh. New Delhi measuring 1322 sq. yds. She entered into an agreement with the 2nd respondent M/s. Delhi Polymers & Chemicals (Pvt.) Ltd. on 7-7-1987 (hereinafter called the builders') for construction

of a group housing residential complex on the plot for a total consideration of Rs. 26 lakhs. According to her, she received Rs. 5 lakhs at the time of signing the agreement and the balance of Rs. 19 lakhs was payable in 60 days of the signing of the agreement or sanction of building plans by the Municipal Corporation of Delhi, whichever was earlier and balance of Rs. 2 lakhs was to be paid within 2 and half years of the agreement or at the time of handing over of the plot to the buyers, whichever was earlier. This builder was to construct flats within 2 and half years and give possession to the buyers and pay balance of Rs. 2 lakhs to appellants.

(3) It appears that the Competent Authority acting under Section 269UD of the Income Tax Act, 1961 opted to purchase the property by orders dated 2/3-9-1987 and the Builder challenged the same in Cwp 274787. While so, the appellant considered that time was essence of the contract, and that the delay in the execution of the sale-deed itself resulted in 'frustration' of the agreement dated 7-7-1987. On that basis plaintiff gave notice dated 12-6-92 to the 2nd defendant and cancelled the contract.

(4) On such cancellation,, the appellant filed the present suit in 1992 for a declaration that the agreement dated 7-7-87 stood frustrated and was not binding and for permanent injunction restraining the Union of India (1st respondent) from acquiring the property under Section 269-U.D.(1) of the Income Tax and also sought damages of Rs. 15 lakhs with interest at 18 per cent per annum.

(5) It appears that, after the filing of the suit in 1992, the Writ Petition Cwp 2747187 filed by the builder against the Income Tax Department was allowed and the matter was remitted and thereafter the Competent Authority passed a fresh order on 30-3-93 releasing the property from acquisition and permitting the sale.

(6) Thereafter, in 1993, the 2nd defendant (Builder) filed the present is No.5086/93 seeking stay of suit on the basis of the arbitration clause. The learned Single Judge accepted the contention of the 2nd defendant that the arbitration clause; viz. clause (25) of the agreement covered the question whether time was of essence and whether, on account of delay, the agreement became frustrated and allowed the Section 34 application. The suit was stayed. The learned Judge

followed the judgment of the Supreme Court in *Naihati Jute Mills vs . Khyaliram* : [1968]1SCR821 . (1) This appeal is preferred by the plaintiffs against the said order.

(7) The arbitration clause contained in clause 25 of. the agreement of sale dated 7-7-87. reads as follows :

'CL.25. That in case any dispute or difference arises between the parties hereto concerning the meaning, interpretation or effect of any of the provisions of this agreement, the same shall be referred to arbitration, and failing them, of the Umpire shall be final and binding on the parties.'

(8) Learned counsel for the appellant contends that the above arbitration clause is not comprehensive or wide enough like other clauses, that its scope is very restricted and does not cover a dispute as to whether the agreement has become frustrated. According to him though the words 'any dispute or difference' is used, those words are restricted by the words 'concerning the meaning, interpretation or effect of any of the provisions of this agreement' and hence the arbitrator cannot decide the question whether time was of essence and whether, on account of delay, the agreement got frustrated,

(9) In our view, this contention is not correct in law. While it is true that clause 25 is not worded as wide as some other arbitration clauses are and can be treated as restricted, still the question is whether the clause will cover the dispute in question. We have, therefore, to find out the true scope of the words,

'CONCERNING the meaning, interpretation or effect of any of the -provisions of the agreement'.

(10) We shall first deal with the meaning of the word 'effect' used in the clause. In *Printers (Mys) Pvt. Ltd. vs . P. Joseph* (: [1960]3SCR713 the language used in the arbitration clause was that 'if on the interpretation or application of the contract' any difference of opinion arose, the same should be referred to arbitration. It was construed that the word 'application of the contract' must, in the context, mean the 'working out of the contract or giving effect to its terms'. Gajendragadkar, J. ('as

then was) observed:

'The words. Interpretation or application of the contract' are frequently used in arbitration agreement and they generally cover disputes between the parties in regard to the constrictions of the relevant terms of the contract as well as their effect, and unless the context compels a contrary construction, a dispute in regard to the working of the contract would generally fall within the clause in question. Differences may, however, arise and in fact have arisen as to the manner in which 'the contract has to be worked out and given effect to and it is precisely such differences that are covered by the arbitration agreement'.

(11) It is, therefore, to be held that the words 'application of the contract' used in the above case and the words 'effect of any of the provisions of the agreement' mean the same and relate to the disputes arising during the 'working out' of the contract. Obviously, such disputes include the questions whether the time was of essence of the contract and whether on account of the delay in the execution or implementation of the terms of the contract, the contract got frustrated. therefore, the present disputes are clearly covered by the arbitration clause.

(12) We shall also deal with the problem from another angle. Question is as to be meaning of the words 'interpretation' of any of the provisions of the agreement. It will be useful here to refer to *Willsboro vs. Watson* (1873) 8 Ch. A 473.(3) There the words used were any dispute 'touching these present or any clause or matter or the thing herein contained or the construction hereof.' It was held that a dispute as to whether the agreement, according to its true construction did or did not warrant a particular thing to be done there under was referable to and came within the scope of the authority of the arbitrators. Lord Selborne L. C. observed:

'IT struck me throughout that the endeavor of the appellant has been to require this Court to do the very thing what the arbitrators ought to do that is to say, to look into the whole matter, to construe the instrument, and to decide whether the thing which is complained of is inside or outside of the agreement'.

This would mean that the word 'interpretation' used in the arbitration clause would go even to the extent of leaving the question whether the dispute fell within the

scope of arbitration itself, to the arbitrators. The above judgment was quoted with approval by the House of Lords in *Heyman vs. Darwins* 1942 AC 356.(4). Our Supreme Court in *Renusagar Power Co.Ltd. vs. General Electric Co.* (: [1985]1SCR432 referred to the above case while dealing with Section 33 of the Arbitration Act. It will be noticed that Section 33 says that the question of the existence and validity of the Arbitration agreement as well as its effect is to be decided by the Court. The Supreme Court made a distinction between existence and validity of the arbitration clause as opposed to its effect. It was held that while the existence and validity of the contract could be decided by only the Court, it was open to the parties to agree that the question as to the 'effect' of the contract could be determined by the arbitrator and where the question of 'construction' of the contract was left to the arbitrator, the arbitrator could decide what is the effect of the events on the arbitration clause. In the present case the question of 'interpretation' was allowed to be decided by the arbitrator and hence the arbitrator could interpret the contract and decide whether, in the light of the events, the question of readiness or willingness or frustration was within the arbitration clause and also decided those facts.

(13) So far as the question relating to the 'frustration' of the contract, the Supreme Court had occasion to deal with the question directly in *Naihati Jute Mills vs. Khyaliram* (supra). (No doubt, the terms of the arbitration clause are not set out there). It was held there (p. 528, para 12) that the question whether the contract became impossible of performance and was discharged under the doctrine of frustration would have to be decided under the arbitration clause which operated in respect of such purposes. It is true that the decision does not set out the language of the particular arbitration clause available in that case, but even so, we are of the view that the question whether on a reading of the agreement and upon the events which happened, there was frustration of the contract, are matters which as discussed earlier, depend upon the application or effect of the contract and at any rate, upon the construction or interpretation of the contract, if it is necessary to have resort to the agreement and interpret the same, it will be for the arbitrator to decide the issue.

(14) Learned counsel for the appellant relied upon *Gaya Electric Supply Co. vs . State of Bihar* : [1953]4SCR572 and on *Ram Chandran etc. vs . H.O. Mills* : AIR1958 Cal620 . These decisions lay down generally that an arbitration clause may be wide or narrow in its scope and if it is narrow in scope, it may not taken in all disputes. We have no quarrel with the proposition. The fact remains that these cases do not deal with the meaning of the particular words used in the agreement before us. We have already referred to the more direct cases and followed them. We thereforee agree with the learned Single Judge. The appeal is dismissed.

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