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Court : Delhi

Decided On : Jul-01-1997

Reported in : 1997VAD(Delhi)599; 69(1997)DLT396; (1998)118PLR43

Judge : Lokeshwar Prasad, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 151; Arbitration Act, 1940 - Sections 14 and 14(2)

Appeal No. : Interim Application No. 947 of 1997 and Suit No. 884A of 1996

Appellant : Anant Raj Agencies

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : Harish Malhotra and; A. Salwan, Advs

Judgement :

Lokeshwar Prasad, J.

(1) This Order will dispose of the above mentioned application filed by the respondent Delhi Development Authority (hereinafter referred to as 'the DDA') under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'). The facts relevant for the disposal of the above mentioned application lie in narrow compass. The work of the construction of 8314 Houses in Sector Xv, Rohini SH: Construction of 352 Ews Houses in Block A, Pocket 5 to 7, was

awarded to the petitioner and an agreement bearing No. 7/EE/RPD-4/ DDA/ 85-86 was entered into between the petitioner and the Executive Engineer of the respondent DDA. Certain disputes arose between the parties and the petitioner invoked the arbitration clause. The disputes/differences between the parties, in terms of the arbitration clause, contained in the agreement, were referred to the arbitration of Shri L.R. Pahwa (respondent No. 2) who entered upon the reference and made and published his award on 26.3.96. 2. The petitioner filed a petition under Sections 14 & 17 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') for filing the award and making the same a rule of the Court. In the above mentioned petition which came to be numbered as Suit No. 884-A/96, the Delhi Development Authority through its Vice-Chairman was arrayed as the first respondent and the Arbitrator Shri L.R. Pahwa as the second respondent. On the filing of the award Along with the proceedings by the Arbitrator a statutory notice was issued to the respondent DDA. It would be useful to reproduce the same which reads as under:

In The High Court Of Delhi In the matter of: Suit No. 884-A/96 Application No. of under M/s. Anant Raj Agencies -Petitioners Versus Dda & Another -Respondents To Delhi Development Authority Service to be effected through its Vice-Chairman, Vikas Sadan, Ina, New Delhi. Whereas Sh. L.R. Pahwa the Arbitrator/ the petitioner has filed/got filed the award dated 26.3.96 delivered by.....the Arbitrator with/without arbitration proceedings in Court in disputes inter se you respondent and petitioner for being made a rule of the Court. The suit is fixed for hearing on 3.10.96. You are hereby called upon to file objections, if any, in accordance with law to the said award within 30 days of the service of this notice. Take notice that failure to do so would entail the consequences enjoined by law. Dated this 4th day of July, 1996. Superintendent (0) For REGISTRAR'

The above said notice was served in the office of the Vice-Chairman of the respondent Dda on 10.8.96. As no objections were filed to the award, the learned predecessor of this Court proceeded to make the award a rule of the Court vide judgment dated 7.11.96, followed by a decree.

(3) The respondent Dda has filed the above mentioned application stating of the award was given to the Engineer-in-Charge (Executive Engineer, Division No. Iv, DDA) and that the notice was served in the office of the Vice-Chairman on 10.8.96 without any details such as the name of the work, details of the arbitration matter as a result of which objections could not be filed on behalf of the respondent DDA. It is prayed by the respondent Dda in the above mentioned application that in exercise of its inherent powers,the Court may seta side the judgment and decree dated7.11.96 and allow the respondent Dda to file objections within four weeks.

(4) Notice of the above mentioned application was given to the petitioner who has filed reply stating therein that the above mentioned application is not maintainable and a proper notice as contemplated by law was duly served on the Vice Chairman of the respondent Dda as the respondent Dda did not file any objections within the statutory time limit the award was made a rule of the Court. It is stated in the reply that the above mentioned application, filed by the respondent deserves to be dismissed.

(5) I have heard the learned Counsel for the parties at length and have also carefully gone through the documents/material on record. In the light of the contentions advanced at the Bar I formulate the questions arising for decision in the present application as under:

(I)Whether the notice dated the 4th July, 1996, issued in the name of respondent No. 1 (DDA), stating that service to be effected through Vice-Chairm'an of the respondent No. 1, which was received in the office of the Vice-Chairman Dda on 10.8.96, amounts to sufficient compliance of the statutory provisions of Section 14(2) of the Act? (ii) Whether the Engineer-in-Charge of the work i.e. the Executive Engineer, Rohini Project Division No. Iv, Dda is a necessary party in these proceedings for 'the purpose of notice under Section 14(2) of the Act? (iii) In case this Court is satisfied that there was no proper notice within the meaning of Section 14(2) of the Act and/or the Engineer-in-Charge of the work was a necessary party for the purpose of notice under Section 14(2) of the Act in that event whether the present application is maintainable and any relief can be given to the applicant/respondent DDA?

Question-1

The entire controversy in the present proceedings relate to the interpretation, intent meaning and scope of the word 'notice', occurring in Section 14 of the Act, more particularly in Sub-sections (1) & (2). Section 14 of the Act reads as under:

'Award to be signed and filed.-(1) When the Arbitrators or Umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing Hereof and of the amount of fees and charges payable in respect of the arbitration and award. (2) The Arbitrators or Umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award. (3) Where the Arbitrators or Umpire state a special case under Clause (b) of Section 13, the Court, after giving notice such notice that limitation as provided for under Article 119(b) of the Limitation Act, 1963, would commence. The question of questions is what is a 'notice' of the filing of the award. The phrase has neither been defined in the Actnorin the Limitation Act, 1963 and, thereforee, one has to go by the root principles of law and basic tenets of justice in interpreting the meaning of the above said phrase. Provisions of issuing summons and notice by the Court are based on the maxim audi alter am partem i.e. here the other side, do not condemn anyone unheard. As per settled law, culled out from various decisions, the maxim audi alteram partem in its fullest amplitude means that a person against whom an order to his prejudice maybe passed should be informed of the allegations and the charges against him, be given an opportunity, of submitting an Explanationn thereto, has the right to know the material including the evidence both oral and documentary by which the matter is proposed to be decided against him, to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him, examined in his presence and have the right to cross-examine them and to lead his own evidence both oral and documentary in his defense.

(6) Statutory summonses and notices issued by the Courts are never an eye wash. The underlying idea is to make it known to the party intended to be served as to why and in what connection and for what purpose he is being called to the Court.

(7) It is true that notice of the filing of the award need not be accompanied by a copy of the award but it must give to the person noticed a clear indication of the subject matter of the arbitration and the award made. Unless such particulars are given in the notice, in my opinion, the same would not meet the requirement of the notice of the filing of the award as contemplated in Section 14(2) of the Act.

(8) This very question came up for consideration before a Division Bench of this Court in case Union of India v. Surinder Kumar, : 61(1996)DLT42 , and it was held :

'The object of giving notice under Section 14(2) of the Act is to provide an opportunity to a party to submit objections to the award filed by an Arbitrator within a period of 30 days of the receipt of a notice in respect of filing of the award as per Article 119 of the Limitation Act. What is the knowledge of the award filed by the Arbitrator in a particular matter. Notice should thereforee, specify such details as would enable a party to identify the arbitration case, otherwise the notice will not serve the purpose for which it was given and will not meet the requirements of law. In the instant case the notice does not specify the name of the work, the division or department to which the matter pertained or even the contract number. It is needless to point out that Ministry of Urban Development has a very large area of operation covering several departments of the Government including Cpwd, which itself has several divisions spread all over the country. thereforee, unless the notice of filing of the award gives the details of the arbitration matter in which award is given, it cannot be considered as a proper notice in accordance with law.'

(9) Not only this the Division Bench of this Court in the above said case issued the following directions to the Registry of this Court to be followed in future :

'XXXXXXXXXX wherever an Arbitrator renders an award in a matter which concerns the Central Government, a notice should not only be directed to the

Secretary of the concerned Ministry but also to the concerned officer who dealt with the matter on behalf of the Union of India before the Arbitrator. The notice of the filing of the award must specify the details relating to the project with regard to which the arbitration was conducted, for this purpose, the party filing the application for directing the Arbitrator to file the award or asking the Court to make the award a rule of the Court should specify the name of project and the officer in-charge of the same in the cause title of the case so that while issuing notice of the filing of the award the Registry could mention the necessary details of the matter. If these formalities are complied with there will be no scope then for urging the violation of principles of natural justice or for urging- that the notice was not in accordance with law.'

The Registry will take note of the procedure in regard to the service of notice of the filing of the award as indicated above.

(10) The Dda, though a local authority', as has been held by the Supreme Court in case Union of India v. R.C. Join, : (1981)ILLJ402SC , yet is a 'State' 'within the meaning of Article 12 of the Constitution' and the functioning of the Dda is not 'individual' but 'institutional' acting through someone, commonly known as officerin-charge. In the present case it was the Engineer in-charge of the Work i.e. the Executive Engineer, Rohini Project Division No. Iv who was in-charge and was throughout conducting the proceedings on behalf of the respondent Dda before the Arbitrator. The covering letter dated die 8th May, 1996 addressed by the Arbitrator to the Registrar of this Court, forwarding the award Along with the proceedings contained details of the contract out of which the disputes and the arbitration proceedings had arisen. The Executive Engineer, Rohini Project Division No. Iv was shown in the covering tatter as a party likely to be affected by the proceedings or a party interested in the award. The notice issued to Dda could have been accompanied by a copy of the covering letter filed by the Arbitrator or else the notice should have given the requisite particulars already stated hereinabove. That having not been done, the notice issued on the address of Dda, in my opinion, did not satisfy the requirement of the notice of the filing of the award as contemplated under Section 14(2) of the Act.

(11) Moreover, it is the above said interpretation which would serve the cause of justice. Otherwise unscrupulous claimants would well have the notice of the filing of the award issued to the Head of the Institution like Dda and have it served on the receipt clerk his office and have the award made a rule of the Court on the expiry of thirty days there from while the Head of the Institution would not within thirty days be in a position with such a skeleton/defective notice to find out the record and/or the officer in-charge of the case who may be fully conversant with the facts of the case and who only could take action on the notice.

(12) In view of the position explained above I am of the opinion that the notice which was issued to respondent No. 1 Dda did not satisfy the requirements of Section 14 of the Act and Article 119(b) of the Limitation Act and, thereforee, in the eyes of law there was no effective notice issued and served on the respondent No.1.

Question-2

Section 14(1), (2) & (3) of the Act speaks of 'parties'. In the context of the above provisions of the Act 'parties' mean not parties to the suit or petition but parties to the arbitration proceedings: It is not in dispute that the Executive Engineer, Rohini Project Division No. Iv Dda, being the Engineer in-charge of the work had signed the agreement on behalf of the respondent Dda and as per Clause 2(e) of the Conditions of Contract, Engineer-in-charge was made in-charge of the work and was empowered to supervise the same. It is also not in dispute that the above said Executive Engineer of the respondent Dda had represented the Dda before the Arbitrator. From a perusal of the record it is apparent that the petitioner had sent copies of the papers filed by him before the Arbitrator to the Executive Engineer thereby recognising the fact that the Executive Engineer was representing the Dda in the arbitration proceedings. The Executive Engineer was filing documents on behalf of the Dda before the Arbitrator. The Arbitrator made and published his award on 26.3.96 and informed the parties including the Executive Engineer of the respondent Dda the above fact vide notice dated 8.4.96. Thereafter the Arbitrator also filed the same in the Court Along with the proceedings on 8.5.96. It is note worthy that the notice of the making and publishing of the award was given by the

Arbitrator to the petitioner and also to the Executive Engineer, Rohini Prefect Division No. Iv, DDA. Similarly the Arbitrator while filing the award in the Court on 8.5.96 also sent a copy of the letter accompanying the award to the above said Engineer. Thus it is apparent that it was the Executive Engineer of the respondent Dda who had conducted the arbitration proceedings on behalf of the Dda before the Arbitrator. and was dealing with the matter. The Arbitrator in his letter dated the 8th April, 1996 while making and notifying the publication of the award inter-alia in paras 3 & 4 stated that the award together with all the records would be filed in the Court of competent jurisdiction on an application made by either party to the Arbitrator indicating the name and complete postal address of the Court. It is further stated that both the parties have since given their consent for extending the time for the award up to 3.6.96.'Surely when the Arbitrator referred to the parties in the above said notice dated the 8th April, 1996, the Executive Engineer, Rohini Project Division No. Iv, Dda and the petitioner were in his contemplation as parties.

(13) In the above circumstances, the notice ought to have been sent to the Executive Engineer, Rohini Project Division No. Iv, Dda who was the Engineer- in charge of the Work and was the person who had signed the contract on behalf of the respondent Dda and was dealing with the matter. thereforee, it was necessary that he also should have been added as a party respondent in the matter. Merely arraying Dda and sending the notice to Dda would not be effective service as the Vice- Chairman-DDA was not aware of the case nor he was furnished with the particulars thereof. In such a big organisation like Dda he (Vice-Chairman-DDA) in all probabilities would also be ignorant of the proceedings before the Arbitrator which culminated in the award. Moreover, in the present case, as already noted, it would be difficult for the Vice-Chairman-DDA to link up the notice of the filing of the award to the matter which was subject matter of arbitration proceedings as tile notice in question did not give any details except that the award was rendered by Shri L.R. Pahwa on 26.3.96. In the above circumstances, failure to serve a notice of the filing of the award on the concerned Executive Engineer decidedly amounts to violation of the principles of the natural justice.

(14) Punjab & Haryana High Court Arbitration Rules are applicable to Delhi High Court and I may quote Rides 6, Ii & 17 of the said rules which are relevant .

'6.Notice of application to person affected by award-Upon any application by petitioner under the Act, the Judge shall direct notice thereof to be given to all persons mentioned in the petition, and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted. II. Notice of filing award-When the award has been filed in Court, the Court shall forthwith issue notice of such filing to the parties interested in the award. 17. Application of Code of Civil Procedure and the High Court Rules and Orders-In the cases not provided for in the foregoing rules or in the Act, the provisions of the Code of Civil Procedure, 1908, and the High Court Rules and Orders, mutates mutants, shall apply to all the proceedings before the Court and to all appeals under the Act.'

Rules 6 and Ii as quoted above clearly indicate that the notice contemplated by the Rules is not merely to the parties of the case but the notice has to be given to the persons likely to be 'affected by the proceedings' and to 'the parties interested in the award'.

(15) Thus the notice under Section 14(2) of the Act has to be served not merely on the parties to the suit in the sense in which the phrase is known to the Civil Procedure Code but also on the 'parties interested' in the award and likely to be affected by the proceedings before the Court. In the case of big organisations like Dda where the functioning is not 'individual' but 'institutional' it would be the officer-in-charge of the case or the proceedings who was conducting the case before the Arbitrator. Thus, in my opinion, the Engineer-in-Charge of the Work i.e. Executive Engineer, Rohini Project Division No. Iv, Dda was a necessary party in these proceedings for the purpose of notice under Section 14(2) of the Act.

Question-3

The learned Counsel for the petitioner during the course of arguments submitted that even if this Court comes to the conclusion that there was no proper notice or a

notice should have been given to the Engineer-in-Charge of Works even in that eventuality no relief can be given to the respondent Dda in the present application as the same is not maintainable because the provisions of Order Ix Rule 13, Civil Procedure Code are not applicable to the award having been made a rule of the Court in the event of objections not having been filed within the statutory period. In my opinion, the above submission of the learned Counsel for the petitioner/non-applicant is without any substance because the present application has been filed on behalf of respondent Dda not under Order Ix Rule 13, Civil Procedure Code but under Section 151, CPC.

(16) The Court acquires jurisdiction to pronounce judgment in terms of award followed by decree only on satisfaction of dual conditions: (i) parties to the award having been served with a notice-of filing of the same, and (ii) a period of 30 days having elapsed from the date of service of such notice. If either of the two conditions is missing, the decree would not be legal and shall be liable to be set aside in revision (see Sheikh Esuf Rowther (c) A.SM. Mohammed Yusuf 6- Ors. v. Sheikh Davad Rowther SfArn., : AIR1951 Mad658 , Koduri Krishnmma v. Koduri Chennayya & Am., Air 1949 Mad 276, Palaparthi Venkataramayya & Ors. v. Duggina Papayya b Ors., Air 1943 Mad 718 Achaber Pande v. Kuldip Singh, Air 1925 Ran 103,Ravibhai Kashibhm v.Dahyabhai Zaberbhai Patel, AW.l921 Bom 32, Mani Ram v. Ram Asray Air 1921 Oudh 148 1 . Before pronouncing judgment followed by decree it is obligatory upon the Court to satisfy itself of the availability of the dual conditions referred to hereinabove. No man shall suffer for the fault of the Court. If one of the two conditions is missing, the Court may set-aside the decree by exercising its inherent power and thereby cure illegality in its proceedings on its attention being invited thereto (see Soorajmull Nagarmal v. Golden Fibre and Products, : AIR1969 Cal381 and Shrichand Prasad v. Mohan Singh, : AIR1964 Pat509 .

(17) In my opinidn, the facts as set out in the application by respondent No. 1 do attract the applicability of the statement law quoted hereinabove. The present one is a fit case where I must exercise my inherent power and thereby cure illegality in the proceedings, the facts impelling exercise of such jurisdiction having been brought to its notice.

(18) For the foregoing reasons, the judgment and decree dated the 7th November, 1996 are set aside. The respondent Dda and the concerned Executive Engineer are given a notice of the filing of the award today. The respondents to file objections, if any, within the statutory time limit with copy to the Counsel for the petitioner.

I stands disposed of in above terms with no order as to costs. Application disposed of.

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