

Minny Enterprises Vs. the General Manager, Itdc and anr.

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Court : Delhi

Decided On : Aug-08-2003

Reported in : 2003VIIIAD(Delhi)10; 2004(1)ARBLR64(Delhi); 107(2003)DLT236; 2003(71)DRJ112

Judge : H.R. Malhotra, J.

Acts : Code of Civil Procedure (CPC) - Sections 151; Indian Arbitration Act, 1940 - Sections 30; [Arbitration and Conciliation Act, 1996](#) - Sections 21 and 85(2)

Appeal No. : IA 8153/2002 in S.No. 759-A/98

Appellant : Minny Enterprises

Respondent : The General Manager, Itdc and anr.

Advocate for Def. : Sandeep Sharma, Adv.

Advocate for Pet/Ap. : Anand Srivastava and; Dinesh Pardasia, Advs

Disposition : Petition dismissed

Judgement :

H.R. Malhotra, J.

1. This is an application made by the respondent under the provision of 151 CPC seeking dismissal of the objections filed by the petitioner under the provision of

Sections 30 of the Arbitration Act, 1940 because of new enactment having come into force, viz, [Arbitration and Conciliation Act, 1996](#).

2. The respondent seeks dismissal of the objections on the strength of judgments rendered by the Apex Court in 'Thyssen case' : AIR 1999 SC3923 and also in view of another judgment known as 'Rani Construction case' again rendered by the Hon'ble Supreme Court in Civil Appeal No. 61/99.

3. The respondent also seeks dismissal of the objections filed under the old Act in view of insertion of Section 21 and Section 85(2) in the new Act which came into force on 1st January, 1996.

4. Before I proceed to deal with this legal aspect it is essential to advert to few facts in brief.

5. The respondent ITDC Ltd. had invited tenders for installation, testing and commissioning of an MATV and CTV at Hotel Qutab and Ashok Hotel at Delhi.

6. The petitioner M/s Minny Enterprises responded and submitted its tender which was accepted by the respondent and the contract was awarded to them.

7. Certain disputes arose inter se and the same were referred to the Arbitration in terms of clause 48 of the general conditions of contract vide letter dated 1st December, 1986.

8. On 31st May, 1993, the sole Arbitrator made and published his award.

9. The petitioner moved an application under Section 30 of the Indian Arbitration Act, 1940 for setting aside the award in respect of number of claims. Part of the award was remitted back to the Arbitrator for reconsideration by the orders of the learned single judge on 26th September, 1994.

10. The Arbitrator reexamined the matter and made his award dated 16th March, 1998 and filed the same in the Court. Notice of filing of the award were issued to the parties. Pursuant to which the petitioner filed objections against the award which are sought to be dismissed because of new statute wherein petition lies under the provision of Section 34 of the [Arbitration and Conciliation Act, 1996](#).

Learned counsel for the respondent has urged that objections preferred by the petitioner after coming into force of the new enactment are not maintainable under the old act at all. Whereas learned counsel for the petitioner submitted that in view of the peculiar facts of this case and more particularly when initially disputes had arisen between the parties in the year 1986 and more so when the Arbitrator gave his award much prior to coming into force new enactment, which could never be the intention of the parties that disputes between them could be resolved under the provision of new Act. He contended that neither 'Thyssen case' nor 'Rani Construction' case is applicable to the facts of the present case and that the objections preferred by them under the provision of Section 30 of the old act are maintainable.

11. I have heard learned counsel for both the parties at length and with their assistance have perused the record including the award made by the Arbitrator on two occasions as also the proceedings conducted by him.

12. Learned counsel for the respondent has placed reliance on an authority : 2001(60)DRJ663 title Atree Associates v. DDA and also on another authority reported in 2001 (VII) Apex Decisions (Delhi)546 title Bhai Sardar Singh and Sons v. DDA. On the other had learned counsel for the petitioner placed reliance on a case title M/s Shetty's Construction Co. Pvt. Ltd. v. Konkan Railway Construction & Anr. : AIR 1999 SC1535 .

13. Learned counsel for the respondent has drawn my attention to Clause 49 of the contract entered into between the petitioner and the respondent. It reads as under:-

'Subject as aforesaid the provisions of the Arbitration Act, 1940 or any statutory modification or reenactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.'

14. Learned counsel for the respondent has urged that in view of this clause in the contract the parties had expressly intended that firstly the provisions of old Arbitration Act would apply and if any statutory modifications are made in the statute or the statute is reenacted, the rules made there under shall apply to the

arbitration proceedings. He has thus urged that the ratio as laid down in 'Thyssen case' aptly applies to this case as their Lordships while dealing with that matter which is similar to the one in hand and also keeping in mind the provisions of Section 85(2(a) of the new Act held that the expression 'unless otherwise agreed' referred not only to the 'law in force' at the time of the arbitration agreement was entered into but also referred to law that may be in force for the enforcement of the award as well. Their Lordships while taking assistance of 'Rani Construction case' and also while interpreting the expression 'unless otherwise agreed' observed that ' parties were clear in their mind that it would be the old Act or any statutory modification or reenactment of that Act which would govern the arbitration and that parties could anticipate that the new enactment may come into operation at the time the dispute arise. Their Lordships further held that 'when the agreement uses the expression 'unless otherwise agreed' and 'law enforce' it does give an option to the parties to agree that the new Act would apply to the pending arbitration proceedings. That agreement can be entered into even before the new Act comes into force and it cannot be said that the agreement has to be entered into only after the coming into force of the new Act.

15. Although, learned counsel for the petitioner referred to an authority reported in Shetty's Construction Ltd. v. Konkan Railway : AIR 1999 SC1535 but this authority has no application to the case in hand as the parties while entering into an agreement had clearly indicated that reenactment or modified law would be applicable to their disputes.

16. Since the present case is quite akin to the facts presented in the Thyssen case and Rani Construction case therefore, law being established in this regard, the present application has to be dealt with in the light of the settled law.

17. For these reasons, the objections preferred by the petitioner under the old Act are not maintainable in view of the specific agreement between the parties that their dispute will be subject to the provision of the new Act and, therefore these objections being not maintainable under the old Act are liable to be dismissed. Similarly, the application of the respondent filed under Section 14 and 17 of the old Act must go. Consequently, the objections filed by the petitioner and the petition of

the respondent are dismissed.

18. Of course, parties shall have an option to have recourse to the new Act.

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