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Sanyukt Nirmata Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Oct-24-1994

Reported in : 59(1995)DLT338

Judge : Usha Mehra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 9; [Arbitration Act, 1940](#) - Sections 14

Appeal No. : Suit No. 4519 of 1992

Appellant : Sanyukt Nirmata

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : M.M. Sareen and; V.K. Sharma, Advs

Judgement :

Usha Mehra, J.

(1) By this application under Order 9 Rule 13 of the Code of Civil Procedure (in short Civil Procedure Code) the Delhi Development Authority (in short 'DDA') wants the decree, passed by this court in favor of the respondent pursuant to an award having been made a rule of the Court, be set aside.

(2) In order to appreciate the contentions raised by the applicant-DDA, the brief facts of the case are that award made and published by Shri J. K. Varashneya, the sole arbitrator dated 20th October, 1992 was ordered to be filed in the Court. The said award was filed in the court on 31st March, 1993. The petitioner accepted the notice of filing of the award but did not file any objections. The respondent/D.D.A. who was also served with the notice of the filling of the award on 28th May, 1993, did not file any objection to the award, within the statutory period. As a result the said award was made a rule of the Court on 21st September, 1993. The petitioner decree holder filed an execution application seeking attachment of the asserts of the D.D.A. The application was allowed and the decretal amount was realised by the petitioner. On 3rd February, 1994, present application was filed for setting aside the decree. The relief has been sought, inter-alia, on the grounds that the award pertained to the South Western Division-VII of the D.D.A. Since there was three cases pending inter se the parties relating to the above Divison, therefore, the Executive Engineer could not ascertain as to in which case the notice of the filing of the award had been received. It was only on 20th December, 1993 on enquiry made from the office of the decree holder that D.D.A. official came to know that the award had been made a rule of the court. Immediately on attaining this information, the case was marked to a panel lawyer who inspected the court record and found that notice of the filing of the award was received in the Legal Section of D.D.A. on 28th May, 1993. From the inspection of the office record, it transpired that after receipt of the notice from the court, the Legal Branch of the Dda opened the case file on 28th May, 1993. Thereafter the case was entrusted to one Mrs. Mala Goel, a panel lawyer. Later on it transpired that she had in fact already resigned from the panel of the D.D.A. on 31st March, 1993, therefore, no action was taken by her. On realisation of this mistake, the file was sent to the South Western Division-VII on 10th June, 1993. Thereafter the said file was not traceable because it was tagged on, with some other file by inadvertence and, therefore, no further action was taken till the Court file was inspected on 21st January, 1994. Hence the delay in filing the objections.

(3) Mr. Man Mohan Sarin, Advocate appearing for the decree holder at the outset raised a very interesting legal point regarding the maintainability of this application. He took the plea that the D.D.A. having been served chooses not to file any

objections within the statutory period of 30 days, therefore, the Court under Section 17 of the Arbitration Act made the award rule of the Court. The making of the said award a rule of the Court in such circumstances cannot be called an ex-parte decree. Hence application under Order 9 Rule 13 Civil Procedure Code is not maintainable. To support his contention, he placed reliance on the decision of this Court in the case *Inder Khanna & Sons v. Union of India* 1991 ALR 411 and in the case of *Popular Electric Works v. Union of India & anr.* (2) He also placed reliance on the decision of Madras and Andhra Pradesh High Court in *Alvel Sales V. Dujadwal Industries*, : AIR1978 Mad295 and *Government of Andhra Pradesh & Anr. V. Bactchala Balaiah*, : AIR 1985 AP52 .

(4) In the case of *Inder Khanna (supra)*, it was held that once a decree is passed in terms of the award after issuance of notice to the parties and party chooses not to file any objections within the statutory period, then in such an eventuality the provision of Order 9 Rule 13, Civil Procedure Code , will not apply because such a decree when passed alter service of notice cannot be called ex-parte decree nor can be set aside. Similar view was taken in the case of *Popular Electric Works (supra)*. The Madras as well as Andhra Pradesh High Courts also took similar view.

(5) On the other hand, Mr. V. K. Sharma, appearing for the D.D.A. relied on the decision of this Court in *M/s. Bhagwan Dass Bros. v. Gulam Ahmed Dar and Ors.* : AIR1992 Delhi22 . Relying on that judgment, Mr. Sharma contended that the making of the award a rule of the Court in the absence of D.D.A. would amount to an ex-parte decree. Hence proper course open for D.D.A. is to file this application.

(6) Looking to the facts of this case and the legal submissions made by the counsel for the parties, I have no hesitation to pronounce that the decree passed in the facts of this case cannot be called a a ex-parte degree. The award was made a rule of the Court after the service of notice; on the D.D.A. It is an admitted case of the D.D.A. that notice of filing of the award was received by its Legal Section on 28th May, 1993. Thereafter is the history of neglgence and inaction on the part of the D.D.A. which is so stated in this application. It is alleged that file was entrusted to a counsel in May, 1993, whereas the said counsel had already

resigned from the panel in March, 1993. This shows the casual attitude of the officials of the DDA. After receipt of the notice of the filing of the Award DDA's Explanationn for delay is most unconvincing. The Legal Section of the Dda sent the file to the executive Engineer, South Western Division-VII in a routine manner though fully aware that period for filing the objection would expire within 30 days. Matter does not end here. After sending the file the Legal Section washed its hands from the case and in the Division the file is alleged to have been lost. Thereafter no one bothered to find out what happened to that file. What action was taken for this negligence, there is not a whisper in this regard except a casual reference that file was lost. No proof of the movement of the file has been filed Along with this application. No Explanationn has been given as to why the Executive Engineer of the concerned Division did not pursue the case. Why the Legal Section of the D.D.A. marked this case to a counsel who had already resigned from the panel of the DDA. In the absence of any Explanationn it cannot be said that the applicant has furnished any sufficient reason or cause. Hence on merits also the applicant has not been able to make out a case for setting aside the decree.

(7) So far as the legal proposition is concerned that is clear, once the notice of the filing of the Award had been served on a party and that party chooses not to file objection then such a decree cannot be called an ex-parte decree. The reliance by Mr. Sharma, on the decision of Bhagwan Dass's case (supra) is of no help to him because that case is clearly distinguishable. The Court in that case was concerned with a situation when objections had intact been filed by the party within time but the counsel lor the objector did not appear at the time of arguments and the Court without deciding those objections made the award rule of the Court. It was in these circumstances the Court observed that the decree was an ex-parte decree. The Court after analysing various positions sets out the situations which may arise upon a decree being passed contrary to the procedure prescribed under Section 14 and 17 of the Arbitration Act. However, in the instant case none of those situations mentioned in that judgment have arisen. Besides the situation enumerated are those in which there is non-compliance with the procedure leaving a serious legal infirmity. In the instant case, firstly the Dda received the copy of the award from the Arbitrator. Thereafter, notice of filing of the award was sent by this

Court. Notice was duly received as admitted by the DDA. The Award was made a rule of the Court after the time for filing the objections had elapsed. Whereas Bhagwan Dass's case at best can be an authority for a situation where the objections had been filed but the decree under Section 17 was passed because at the hearing of those objections, either the counsel or the objectors failed to appear. It is only in such like situations that the decree could be regarded as ex-parte decree and if good cause shown the same can be set aside. In such an eventuality application under Order 9 Rule 13, Civil Procedure Code, would be maintainable. The rationale of the judgment in Bhagwan Dass's case is based upon award being made rule of the Court under Section 17 after refusing the objections, the refusal of the objections if made in the absence of a party would be an ex-parte refusal. It was then observed in para No. 20 of the judgment that if such an application is refused due to the non-appearance of the Objectors or his counsel and Without hearing the Objectors or his counsel, then it is difficult to accept that it is not an ex-parte decree. Reference is also invited to Para No. 21 which records that the cases covered in the earlier judgments were those where objections has not been filed.

(8) In view of the factual and legal position discussed above, I find no merits in this application. The application does not disclose any sufficient cause and, therefore, merits dismissal. The same is accordingly dismissed.

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