

M.A. Admani and ors. Vs. A. Admani and ors.

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Court : Rajasthan

Decided On : Oct-22-1981

Reported in : 1981WLN(UC)526

Judge : S.K. Mal Lodha, J.

Appellant : M.A. Admani and ors.

Respondent : A. Admani and ors.

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. These two appeals under section 39 of the Arbitration Act (No. XX of 1940) (here in after referred to as 'the Act') are directed against the common order dated November 9,1976 passed by the District Judge, Pratabgarh (Camp Chitorgarh) in Civil Original Suit No. 11 of 1975. As both the appeals are directed against the same order and were heard together, I consider it proper to dispose them of by a common judgment.

2. Ahmed Admani, who is appellant in Civil Misc. Appeal No. 11 of 1977 and M.A. Admani who is appellant in Civil Misc. Appeal No. 194 of 1976 are real brothers. They were partners in the partnership firm M/s Mewar Bone Mills, Gosunda. The

firm was dissolved by the aforesaid partners with mutual consent by Partnership Dissolution Deed Ex. A8 dated April 4, 1974. The dissolution of the aforesaid partnership took effect from April 1, 1974. Under clause 12 of Ex. A8, the matter was referred to the arbitrators. The arbitrators gave their award on June 3, 1975. The arbitrators gave notice under Section 14(1) of the Act to the parties on the same day. The Award was filed on July 9, 1975 vide application dated June 30, 1975 by the arbitrators Ahmed Hussain, Noor Mohamad and R.L. Shah. The learned District Judge, Pratabgarh (Camp Chiltorgarh) issued notices to the parties. It may be stated here that A. Admani will here in after be described as the petitioner and M.A. Admani as non-petitioner. The date fixed for filing of the objections, if any, by the learned District Judge was October 11, 1975. A. Admani filed his objections in writing on August 16, 1975. The objections were filed within the period of 30 days. The award was sought to be set aside on the ground of misconduct etc. A. Admani also filed objections on October 11, 1975. M.A. Admani filed his objections on August 18, 1975. He also filed reply to the objections of A. Admani. The learned District Judge framed issues in the light of the objections. I am only concerned with the issues no. 1, 3 and 5 which are as under:

- (1) Whether the award requires registration; if not what is the effect:
- (2) Whether the award made by the arbitrators is within limitation ?
- (3) Whether the arbitrators were within their jurisdiction to pass the award as referred ?

The learned District Judge by his order dated November 9, 1976 decided issue no. 1 in favour of the petitioner A. Admani and against non petitioner M.A. Admani. He held that (1) the Award requires registration and (2) that the Award made by the arbitrators is within limitation. The learned District Judge, in view of the finding arrived at by him on issue no. 1, rejected the Award and looking to the facts of the case, directed the parties to bear their own costs. M.A. Admani has filed Civil Misc. Appeal No. 194 of 1976, inter alia, on the ground challenging the rejection of the Award on the ground that as it was not registered. A. Admani has filed the appeal praying that the decision on issues no. 3 and 5 may be set aside. In other words, he has challenged the order by which the Award was held to be within limitation.

3. I have heard Mr. M.C. Bhandari, learned Counsel for M.A. Admani and Mr. D.S, Shishodia, learned Counsel for A. Admani and have also gone through the record.

4. I take up S.B. Civil Misc Appeal No. 194 of 1976 first. In support of the Appeal, Mr. M.C. Bhandari, learned Counsel for M.A. Admani has raised only one contention and that is, that the learned District Judge has committed a serious error of law when he held that the Award requires registration and so, the consequences of the non-registration will follow. He submitted that the Award does not require registration. Mr. Shishodia supported the finding of the learned District Judge on issue No. 1. The agreement dated August 24, 1973 has been marked as Ex. A.9. Paras 1 and 2 of Ex. A.9 are as follows:

1. That the pieces of Agricultural lands, animals, catties, Agricultural Equipments and accessories as per part 1 & part 2, as described in APPENDIX 'A' attached here with and at present registred at Government records in any of the above two brother's name and belonging and owned jointly by them till this day, Dot equal in area of measurement but mutually agreed as equal for the purpose of drawing lots to decide the separate ownership It was further agreed that the lots should be drawn for the said part 1 & part 2 and the results should be recorded in this agreement.

2. That the lots were drawn in the presence of above mentioned three witnesses and the results were recorded as under:

(a) Part 1. Shri A. Admani was declared as per the result of the lot, as the owner of the portion of Agricultural lands, animals, catties, Agricultural equipments, and accessories as described in APPENDIX 'A' attached here with.

(b) Part 2. Shri M.A. Admani was declared as per the result of the lot, as the owner of the portion of Agricultural lands, animals, catties, Agricultural equipmentes and acessories as described in APPENDIX 'A' attached here with.

The agreement Ex. A9 is unregistered. The Partnership Dissolution Deed Ex. A.8 dated April 4, 1974 is also unregistered. In Ex. A8 M.A. Admani and A. Admani have been described as first party and second party respectively. Para 2 of Ex. A8

is as under:

That all the assets and liabilities (as shown in clause 7 of this deed) of the firm M/S Mewar Bone Mills Gosunda, along with goodwill of the business have been allotted and assigned to the first party except those given to the second party as described below:

(1) Vacant place of land lying on the western side of the residence of the second party up to public road on the west parallel to the boundary wall of the bungalow

(2) A godown in a size of 10 x 40--400 Sft. shall be built at the expenses of the first party in lime and stone with Chittor stone flooring covered with C.G.I. sheets or stone slabs with doors and windows as suggested by the second party. This will be built within 4 months from today. The site of this godown will be the vacant land lying worth (a) to the second party's residence bungalow (1).

(c) For the clarification it is mentioned that the first party and the second party are real brothers and owned other properties jointly. The same has been divided by us and memorandum of partition signed by both of us was drawn on 24th August, 1975, with a rough sketch made and signed by both of us on 23-10-73. The same division stands.

(d) The first party shall pay a sum of Rs. 45,000/- (Rupees forty five thousand only) to the second party. As the first party has no ready cash to pay the second party has agreed to accept the payment of this amount in monthly instalments of 12,00/- (Rupees twelve hundred only) first instalment payable on 1-11-1974. In case the first party makes regular payments of instalments, with out any default for not more than 3 instalments on continuation, the second party will only be entitled to Rs. 40,000/- (Rupees forty thousand only) in total.

Para 6 of the Ex. A8 reads as follows:

The second party hereby relinquishes releases assigns disclaims and convey all his rights and interest in the partnership properties, outstandings privileges, trade names, trade marks etc. in favour of first party.

It is also relevant to refer to para 12, which is as under:

That if at any time there arises any dispute between the parties regarding the interpretation or implementation of this deed of dissolution, the same shall be referred to three arbitrators (i) Shri Abdul Aziz Paniwala of Bombay and (ii) Shri Noor Mohamed Mansoori contractor of Udaipur and (iii) Shri Ahmed Hussaein contractor r/o Udaipur whose decision whether unanimous or by majority shall be final and binding upon both the parties. If any of the arbitrator is unable to arbitrate, the remaining arbitrators shall appoint the third one.

The relevant portions of the Award dated June 3, 1975, given by the Arbitrators is as under:

In his counter-claims filed on 10-2-1975 the respondent has claimed that this Karkhanawali Pati bearing khasra No. 291/2 measuring 3 bighas, residential bungalow and cow shed are the assets of the Mewar Bone mill by virtue of para 2 there of. As such the petitioner is not entitled to hold the possession of the karkhanawali pati, the portion of the residential building in which the petitioner is living at present and this cow shed. The respondent has, therefore, urged that since the petitioner has failed to carry out and implement the terms of the deed of dissolution this tribunal is required to get them implemented and possession of the same delivered to him. The respondent has based this claim on the ground that according to the deed of dissolution of the Mewar Bone Mill and its' assets become the property of the respondent, except those given to the petitioner vide para 2(a), (b), (c), (d). It is contended that the Mewar Bone Mills consists of all the lands and building including the factory situated at Gosunda and these are the assets of the Mewar Bone Mills.... We are therefore, unable to accept this claim of the respondent. It is, therefore, rejected, The claim with regard to rent of the residential bungalow in possession of the petitioner and damages for loss of produce of the agricultural land is also rejected.... The well in the factory area exclusively belongs to the Mewar Bone Mills as it forms the part of its assets. The petitioner is not entitled to irrigate his fields or use its water for any other purpose. There is absolutely no question of sharing its water between the parties. The petitioner Shri A. Admani is hence forth stopped from making use of the well water

for irrigation or any other purpose He may make his own arrangement of irrigating his share of the lands and the residenrial bungalow.... The respondent shall construct a godown in a size of 10 x 40 x 400 sq. ft. for the petitioner on the vacant land lying south to the petitioner's residence bungalow in terms of para 2 (a) of the deed of dissolution and according to the specifications laid down there in at his (respondents') own expenses.

The respondent shall remain in sole and exclusive possession of the well of the Mewar Bone Mill and the petitioner is here after restrained from using its water for irrigation and house-hold purposes and he is prohibited from interfering in the possession of the respondent in any manner....

The learned District Judge has found that the Award requires registration as it creates right in immovable property under Section 17(1)(a) of the Registration Act and as it was unregistered, he rejected it. Section 17(1)(b) of the Registration Act reads as follows:

17. (1) The following documents shall be registred, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act, No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely :-

(a)....

(b) Other non-testamentary instruments which purportor operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property;

(c) (d) (e)

5. It is argued by Mr. Bhandari that the arbitrators by means of the Award did not create any right what so ever in the immovable property as the rights had already been created by Ex. A8 or by Agreement Ex. A9. It was held in Satish Kumar v. Surinder Kumar : [1969]2SCR244 that an Award given under the Arbitration Act on

a private reference requires registration Under Section 17(1)(b) of the Registration Act, if the award effects partition of immovable property exceeding the value of Rs. 100/- It was observed by Hedge J. in para 19 as follows:

The award does create rights in that property but those rights cannot be enforced until the award is made a decree of the Court. It is one thing to say that a right is not created, it is an entirely different thing to say that the right created cannot be enforced with out further steps. For the purpose of Section 17(1)(b) of the Registration Act, all that we have to see is whether the award in question purports or operates to create or declare, assign, limit or extinguish whether in present or future any right title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property If it does it is compulsorily registrable. In the aforementioned Full Bench decisions sufficient attention has not been given to Section 17 of the Registration Act. The focus was entirely on the povisions of the Arbitration Act and there again on the enforcement of the award and not in the making of the award. A document may validly create rights but those rights may not be enforceable for various reasons. Section 17 does not concern itself with the enforcement of rights.

Section 17 and 49 of the Registration Act and Section 17 of the Arbitration Act came up for consideration in Ratan Lal v. Purshottam : [1974]3SCR109 . Satish Kumar's case : [1969]2SCR244 was noticed therein. It was held that where the terms of the arbitration award did not transfer the share of a partner A in the assets of a firm to the other partner B either expressly or by necessary intendment but on the other hand expressly made an allotment of the partnership assets and liabilities to B making him absolutely entitled to the same in consideration of a sum of money to be paid by him to the other partner A, thereby expressly purporting to create rights in immovable property of the firm owrth above Rs. 100/- the award is compulsorily registrable under Section 17 Registration Act and if unregistered, cannot be looked into & the court could not pronounce judgment in terms of award under Section 17 of the Act, which presupposes the existence of an award which can be validly looked into the Court It was also observed therein that the award being an inseparable tangle of several clauses cannot be enforced as to part not dealing with immovable property No rights were created by the Deed Ex. A 8 or by

agreement Ex. A 9 as both of them are unregistered documents. These documents on which reliance was placed by the learned Counsel for the appellant, were rightly held by the learned not to create right in favour of one party or extinguish rights of the other party. the learned District Judge was right when he held that it is not correct that the rights had already been created, and they were only required to be enforced by the award on having becoming rule of the Court I have already extracted the relevant portions of the award relating to the immovable property. Having considered the award, I am of the view that it created rights in immovable property of the value of more than Rs. 100/- and so it was compulsorily registrable. The learned District Judge was right in rejecting it on the ground that it was not registered. In view of the authoritative pronouncements in Satish Kumar's case : [1969]2SCR244 and Ratan Lal,s case : [1974]3SCR109 it if not necessary to refer to the old decisions, which were cited by he learned Counsel for the parties. I, therefore, affirm the finding of the learned District Judge in respect of issue No. 1. The decision on issue No. 1 was only challenged in Civil Misc Appeal No 194 of 1976 and as I have a ready affirmed the finding on it, the appeal deserves to be dismissed.

6. In Civil Misc. Appeal No. 11 of 1977, Mr. Shisodia has assailed the findings on issues no Section 3 & 5 on two ground :--(I) that the award was no given by the arbitrators within four months and that the extension could not have been granted and, therefore, the learned District Judge committed a serious error of law when he decided the aforesaid issues holding that the Award given by the arbitrators is within limitation. Mr. Bhandari, on the other hand, supported the decision of the learned District Judge on the question of limitation. In this connection, two questions arise for my consideration:--(1) Whether the Award as given should be treated within limitation and (2) Whether there should be extension of time as prayed for by the non-petitioner.

Section 3 of the Act runs as follows:

Provisions implied in arbitratrations agreement An arbitration agreement, unless a different intention is expressed there in shall be deemed to include the provision set out in the first Schedule in so far as they are applicable to the reference.

Rule 3 of the First Schedule is as follows:

The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.

According to Rule 3, the arbitrators are required to make their Award within four months (1) after entering on the reference or (2) after having been called upon to act by notice in writing from any party to the arbitration agreement or (3) within such extended time as the Court may allow. Section 28 of the Act lays down that the Court may, if it thinks fit, whether the time for making the Award has expired or not and whether the Award has been made or not, enlarge from time to time, the time for making the Award. It is clear from the language of Rule 3 that the period of 4 months for giving the award starts from the date when the arbitrators enter on the reference. Nothing has been laid down therein as to when the arbitrators can be said to have been entered on the reference. It depends upon facts of each case and it is a question of fact when arbitrators have entered on the reference.

7. Sections 3 and 28 of the Act and Rule 3 of the Schedule came up for consideration before their Lordships of the Supreme Court in *Hari Shankar Lal v. Shambhu Nath* : [1962]2SCR720 . The legal position as formulated by the majority of the Judges in *Hari Shanker Lal's* case : [1962]2SCR720 is as follows:

(a) A notice to act may be given before or after the arbitrators entered upon the reference, (b) If notice to act is given before they entered upon the reference, the four months would be computed from the date they entered upon the reference, (c) If a party gives notice to act within 4 months after the arbitrators entered upon the reference, the arbitrators can make an award within 4 months from the date of such notices (d) in that event after the expiry of said four months the arbitrators become functus officio, unless the period is extended by court Under Section 28 of the Act, such period may also be extended by the court, though the award has been factually made. In this case, *Raghubar Dayal J.*, however, observed that if the arbitrators have entered upon the reference, the period of four months begins to run from the date they entered on the reference and any notice sub sequently

given to them calling upon them to act will not make the period of four months start a fresh from the date of the service of the notice.

8. A learned Judge in *S.D. Ghai & Co. v. Punjab University* held that an arbitrator is said to enter on reference when he applies his mind and does some judicial act for progress of the reference.

9. Before the Division Bench, the expression 'entering on the reference' came up for interpretation in *Soneylal Thakur v. Lachminarayan Thakur* : AIR1957 Pat395 . It was held by the learned Judges that an arbitrator does not enter upon a reference the moment he accepts to work as an arbitrator, nor can it be said that he enters upon a reference only when he actually hears the reference. It was observed as follows:

An arbitrator enters upon a reference when, after having accepted the reference he applies his mind and does something in furtherance and execution of the work of arbitration. The exact date as to when an arbitrator enters on a reference in a particular case, however, has to be determined on facts and circumstances of the case.

10. A full Bench of the Calcutta High Court in *Ramanath v. Goenka & Co.* : AIR1973 Cal253 after dissenting from *Harish Chandra v. Union of India* ILR (1966) 1 Punj 1 and over ruling *Bajaranglal v. Ganesh Commercial Co. Ltd.* AIR 1951 Cal 98 came to the conclusion that an arbitrator does not enter on the reference by assuming office. Similarly, he does not 'necessarily enter' when he merely commences considering dispute in the presence of parties or ex parte.

11. A. Admani first approached the arbitrators as he issued notices dated May 29, 1974 to three arbitrators whose names were mentioned in Ex. A8 and requested them to give the Award on the points of dispute mentioned there in. The arbitrators Noor Ahamed and Ahmed Hussain wrote a letter on June 3, 1974 to M.A. Admani asking him to file the reply within 15 days of that letter. Ajiz Paniwala, a third arbitrator, intimated to one arbitrator Ahmed Husain that he wants to withdraw from acting as arbitrator. The two arbitrators appointed R.L. Shah as the third arbitrator on January 25, 1975. It was decided in the meeting that the arbitrators

shall hear the objections of A. Admani about jurisdiction and limitation on February 10, 1975. A Admani, however, appeared on February 18, 1975 and on that day he submitted that he does not want to take part in the proceedings of arbitration but he is ready to assist the Tribunal to show some law. It was decided by the arbitrators that they can hear the petitioner if he participated in the arbitration proceedings. A. Admani did not appear before them. The arbitrators heard M.A. Admani, recorded his evidence and gave decision on June 3, 1975. It is clear from the facts stated here in above that it was on January 25, 1975 that all the three arbitrators entered on the reference first on that day and they directed the parties to appear before them on February 10, 1975 to hear the objections of the petitioner about limitation and jurisdiction.

12. The other question is whether there could be extension of time as prayed for by the non-petitioner. under Section 28 of the Act, power has been given to the Court to enlarge the time for making the Award in case the time for making the Award has expired or not and whether the Award has been made or not. In Harish Chandra's case ILR (1966) 1 Punj 1, it was held that an award made by an arbitrator beyond the period of four months after entering on the reference is a nullity unless the period is extended by the Court. In J.W. Oliver v. Mian Dost Mohammed AIR 1935 Lah 191, a Division Bench of the Lahore High Court took the view that the Act prescribes a procedure for the expeditious and speedy settlement of disputes by private tribunals especially those arising in commercial transactions, and the legislature has, in the Schedule, fixed a period for the delivery of awards in cases where no time is fixed in the reference. The Court has no doubt a discretion to extend time under S. 28, but it will do so only if cogent reasons are forthcoming. Obviously the discretion cannot be exercised in favour of a party who himself has been negligent and has been guilty of dilatory tactics. So also in Bihar State Co-operative Batik Ltd. v. The Phosphate Co. Ltd. : AIR1975 Pat63 , S.K. Jha J. with whom S.N.P. Singh agreed held that under the Act an award made beyond the period of four months is neither invalid nor void merely on that account. If either of the parties raises an objection or continues to participate beyond the period of four months under protest, then only can the Arbitrator be held to be functus officio. All the three arbitrators had entered upon the reference after the appointment of R.L. Shah of January 25, 1975, wherein they decided to

hear the objections relating to limitation and jurisdiction. The period of four months will, thus, commence from January 25, 1975. The power has been given to the court to extend the time even after the expiry of four months. Four months had expired on May 24, 1975. The Award was given on June 3, 1975. The application was filed by M.A. Admani on February 12, 1975. On the basis of that application, it would be considered that the time was extended and even if it is held that on the basis of the application dated February 12, 1975, which was filed by M.A. Admani, the time was not extended, then there was delay of 8 or 9 days. Under Section 28 of the Act, the extension can be granted after the Award has actually been given or filed in the Court. The court in exercise of its discretion under Section 28 of the Act after taking into consideration the peculiar circumstances of the case as there was dispute in regard to the date of entering on the reference, enlarged the time. It cannot be said that discretion has been exercised arbitrarily or capriciously or in utter disregard of the recognised principles relating to the exercise of discretion in such matters. Having regard to the principles laid down in Hari Shanker Lal's case : [1962]2SCR720 and Section 28 of the Act, I am of the opinion that the Award given on June 3, 1975 cannot be thrown out on the ground that it was not given within the period of four months from the date, they entered on the reference. The contention of Mr. Shisodia that the Award was not given by the arbitrators within four months and that the extension could not have been granted is, therefore, repelled.

13. The net result of the discussion made here in above is that the learned District Judge was right in rejecting the Award on the ground that it was not registered and that he was also right in holding that the Award could not be thrown out on the ground of limitation.

14. No. other point was argued by any of the learned Counsel for the parties in both the aforesaid appeals.

15. For the foregoing reasons, there is no force in both the appeals and they are, accordingly, dismissed. In the circumstances of the case, the parties are left to bear their own costs.

