

Union Builders Vs. Union of India (Uoi)

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Court : Kolkata

Decided On : Aug-22-1996

Reported in : (1997)1CALLT197(HC)

Judge : Shyamal Kumar Sen, J.

Acts : [Arbitration Act, 1940](#) - Section 14(2)

Appeal No. : Award Case No. 186 of 1980

Appellant : Union Builders

Respondent : Union of India (Uoi)

Judgement :

Shyamal Kumar Sen, J.

1. The instant application has been made on behalf of the Union of India (S.E. Rly.) on 27th January, 1981 for, inter alia, setting aside the purported decree dated 21st November. 1981 confirming the Award dated September 11, 1980.

2. It has been contended on behalf of the petitioner that no notice under Section 14(2) of the Arbitration Act was served upon the petitioner. Decree was passed ex-parte on 21st November, 1980 confirming the ex-parte Award.

3. It has further been contended that until receipt of the decree-holder's letter dated 26th December, 1980 on 27th December, 1989, the petitioner was aware of the said purported exparte Award or the exparte decree passed thereon. The application was made on 23rd January, 1981 for setting aside the ex-parte decree dated 21st November, 1980 confirming the said ex-parte Award dated the 11th September, 1980.
4. The only question that arises for consideration in the instant case is whether Notice under Section 14(2) of the Arbitration Act was served upon the petitioner.
5. On 24th February, 1981 an affidavit was affirmed by Mr. Bimal Chandra Sinha, a senior clerk in the receiving section of the office of the General Manager, South-Eastern Railway, Garden Reach, Calcutta wherein it was alleged that no Notice was ever served in the office of the G.M., S.E. Railway, Garden Reach, Calcutta.
6. It may be noted that an order was passed on 25th February, 1981 by D.K. Sen, J. as he then was, directing the matter to be Trial on Evidence. The master appeared from time to time on 4th November, 1987. The matter appeared in the list of S.K. Hazari, J. as he then was, as an adjourned motion and not marked as Trial on Evidence'. The said application was dismissed for non-appearance of the petitioner.
7. On 12th September, 1988 the application was filed for recalling and setting aside the order of dismissal dated 4th November, 1987 was dismissed with costs.
8. Ultimately, the appeal was preferred against the said order dated 12th September, 1988 which was allowed. The trial on Evidence appeared in my list.
9. It may be noted that on 15.10.80 the respondent Award holder sent a letter to the S.E. Railway enclosing a copy of the Award and demanding payment of the amount of the Award being Annexure 'C' of the said affidavit.
10. Section 14(2) notice was served and accepted by S.E. Railway on 14.10.80.
11. On 21st November, 1980 decree was passed in terms on the Award.

12. On 26th December, 1980 the respondent Award-holder forwarded the certified copy of the Decree and Award to the S.E. Railway for payment being Annexure 'D' to the affidavit-in-opposition of the respondent. And thereafter decree was passed.

13. On the only ground to be considered in this application is if service of the notice under Section 14(2) of the [Arbitration Act, 1940](#) was effected. It has been alleged in the petition that the said notice was not served. There is also a supporting affidavit affirmed by one Bimal Ch. Sinha, Senior Clerk of the S.E. Railway. According to the said affidavit of Bimal Ch. Sinha there is a separate Register for receiving incoming letters for arbitration matters in the office of S.E. Railway.

14. The further case in the said affidavit is that he has inspected the affidavit of service as also the 14(2) notice and the rubber stamp was not of the office of the G.M.'s Office of S.E. Railway, and the signature on the stamp is not of any person of the receiving Section. The whole case is that the rubber stamp is a forged one.

15. The case of the respondent Award/Decree holder is that there were two Award: one being the subject matter of the present application being award Case No. 186 of 1980 and the other is Award Case No. 187 of 1980 where in the 14(2) notices were served upon the S.E. Railway, on the same date i.e. October 14, 1980 and both the notices were duly receipt, stamped, and signed by the receiving section of G.M. Office of S.E. Railway.

16. Decree in both the Award Cases No. 186 of 1980 and 187 of 1980 were passed on the same date i.e. on 21st November, 1980 by Mr. D.K. Sen, J. as he then was, so far decree in Award Case No. 187 of 1980 was duly accepted and paid by the applicant upon service of the certified copy of the decree without any protest and no action was taken challenging the same. The case has now been taken up as trial on evidence.

17. It appears from the evidence of Saktipada Banerjee that he was a Jr. Clerk in Receiving section in 1980. He has stated that the different registers were maintained in 1980-1981 where entries are made of the letters received by the receiving section.

18. In answer to questions 21-25, he has stated that two claim registers were maintained at the relevant time and there is no specific register relating to Arbitration matter.

19. In questions 30-34, it has been stated that three types of rubber stamps were and still now used in the receiving section.

20. In questions 49-61, the witness stated that the letters received at the Receiving Section Exhibits 'B' & 'C' with rubber stamp used on it. (Now it would be clear that the rubber stamps on those admitted letters are not in any way similar to any of the rubber stamp being Exhibit 'A').

21. In questions 67-82 he referred to three types of registers tendered (1) Refund Register, (2) Claim Register (3) Registers relations to miscellaneous letters.

22. In question 98, he has stated that his duty was only relating to receiving of letters in respect of claims and refund along with the two other persons.

23. In questions 100-107, he has mentioned that duty of Bimal Sinha was to receive miscellaneous letters delivered by hand. He has further mentioned that only three types of Registers were there at the G.M.'s office. (1) Claims, (2) Refund and (3) Miscellaneous.

24. In answer to questions 108-110 he stated that there was no register regarding Arbitration matter.

25. In questions 113-116 the witness was confronted with the affidavit of Bimal Ch. Sinha and he could not say anything about the contents.

26. In answer to questions 118-122, the witness mentioned that only three types of rubber stamp were used at G.M.'s Office since 1972-1981. So far as the questions 122-124 are concerned, the witness tried to shift his stand regarding the types of the rubber stamp.

27. (Questions 126-129), the witness stated that the rubber stamp in Exhibit also 134 'A' and Ex. 'B' differs and seals also differ.

28. In answer to Question 135 the witness stated regarding the exact replica of the rubber stamp used which is not a correct statement.
29. In questions 136-140 rubber stamps in Exhibit 'B' and 'A' differs materially and the other type of rubber stamp on Ex 'B' are not used to the letters of the outsiders. No specimen of the 4th type of rubber stamp was brought.
30. In questions 141-149, it has been stated that 14(2) notice of the affidavit of service shown of Award Case No. 186/80 Q. by court. It was suggested to him that considering the said documents it appears that witness has not given correct evidence.
31. In questions 150-152, it was shown the Section 14(2) of Award case No. 187/80-rubber stamp with signature appears. Ex- 'b' rubber stamp is the genuine one. The rubber stamp of Ex. 'b' and 'c' are similar to the stamp of Section 14(2) notice of Award Case No. 187/80. Similarly the rubber stamp signature in Section 14(2) notice of Award case No. 186/ 80 are also similar to Ex. 'b' and 'c'.
32. It appears from questions 153-158 that both the notice of Section 14(2) in Award Case No. 187/80 and 186/80 were served and received on the same date and the Award in 187/80 was decreed and accepted and payment made.
33. Accordingly, the suggestion was given to the witness that the notice under Section 14(2) in the instant Award Case must have been received by the deptt.
34. Ram Krishna Pal, clerk in the office of S.K. Guha, Solicitor and advocate on record of the decree-holder also gave evidence. In answer to questions 6-8 he stated that the firm Union Builders was the client of Mr. S.K. Guha and lots of work were done by the said Solicitor's office. He has also affirmed an affidavit on 10.11.80. The said affidavit being affidavit of service of notice under Section 14(2). It is stated that the notice was served both at the office of the G.M., S.E. Railway and Union Builders and it was served personally, (Answer to question 11-16).
35. He has stated that he served the notice under Section 14(2) on 14.10.80 the usual course of business as the clerk of the Solicitor to the office of the G.M., S.E. Railway and the notice bears the seal, rubber stamp, signature and date of the

office of G.M., S.E. Railway also served upon M/s. Union Builders and the signature of Mr. Chandha appears thereon and he knows the signature. (Ans. to ques. 17-27).

36. On 10.11.80 the said witness also affirmed another affidavit wherefrom it appears that Section 14(2) notice was also served upon both at the office of the G.M., S.E. Railway, and also the client M/s. Union Builders on 14.10.80. The service of the notice was done by him. It bears the seal, rubber stamp signature and date of the receiving section of the office of G.M., S.E. Railway and also of the client M/s. Union Builders. (Ans. to Q. 28-40).

37. Both the affidavit of service of Award Case Nos. 186/80 and 187/ 80 were tendered and marked as Ex. I and II. (Q.48-49).

38. He has also stated that he served notice under 14(2) at the office of G.M., S.E. Railway, at Garden Reach. He has stated that he served the notice at the receiving section, the receiving clerk put the stamp, seal, signature and receipt copy of the Section 14(2) notice. Nothing was recorded in the register in his presence. (Ans. to Q-69-73).

39. It has also been stated that he served the notice under Section 14(2) in Award Case No. 187/80 at the office of G.M., S.E. Railway. (Ans. to Q-74-77).

40. Mr. V.M. Chandha, partner of the respondent firm also gave evidence. He stated that Ram Krishna Pal was clerk of S.K. Guha. He has further stated that Section 14(2) notice was signed by him on behalf of the firm. The receipt of notice by S.E. Railway appears from the notice itself with stamp, signature and date. It has been served on 14.10.80.

41. He has also stated that he normally used to accompany the serving clerk. It has been further stated that the notice under Section 14(2) of Award Case No. 187/80 also been served in Ex. II and affidavit has been affirmed by R.K. Pal.

42. He has further stated that he accompanied R.K. Pal and the contents of the affidavit of R.K. Pal are absolutely correct.

43. Considering the facts on record as produced and the evidence adduced before me, I am of the view that the notice under Section 14(2) of the Arbitration Act was duly served. Accordingly the application for recalling the decree stands dismissed.

There will be no order as to costs.

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