

Rama Nand
v.
Kundan Lal
and others

Dua, J.

desirable that the Market Committees perform their duties and functions under the Act with reasonable promptitude and without undue delay, particularly where citizen's rights to carry on trade or profession are involved.

In view of the foregoing discussion and for the reasons contained therein, this appeal succeeds and allowing the same I set aside the order appealed against and dismiss the writ petition with costs.

Capoor, J.

S. B. CAPOOR, J.—I agree.

B.R.T.

REVISIONAL CIVIL

Before S. K. Kapur, J.

THE NATIONAL SMALL INDUSTRIES CORPORATION LTD.—
Petitioner

versus

RAUNQI RAM,—*Respondent*

C.R. 545—D of 1964

1965

January, 18th.

Arbitration Act (X of 1940)—S. 16— Court finding that the award was not intelligible— Whether justified in remitting it to the arbitrator—Arbitrator—Whether must decide all matters referred to him.

Held that, the Court, having come to the conclusion that the award was not intelligible and was liable to be set aside, was justified in remitting the same to the arbitrator under section 16(1)(a) of the Arbitration Act, 1940. The award of the arbitrator must be a final decision of all the matters requiring his determination and it is his duty to decide all matters referred to him. The arbitrators are not obliged to give any reasons for their decision but if the Court hearing the matter comes to the conclusion that the award is not intelligible by reason of omission on the part of the arbitrator to set out some steps in the process of coming to a conclusion, it would not be either illegal or even improper to send it back to him. Even when the award professes to determine all matters which, in truth, it does not, and if the Court comes to the conclusion that there has really been no determination by the award on some matters, section 16(1) (a) of the Arbitration Act would be satisfied.

Petition under Section 115 C.P.C., for revision of the order of Shri Shamsher Singh Kanwar, Sub-Judge, 1st Class, Delhi, dated the 12th October, 1964, dismissing the application.

ORDER

KAPUR, J.—This Civil Revision is directed against the judgment of Shri Shamsher Singh Kanwar, Subordinate Judge 1st Class, Delhi, dated October 12, 1964, on application under Section 14 of the Arbitration Act, 1940.

Kapur, J.

The parties entered into an agreement for some construction work to be carried out at Okhla Industrial Estate, New Delhi. The agreement contained an arbitration clause. Disputes arose between the parties and Raunqi Ram respondent made an application under section 20 of the Arbitration Act. The learned Subordinate Judge made an order on January, 25, 1963, referring the disputes to the sole arbitration of Shri Karam Chand, Divisional Engineer, Ministry of Transport and Communication, New Delhi. The Arbitrator made the award and filed the same in Court. Raunqi Ram respondent made an application praying that the award be made a rule of the Court and judgment pronounced in terms thereof. Petitioner filed objections to the award. The learned Subordinate Judge came to the conclusion that the award was not intelligible and therefore liable to be set aside. He remitted the award to the Arbitrator for reconsideration and making the same intelligible. It is necessary to discuss briefly the reasons which led the learned Subordinate Judge to a conclusion that the award was liable to be set aside. Raunqi Ram in his statement of claim filed before the Arbitrator claimed the following amounts:—

- (1) Rs. 37,756.21 nP. on account of the balance amount due for the work done out of the total amount of Rs. 81,588.60 nP. ;
- (2) Rs. 1,101.35 nP. as interest for withholding payment illegally up to March 31, 1962;
- (3) Rs. 33,800.00 as damages for foregoing secured work due to non-payment of first interim certificate payment; and
- (4) Rs. 60.60 nP. on account of E. C. Bags and supply of labour.

The National Small Industries Corporation in their reply filed before the Arbitrator claimed that nothing was due to Raunqi Ram. Number of documents were filed before the Arbitrator who also examined certain witnesses.

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The Arbitrator neither discussed the merits of each claim separately, nor the question of his jurisdiction to award the same. In the award he first set out the total claim made by Raunqi Ram respondent and then briefly gave the heads under which different items were claimed. The operative part is contained in paragraph 4 of the award which is as under:—

“The written statements have been filed by both the parties (contractor and the Corporation) and the connected records made available during the course of hearing were gone through by me. Having heard both the parties and having examined the evidence produced on record and having given due consideration thereto I hereby pass an award of Rs. 24,000 (Rupee twenty-four thousand only) in favour of the contractor.”

The learned Subordinate Judge was of the view that though the Arbitrator was not bound to give reasons, he must make an award which is intelligible. He then observed:—

“In the present case the petitioner claimed four distinct amounts under four separate headings. Each heading required different kind of evidence and each heading was governed by different provisions of law. The arbitrator without adverting to the evidence produced in the course of arbitration proceedings and without considering the legal position that arose out of these claims has awarded a total sum of Rs. 24,000. It is not clear at all as to how the arbitrator has arrived at this figure. The award is, therefore, liable to be set aside.

In this petition I am not concerned with the question whether the learned Subordinate Judge was right in coming to the conclusion that the award was liable to be set aside. The short question agitated by the learned counsel for the petitioner before me is that the learned Subordinate Judge was not right in remitting the award.

Mr. J. P. Chopra appearing for the petitioner contends that the award should have been set aside because (a)

Court can remit an award for reconsideration upon certain grounds specified in section 16 of the Arbitration Act but upon no others. According to Mr. J. P. Chopra the case does not fall within any of the grounds specified in section 16 and (b) the petitioner has made serious allegations against the Arbitrator and his application for removal of the Arbitrator is pending. In these circumstances the interest of justice required the award to be set aside and not remitted to the same Arbitrator.

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Mr. Som Nath Chopra for the respondent submits that the learned Subordinate Judge had held that the award was liable to be set aside because the arbitrator had not decided how he arrived at the figure of Rs. 24,000, though the claim was for four distinct amounts under four distinct heads. In these circumstances, submits Mr. S. N. Chopra, the case would fall under section 16(1)(a) of the Act. According to Mr. S. N. Chopra section 16(1)(c) of the Act would also be applicable. In my opinion, the Court having come to the conclusion that the award was not intelligible and was liable to be set aside, was justified in remitting the same to the Arbitrator. As I have said earlier, this petition is to be disposed of assuming the judgment of the trial Court to be correct to the extent that the award is not intelligible and cannot be made a rule of the Court. The reason given for the invalidity of the award is that the Arbitrator has not decided how much he is awarding under what head. The award of the Arbitrator must be a final decision on all the matters requiring his determination. It is the duty of an Arbitrator to decide all matters referred to him. If any matter is left undetermined in the award, the Court would be perfectly within its right to remit the award. Since according to the learned Subordinate Judge the Arbitrator should have decided as to how much he was awarding under which head, the matter does, in my opinion, fall squarely within section 16(1)(a) and the order remitting the award to determine the question is proper. The Arbitrators are not obliged to give any reasons for their decision, but if the Court hearing the matter comes to the conclusion that the award is not intelligible by reason of omission on the part of the Arbitrator to set out some steps in the process of coming to a conclusion, it would not, in my opinion, be either illegal or even improper to send it back. Even when the award professes to determine all matters which in truth it does not, and if the Court comes to the conclusion

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that there has really been no determination by the award on some matter, section 16(1) (a) of the Act would be satisfied.

I now come to the other contention of Mr. J. P. Chopra. He submits that the Court ought not to have remitted the award because (a) the Court had come to the conclusion that the award was liable to be set aside and (b) because of the serious allegations made against the Arbitrator. It is no doubt true that if a party moves the Court for setting aside an award and the Court comes to the conclusion that the award suffers from a defect which renders it liable to be set aside, the Court will not remit it for rectification of the defect, even where section 16 applied if the Court comes to the conclusion that the Arbitrator has been guilty of misconduct of such a kind as to disqualify him from acting or as to make it impossible for the Court to trust him. In such circumstances setting aside of an award may be a more appropriate remedy. Each case has to be judged on its own facts. In the present case, however, there is nothing to show on this record that the Arbitrator is prejudiced against any party or that he has been guilty of any misconduct. I do not intend to express any opinion as to the allegations of misconduct against the Arbitrator which, I am told, is subject-matter of a separate petition pending in the trial Court. That matter would, therefore, be more appropriately investigated by that Court. So far as the present petition is concerned there is nothing to justify the conclusion that the Court acted against any established principle in remitting the award to the same Arbitrator for removal of the defect. As a matter of fact it has been specifically observed in the judgment of the learned Subordinate Judge that the learned counsel for the respondent did not take up any other point during the arguments. It clearly shows that no contention was raised against the award being remitted to the same Arbitrator. Mr. J. P. Chopra then suggests that if the award is objected to by one party, the Arbitrator is bound to be prejudiced against such a party. I am afraid I cannot subscribe to this view, for adherence to such a course of action would mean that in no case can an award be sent back to the same Arbitrator when at the instance of one of the parties, Court finds that it suffers from some defect. If, on a motion to set aside an award, the Court comes to a conclusion that it suffers from any of the defects or infirmities men-

tioned in section 16 of the Arbitration Act, 1940, then unless remission of the same is likely to cause injustice to one of the parties it would not be expedient to render nugatory all the expenses incurred under the reference. Nothing has been shown in this case as to why the Court was not justified in trusting the Arbitrator.

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I next have to consider the submission of Mr. J. P. Chopra that the Court having come to the conclusion that the award deserves to be set aside was not justified in remitting the same to the Arbitrator. I do not agree. In substance what the trial Court holds is that because the award is not intelligible, it cannot be made a rule of the Court. It is only in cases where an award suffers from any infirmity specified in section 16 that the Court can exercise its discretion to remit the same. For example, if the Court is of the opinion that an award suffers from an error apparent on its face, the Court may either set it aside or in exercise of its discretion remit it for reconsideration by the Arbitrator. In the present case all that the learned Subordinate Judge held was that the Arbitrator had failed to decide as to how much was being awarded under which distinct head. In these circumstances the Court was perfectly justified in sending the award back to the Arbitrator. In the result the petition fails and is dismissed with costs.

B.R.T.

FULL BENCH

Before S. S. Dulat, A. N. Grover and H. R. Khanna, JJ.

GANGAGIR,—Appellant

versus

RASAL SINGH AND ANOTHER,—Respondents

Regular First Appeal No. 15 of 1957

Code of Civil Procedure (Act V of 1908)—S. 92—Suit under, filed in the Court of District Judge—District Judge assigning it for disposal to Additional District Judge—Such Additional District Judge—Whether competent to try and decide the suit—Punjab Courts Act (VI of 1918)—S. 21 and Patiala and East Punjab States Union Judicature Ordinance, 2005 Bk.—S. 76—Effect of.

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March, 3rd.