

Koch Navigation Inc vs Hindustan Petroleum Corpn. Ltd on 7 September, 1989

Equivalent citations: 1989 AIR 2198, 1989 SCR SUPL. (1) 70, AIR 1989 SUPREME COURT 2198, 1989 (4) SCC 259, (1989) 3 JT 631 (SC), (1990) 1 MAHLR 296

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, B.C. Ray

PETITIONER:
KOCH NAVIGATION INC.

Vs.

RESPONDENT:
HINDUSTAN PETROLEUM CORPN. LTD.

DATE OF JUDGMENT 07/09/1989

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RAY, B.C. (J)

CITATION:
1989 AIR 2198 1989 SCR Supl. (1) 70
1989 SCC (4) 259 JT 1989 (3) 631
1989 SCALE (2) 588

ACT:
Foreign Awards (Recognition and Enforcement) Act, 1961:
Enforcement of foreign award--Costs of reference--Entitlement to--Whether permissible.

HEADNOTE:

The appellant company had chartered their vessel to the respondent for carrying oil from Arabian Gulf to India under a charter party. Disputes and differences arose between the parties and the matter was referred to a single arbitrator in London, as stipulated in the charter party. The arbitrator awarded a certain sum to be paid by the respondent to the appellant, with interest. The arbitrator further awarded to the appellant the costs of the reference, which were to

be taxed in the event of disagreement. The respondent paid only the principal sum and failed and neglected to pay interest, the appellant's cost of reference to arbitration, and the cost of the award. The appellant filed an application under the Foreign Awards (Recognition & Enforcement) Act, 1961 in the High Court of Bombay. The learned Single Judge of the High Court directed the respondent to pay interest and costs of the award so awarded by the arbitrator and also cost of the petition. The learned Judge however rejected the appellant's prayer for the cost of reference to arbitration, and also rejected the applicant's prayer that in the alternative liberty should be reserved in respect of the said prayer. The appellant preferred an appeal before the Division Bench. During the pendency of this appeal the appellant's costs of reference to arbitration as awarded by the arbitrator were taxed and a taxation certificate was produced at the time of hearing of the appeal. The Division Bench held that at the time when the petition was filed, there had been no agreement upon or reference for taxing. of such costs, it appeared that the application to have the costs taxed was made only after the appeal was filed; and as such no order could be made directing the respondent to make payment to the appellant of the costs so taxed.

Before this Court it was urged on behalf of the respondent that there was no scope for addition to the award, and the award had to be executed as it was, and the costs of reference had not been awarded.

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Allowing the appeal, this Court,

HELD: (1) Foreign awards, as it manifests, are executable in this country under the provisions of the Foreign Awards (Recognition & Enforcement) Act, 1961. The Act was passed to give effect to the convention on the recognition and enforcement of foreign arbitrator's award. [74F]

(2) It is obvious that since the Act was calculated and designed to subserve the cause of facilitating international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration, any expression or phrase occurring therein should receive, consistent with its literal and grammatical sense, a liberal construction. [75B]

Renusagar Power Co. Ltd. v. General Electric Co. & Anr., [1985] 1 SCR 432, referred to.

(3) The Court agrees that the award must be executed as it is and there is no scope for any addition to any award. But the award to be executed must be properly construed and given effect to. If the award is ambiguous, the court has jurisdiction to determine what it means. [75C]

(4) In the instant case, the award is not ambiguous. The award, read properly, means, so far as costs of the reference are concerned, that it was an award upon certain conditions, i.e. the award stipulated that the costs of reference

will be paid. The costs of such reference were, however, directed to be determined either by agreement between the parties and in case there was no agreement or disagreement, to be taxed. [75E]

(5) Law, justice and equity in the facts and the circumstances of this case, enjoin that the appellant should have such costs. The appellant has taken all possible steps that could be taken in the situation contemplated by the award. The appellant has written for agreement about the costs of reference. The respondent did not agree. The appellant took steps to have the costs taxed in London, and the costs have been taxed. [75H; 76A]

(6) There is no evidence of the delay or laches on the part of the appellant, as such, which would disentitle the appellant to such costs. [75F]

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(7) Under the Act, if an application is filed for decree in terms of the award. the court in upholding the award ought to grant a decree in terms of the award and not subtract any portion thereof. Since the award directed costs of appellant's reference to be paid as is mutually agreed upon or as taxed, the Division Bench ought to have passed an order for costs as taxed. [76H; 77A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3838 of 1989.

From the Judgment and Order dated 12.10. 1987 of the Bombay High Court in Appeal No. 244 of 1983.

C.S. Vaidyanathan, S.R. Bhat and K.V. Mohan for the Appellant.

M.S. Ganesh for the Respondent.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. Special leave granted. This is an appeal from the judgment and order dated October 12, 1987 of the Division Bench of the High Court of Bombay. The appellant had chartered their vessel 'KRISTEL' to the respondent for carrying oil from Arabian Gulf to India under a charter party, dated 30th November, 1979. Clause 40(a) of the charter party provided that the charter shall be construed and the relations between the parties shall be determined in accordance with the English Law. Clause 40(b) of the charter party provided that any dispute arising under the charter party shall be decided by the English Courts but that either party may elect, in writing, to have the dispute referred to the arbitration of a single arbitrator in London in accordance with the (English) Arbitration Act, 1950. , Disputes and differences arose between the parties, and they appointed one Mr. Robert William Reed of the Baltic Exchange and of 28, Reddons Road, Beckenham, Kent BR 3 ILZ to be the sole arbitrator. The parties appeared before the arbitrator represented by their respective Solicitors and counsel. The arbitrator

made his award on 28th July, 1982 which contained, inter alia, as follows:

"I AWARD AND ADJUDGE that the Charterers do forthwith pay the Owners the sum of U.S. \$ 291,822.00 (United States Dollars two hundred and ninetyone thousand eight hundred and twenty-two only) together with interest at the rate of 15 per cent per annum as from 20th June, 1980, to the date of this my Final Award in full and final settlement of the matters at issue in the Reference.

I FURTHER AWARD AND ADJUDGE that the Charter- ers do bear and pay their own and the Owners' costs of the Reference (the latter to be taxed in the event of disagreement) and that the Charterers do bear and pay the cost of this my Final Award which I hereby tax and settle at E4,684 including my disbursements. Provided always that if in the first instance the Owners shall have paid the said cost of this my Award, then they shall be entitled to an immediate refund from the Charterers of the sum so paid."

As mentioned hereinbefore, the arbitrator awarded the cost of reference to be taxed in the event of disagreement. The respondent paid only the principal sum and failed and neglected to pay any interest on it and the appellant's cost of reference to arbitration and the cost of the award. Pursuant to section 20 of the English Arbitration Act, 1950 a sum directed to be paid by the award shall carry interest as from the date of the award at the same rate as the judgment date. It appears that from 8th June, 1982 the interest rate on judgment debt in England was 14% per annum. The award is enforceable under the Foreign Awards (Recognition & Enforcement) Act, 1961 (hereinafter called 'the Act'). The appellant filed an application under the Act in the High Court of Bombay, inter alia, contending for the judgment be pronounced and a decree to be passed according to the award in favour of the appellant. The learned Single Judge of the High Court by his judgment and order dated 21st February, 1983 decreed in favour of the appellant and directed the respondent to pay interest and costs of the award so awarded by the arbitrator and also cost of the petition. The learned Judge, however, rejected the appellant's prayer for the cost of reference to arbitration, and also rejected the applicant's prayer that in the alternative liberty should be reserved in respect of the said prayer. The said prayer was made orally but was refused by the learned Single Judge because as he observed that he saw no reason to reserve such liberty, as the appellant had not taken any steps.

Aggrieved by the said judgment and order dated 21st February, 1983 the appellant preferred an appeal before the Division Bench of the High Court. During the pendency of the said appeal in the High Court the appellant's costs of reference to arbitration as awarded by the arbitrator were taxed because of the failure of the parties to agree and the taxed amount was Pound 10,901.45 by the Taxing Master of the Supreme Court of Judicature, England. A taxation certificate dated 19th December, 1984 was issued and the same was produced at the time of hearing of the appeal before the Division Bench. Before the Division Bench, cross-objections had been filed on behalf of the respondent. By judgment dated 12th October, 1987, the Division Bench of the High Court dismissed the respondent's cross-objections, and held that the only point related to the refusal of the learned Single Judge to grant liberty to the appellant to file a separate petition upon the costs of the reference to arbitration being quantified. The Division Bench held that at the time when the petition

was filed, there had been no agreement upon or reference for taxing of such costs, and as such it appears that the application to have the costs taxed was made only after the appeal was filed. No order could be made directing the respondent to make payment to the appellant of the costs so taxed. The Division Bench held that if the appellant was entitled to file a fresh petition for such costs, it might adopt such proceedings.

Aggrieved thereby, the appellant has come up before this Court. We are unable to uphold the views of the Division Bench of the Bombay High Court that no order could have been made by the Division Bench directing the respondent to make payment to the appellant's costs so taxed. Foreign awards, as it manifests, are executable in this country under the provisions of the Act. The Act in question was passed to give effect to the convention on the recognition and enforcement of foreign arbitrator's award. Section 6 of the Act is as follows:

"Enforcement of Foreign Award: (1) Where the Court is satisfied that the Foreign award is enforceable under this Act, the court shall order the award to be filed and shall proceed to pronounce judgment according to the award. (2) Upon the judgment so pronounced, a decree shall follow and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award."

Thus foreign award is enforceable in India. In such a case the Court is obliged to direct that the award be filed and proceed to pronounce judgment according to the award. And upon the judgment so pronounced a decree shall follow. This Court had occasion to examine the purpose and terms of the Act in *Renusagar Power Co. Ltd. v. General Electric Co. & Anr.*, [1985] 1 SCR 432. This Court held referring to the objects that the Act seeks to achieve speedy settlement of disputes arising from international trade through arbitration. The Act was enacted to give effect to the New York International Convention on the Recognition and Enforcement of Foreign Awards to which India was a party. This Court noted that it is obvious that since the Act was calculated and designed to subserve the cause of facilitating international trade and promotion thereof by providing for speedy settlement of disputes arising in such trade through arbitration, any expression or phrase occurring therein should receive, consistent with its literal and grammatical sense, a liberal construction.

The judgment has been pronounced in terms of the afore-said and a decree has followed. The award enjoins, inter alia, "that the Chatterers do pay and bear their own costs and the owner's costs of reference (the latter to be taxed in the event of disagreement). The judgment and decree which was pronounced in terms of the award did not direct any cost taxed or quantified of the reference to be paid. Indubitably, the costs of reference have been awarded. The award, read properly, means, so far as costs of the reference are concerned, that it was an award upon certain conditions, i.e., the award stipulated that the costs of reference will be paid. The costs of such reference were, however, directed to be determined either by agreement between the parties and in case there was no agreement or disagreement, to be taxed. The parties have not been able to agree. It appears from the averments made in the pleadings before the High Court, there was no agreement as to the costs, and the steps were taken after the appeal was filed before the Division Bench to have the costs taxed. But there is no evidence of any delay or laches on the part of the appellant, as such, which would

disentitle the appellant to such costs. In that view of the matter this award can legitimately be considered as an award directing payment of costs upon the condition that these will be taxed on the failure of agreement or disagreement between the parties. The parties have failed to agree. The costs have been taxed and certified. There is no dispute as to the costs taxed or certified.

We are of the opinion that law, justice and equity in the facts and the circumstances of this case, enjoin that the appellant should have such costs. The appellant has taken all possible steps that could be taken in the situation contemplated by the award. The appellant has written for agreement about the costs of reference. The respondent did not agree. The appellant took steps to have the costs taxed in London, and the costs have been taxed.

On behalf of the respondent, several contentions were urged mainly on the ground that there is no scope for addition to the award and the award had to be executed as it was and the costs of reference had not been awarded. We are in agreement with Mr. Ganesh that the award must be executed as it is and there is no scope for any addition to any award in executing a foreign award but the award to be executed must be properly construed and given effect to. If the award is ambiguous, the court has jurisdiction to determine what it means. In this case, the award is not ambiguous. It is clear that the costs of reference should be paid by the respondent, and that such costs should be paid as are determined by agreement between the parties and in case of failure of the agreement by the taxation, such costs have been taxed and were placed before the Division Bench before it pronounced its judgment. Our attention was drawn to the decision in *Re Becker Shillan & Co. and Barry Bros.*, [1920] All E.R. 644, where it was held that where an umpire in making his award dealt with the costs of the award including the expenses of the hire of the room for the arbitration and shorthand notes, but made no order as to the general costs of the parties to the reference, the court would not presume that he has exercised his discretion to make no order as to costs or that he has left them to be borne by the parties who incurred them, but will conclude that the question of costs has not been dealt with at all and, therefore, should remit the award to him for reconsideration.

In our opinion, the said decision has no application to the facts of this case. The instant appeal before us is not a case where the award has not dealt with the costs of reference, rather it has specifically dealt with the same. It has categorically provided that cost of reference is to be paid by the respondent. The award has stated that such cost should be agreed between the parties and in case there was no agreement, cost should be taxed. The award is clear and unambiguous and does not leave this question undecided. In the circumstances, there is no scope of remission of this award or not enforcing what the arbitrator has awarded. Under the Act, if an application is filed for decree in terms of the award, the court in upholding the award ought to grant a decree in terms of the award and not substract any portion thereof. Since the award directed costs of appellant's reference to be paid as is mutually agreed upon or as taxed, the Division Bench ought to have passed an order for costs as taxed.

We, therefore, direct that the award to be enforced and the costs as mentioned hereinbefore should also be payable by the respondent. The judgment and order of the High Court are modified to that extent. In the facts and the circumstances of the case, we do not make any order as to costs of this appeal.

R.S.S.
allowed.

Appeal