Gujarat High Court
Union vs Indus on 20 July, 2010
Bench: M.D. Shah

FA/2186/1996 4/ 6 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST
APPEAL No. 2186 of 1996

For
Approval and Signature:

HONOURABLE
MR.JUSTICE MD SHAH

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1

Whether Reporters of Local Papers may be allowed to see the judgment ?

2

To be referred to the Reporter or not ?

3

Whether their Lordships wish to see the fair copy of the judgment ?

4

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether it is to be circulated to the civil judge ?

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UNION
OF INDIA THROUGH EXECUTIVE ENGINEER - Appellant(s)

Versus

INDUS
ENGINEERING & CONSTR. CO.THROUGH PARTNER & 1 - Defendant(s)

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Appearance
:
MS
PJ DAVAWALA for
Appellant(s) : 1,
MR NM DASTANE for Defendant(s) : 1,
MRS NISHA
M PARIKH for Defendant(s) : 1,
MR PURVISH J MALKAN for
Defendant(s) : 1,
MS MANISHA LAVKUMAR for Defendant(s) :
2,
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CORAM
:

HONOURABLE
MR.JUSTICE MD SHAH

Date
: 20/07/2010

ORAL
JUDGMENT

This appeal is filed against the judgment and decree dated 30.4.1996 passed by the City Civil Court, Ahmedabad in Civil Miscellaneous Application No.518 of 1993 whereby the award dated 17.8.1993 made by the Arbitrator Shri J.Pal in arbitration proceedings between the claimant and respondent is made Rule of the Court, subject to the correction that the figure 25% appearing in the sixteen sentence on page five of the award, be read as 50% .

The facts of the case are such that the disputes between the parties were resolved by the Arbitrator on 17.8.1993. Thereafter, the original claimant filed an application for directing the Arbitrator to file the award dated 17.8.1993 along with the full records pertaining to the arbitration and upon filing the same, for proceeding as per Sections 16,17 and 30 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as the Arbitration Act for short). On the notices having been served upon the parties in the said application, learned Arbitrator along with the letter dated 3.9.1993 filed the award and the documents under Section 14 of the Arbitration Act. The same has been registered as Civil Miscellaneous Application No.518 of 1993. The original respondent filed objections to the said award and one of the objections was that the Arbitrator had committed serious arithmetical error in computing the quantum of the award pertaining to the claims no.1,2,3 and 6. The original claimant requested the Arbitrator by letter dated 14.10.1993 to correct the said mistake under Section 13(d) of the said Act and to send the original correction on stamp paper to the City Civil Court in Civil Miscellaneous Application No.518 of 1993. The Arbitrator, thereafter, corrected the figure 25% appearing in the sentence at page five of the award as 50% under Section 13(d) of the Act and sent the original correction on the stamp paper of Rs.100/- along with the letter dated 20.10.1993 addressed to the City Civil Court. Thereafter, the original claimant made application Exh.6 in Civil Miscellaneous Application No.518 of 1993 and prayed to make the corrected award rule of the Court. The original respondent raised objections against the said correction made by the Arbitrator in the original award under Section 13(d) of the Act without affording it any opportunity of hearing and requested the court to set aside the said correction in the award made and published on 21.10.1993.

The learned trial Court, after discussing the evidence and after hearing learned advocates for the parties, passed the order as stated above which is challenged in this appeal by the original respondent.

Heard the learned advocates for the parties and perused the judgment of the learned trial Court.

Learned advocate Ms.Davawala appearing for the appellant-original respondent submitted that the Arbitrator had no authority to make any correction in the award under Section 13 of the Act, when the award was already filed in the Court and the validity of the same was already challenged by the respondent in the Court and even then the learned trial Court accepted the same and corrected the award which is not permitted under the law and therefore the learned trial Court has committed an error and the order passed by the learned trial Court is required to be quashed and set aside. Ms.Davawala further submitted that there are no reasons assigned by the Arbitrator for reducing loss on the basis of 50% of the full strength overhead cost for first 24 months and so also it cannot be said that 25% mentioned by the Arbitrator is typographical error and therefore also the order passed by the learned trial Court is bad in law.

Learned advocate Ms.Parikh appearing for the respondent-original claimant submitted that prima facie it seems that 25% mentioned in the award is typographical mistake because the total calculation was carried out by the Arbitrator on the basis of 50% and reasons are also assigned for that and so the learned trial Court has rightly passed the order which is not required to be interfered with by this Court. Learned advocate Ms.Parikh also argued that when reasoned award is passed by the Arbitrator and is confirmed by the learned City Civil Court, this Court has very limited power to interfere with the award and can interfere only when prima facie it is found that any error in law is committed by the learned trial Court.

At this stage, it is pertinent to make reference to Section 16 of the Arbitration Act which reads as under.

Section 16 :

The Court may remit the award or any matter referred to the arbitration to the Arbitrator or umpire for reconsideration, if the case falls under any of the three situations namely :

(a)Where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of the matters referred; or

(b) Where the award is so indefinite as to be incapable of execution; or

(c)Where an objection to the legality of the award is apparent upon the face of it.

The learned trial Court, after considering this provision, rightly held that the Arbitrator has not left the award undetermined nor the award could be said to be so indefinite as to be incapable of execution and so it cannot be remitted to the Arbitrator.

Further, the Arbitrator calculated the average overhead expenses per month for normal working within stipulated time to the extent of Rs.14,267.68 ps. The said overhead expenses has been further reduced to the extent of 75%,50% and 10% on the full strength overhead costs, for the period of 22 months, 24 months and 4 months respectively. The Arbitrator has further made the calculation on the basis of 50% of the full strength overhead cost for first 24 months of the period from 20.1.1985 to 12.6.1987 and assigned the reasons for the same but figure 25% is wrongly mentioned which is just typographical mistake. Therefore, the learned trial Judge, considering the provision of Section 15 of the Act which does not contemplate any formal application from the party and the Court can by order correct an award which contains any obvious error or a clerical mistake or an error arising from an accidental slip or omission, rightly held that the mention of 25% is just an accidental slip and typographical error which does not ultimately change the substance in the award and corrected the same and made the award of the Arbitrator Rule of Court.

Considering the above factual situation and the provisions of the Arbitration Act, I am of the opinion that the appellant failed to show any illegality or perverseness in the order passed by the learned

trial Court and therefore this appeal deserves to be dismissed and is accordingly dismissed.

(M.D.Shah, J) ssrilatha