

Supreme Court of India

Hindustan Construction Company ... vs Union Of India on 12 October, 1966

Equivalent citations: 1967 AIR 526, 1967 SCR (1) 543

Author: K Wanchoo

Bench: Wanchoo, K.N.

PETITIONER:

HINDUSTAN CONSTRUCTION COMPANY LTD.

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT:

12/10/1966

BENCH:

WANCHOO, K.N.

BENCH:

WANCHOO, K.N.

MITTER, G.K.

CITATION:

1967 AIR 526

1967 SCR (1) 543

ACT:

Indian Arbitration Act (10 of 1940), s. 14(2)-Award-Copy of award required to be filed in Court-Umpire certifying copy of award to be a true copy and then signing award-Such copy whether a 'signed copy' within meaning of section-Sign, meaning of.

HEADNOTE:

The appellant entered into a contract with the, Union of India for the construction of certain railway bridges. On disputes arising the matter went to arbitration and then to an umpire. After the umpire had made his award the appellant filed an application under s. 14 of the Indian Arbitration Act 1940, praying that the umpire be directed to file the award or a signed Copy thereof in the terms of s. 14(2). The umpire filed in the Court a copy at the top of which he wrote : "now I hereby reproduce a true copy of the said award which is as follows." At the end of the copy of the award he wrote : "Certified as correct copy of the award dated 27th May 1961." Under this the umpire's signature appeared. It was objected by the Union of India before the court that the copy of the award so filed was not a "signed copy" of the award as required by s. 14(2) but only a "certified copy". The objection was upheld by the court and

the appellants application for passing -a judgment in terms of the award was dismissed. A revision petition before the High Court failed. The appellant then came to this Court by special leave.

HELD : When a document is an accurate or true, and full reproduction of the original it would be a copy. In the present case what was produced by the umpire was a true accurate and full reproduction of the original. It was therefore a copy of the original. [845 H]

It was also a signed copy because it bore the signature of the umpire. A document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of an instrument is, or in what part of it the signature occurs. The fact that the umpire wrote the words "certified as correct copy of the award dated the 27th May 1961" above his signature did not make any difference and the document was still a signed copy of the award. If anything these words showed that the document filed was a true copy of the award. [846 D, H; 847 A-B]

Mohesh Lal v. Busunt Kumaree, I.L.R. (1881) VI Cal. 340, relied on.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1109 of 1966. Appeal by special leave from the judgment and order dated December 17, 1964 of the Punjab High Court (Circuit Bench) at Delhi in Civil Revision No. 159-D of 1963. M. C. Setalvad, Veda Vyasa and K. K. Jain. for the appellants.

S. G. Patwardhan, K. L. Hathi and R. H. Dhebar, for the respondent.

The Judgment of the Court was delivered by Wanchoo, J. This is an appeal by special leave against the judgment of the Punjab High Court and arises in the following circumstances. The appellant entered into a contract with the Union of India, respondent herein, for construction of certain highway bridges. In connection with the execution of the contract, some disputes arose between the parties and were referred to the joint arbitration of Sri B. K. Guha and Sri N. P. Gurjar. As there was difference of opinion between the two arbitrators, the matter was referred to an umpire, namely, Sri Dildar Hussain, retired Chief Engineer, Hyderabad. The umpire recorded evidence of the parties and gave his award on May 27, 1961. It appears that the award was made in duplicate and one copy was sent to each party. On August 4, 1961, the appellant made a petition before the Subordinate Judge First Class, Delhi under ss. 14 and 17 of the Arbitration Act, No. 10 of 1940, (hereinafter referred to as the Act). it was prayed that the umpire be directed by the court to cause the award or a signed copy thereof together with any depositions and documents which might have been taken and proved before him to be filed in court (s. 14). It was further prayed that a judgment be passed in terms of the award (s. 17). It appears that on this petition the court issued notice to the umpire to file the award and the arbitration proceedings. On September 13, 1961, the umpire wrote to the court that he was forwarding along with that letter the award in the case duly signed and certified by him.

On November 1, 1961, an objection was taken on behalf of the respondent that the award said to have been filed by the umpire had not been validly and legally filed under s. 14 and as such no proceedings in pursuance of the said filing could be taken in court.

This objection was considered as a preliminary objection by the Subordinate Judge. He came to the conclusion that the document filed in court was neither the original award nor a signed copy thereof, and as such the court could not take any action on that document. He therefore allowed the objection and dismissed the application under s. 17 for passing a judgment in terms of the award. The appellant then went in revision to the High Court. The High Court dismissed the revision application holding that the document filed in court was admittedly not the original award and that it was clear from a perusal of the document itself that it was not a signed copy thereof. Certain alternative arguments were submitted to the High Court which were rejected and the revision application thus failed. Thereupon the appellant obtained special leave, and that is how the matter has come up before us.

The main question that has been argued on behalf of the appellant is that the document in question is a signed copy of the award within the meaning of those words in s. 14(2) and therefore further proceedings should have been taken under s. 17 of the Act. Now the relevant part of s. 14 (2) reads thus :

"(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the court.... cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in court....."

Therefore when a notice is issued by a court to the arbitrators or umpire it is their duty to file in court either the award in original or a signed copy thereof as directed by the court. It is not in dispute that in the present case the original award has not been filed. The dispute is whether the document filed is a signed copy of the award. The main contention on behalf of the appellant is that the document is a signed copy of the award within the meaning of those words in s. 14(2), and thus should have been acted upon by the court. On the other hand, it is contended on behalf of the respondent that what has been filed is a certified copy of the award and not a signed copy thereof, and therefore it cannot be acted upon. The High Court has accepted the contention of the respondent and all that it has said in that behalf is that it is clear from a perusal of the award that it is not a signed copy of the award but it is certified as correct copy of the award dated the 27th May, 1961. Unfortunately, the High Court has not considered what exactly the words "signed copy of the award" mean, and it is to this problem that we must now turn. Now the word "copy" as such is not defined in the Indian Evidence Act, of 1872. But we get an idea of what a copy is from the provisions of s. 63 of the Evidence Act. That section inter alia defines what secondary evidence means and includes namely--(i) certified copies as provided, in s. 76 of the Evidence Act, (ii) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies, and (iii) copies made from or compared with the original. Obviously, therefore a copy means a document prepared from the original which is an accurate or true copy of the original. In Webster's New World Dictionary, the word "copy" means "a thing made

just like another ; full reproduction or transcription". What the word "copy" in s. 14(2) therefore requires is that it must be a full reproduction of the original and that it should be accurate or true. When a document is an accurate or true and full reproduction of the original it would be a copy. In the present case it is not in dispute that what was produced by Sri Dildar Hussain was a true or accurate and full reproduction of the original. It was therefore a copy of the original, and the only question that remains is whether it was signed, for if it was signed, it would be a signed copy.

This brings us to the meaning of the word "sign" as used in the expression "signed copy". In Webster's New World Dictionary, the word "sign" means "to write one's name on, as in acknowledging authorship, authorising action etc." To write one's name is signature. Section 3(56) of the General Clauses Act, No. 10 of 1897, has not defined the word "sign" but has extended its meaning with reference to a person who is unable to write his name to include "mark" with its grammatical variations and cognate expressions. This provision indicates that signing means writing one's name on some document or paper. In *Mohesh Lal v. Busunt Kumaree*(1), a question arose as to what "signature" meant in connection with s. 20 of the Limitation Act, No. IX of 1871. It was observed that "where a party to a contract signs his name in any part of it in such a way as to acknowledge that he is the party contracting, that is a sufficient signature". It was further observed that the document must be signed in such a way as to make it appear that the person signing it is the author of it, and if that appears it does not matter what the form of the instrument is, or in what part of it the signature occurs. or?, We accept these observations and are of the opinion that so long as there is the signature of the arbitrator or umpire on the copy of the award filed in court and it shows that the person signing authenticated the accuracy or correctness of the copy of the document would be a signed copy of the award. It would in such circumstances be immaterial whether the arbitrator or umpire put down the words "certified to be true copy" before signing the copy of the award. If anything, the addition of these words (namely, certified to be true copy) would be the clearest indication of the authentication of the copy as a true copy of the award, which is what s. 14(2) requires, so long as the authentication is under the signature of the arbitrator or the umpire himself. In the present case, the document was sent by the umpire along with a letter forwarding it to the court. In the letter it was stated that he was sending the award only signed and certified by him. Then turning to the document we find that it begins with the words "now I hereby reproduce a true copy of the said award which is as follows" and this is signed by Sri Dildar Hussain, the umpire. Then follows the copy of the award, at the end we find the words "certified as correct copy of the award dated the 27th May, 1961 ". Underneath appears the signature of Sri Dildar Hussain, the umpire. Clearly therefore the document filed is a true or accurate and full reproduction of the original award and it bears the signature of the umpire, Sri Dildar Hussain, and thus is a signed copy of the award. (1)(1881)1.L.R.6Cal.340.

The fact that the umpire wrote the words "certified as correct copy of the award dated the 27th May, 1961" above his signatures does not in our opinion make any difference and the document it still a signed copy of the award. If anything, these words show that document filed is a true copy of the award and as it bears the signature of the umpire, it is a signed copy thereof. It may be added that the words "now I hereby reproduce a true copy of the said award which is as follows" which appear at the beginning of the document and which are signed by the umpire Sri Dildar Hussain also in our opinion are sufficient to show that what was produced in court was a signed copy of the award as

required by s. 14(2).

In this view of the matter, it is unnecessary to consider the alternative argument raised on behalf of the appellant. We therefore allow the appeal and set aside the orders of the courts below and, holding that a signed copy of the award has been filed as required by s. 14(2), direct that further proceedings will be taken in the matter as required by law by the Subordinate Judge in whose court the signed copy of the award was filed. Costs of this Court will abide the final result.

G.C.

Appeal allowed