

* IN THE HIGH COURT OF DELHI

+ CM (M) No. 292 OF 2004

Reserved On : 04.09.2006

% Date of Decision : 13.09.2006

RAM KISHAN GARG, ADVOCATE PETITIONER
Through : In Person.

- V E R S U S -

VASUDEV PRASHAD RUSTAGI & CO. RESPONDENT
Through : Mr. Sunil Ahuja,
Advocate.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J.

1. The petitioner, though professing to be an Advocate, has been dealing with shares and securities with the respondent as a non-member of the Delhi Stock Exchange (hereinafter to be referred to as, 'the Stock Exchange'). The disputes relating to transactions of certain shares resulted in the claim for reference of the same to arbitration in terms of Bye-Law 247 of the Stock Exchange, which deals with the disputes between a

member and non-member in relation to such transactions.

2. The arbitration by two Arbitrators is envisaged in Bye-Law 248(a) and the respondent nominated Shri L.R. Munjal, Member of the Stock Exchange as an Arbitrator and also made the claim. The same were forwarded to the petitioner to appoint his Arbitrator, but the petitioner failed to do so. This was despite a letter dated 10.03.1993 that his failure to appoint an Arbitrator would result in the Stock Exchange appointing an Arbitrator in its place. Shri M.K. Aggarwal was, thus, appointed as the second Arbitrator and this resulted in the Award dated 01.11.1994 for a sum of Rs.64,144/- along with interest against the petitioner. A copy of the Award was stated to be sent to the petitioner on 02.11.1994 and the Arbitrators filed an application under Section 14(2) of the Arbitration Act, 1940 (hereinafter to be referred to as, 'the said Act') and Bye-Law 258 of the Stock Exchange. The petitioner made his first appearance in Court on 01.10.1997 and at his request, the matter was adjourned to 29.11.1997. The objections to the Award were filed by the petitioner only on 11.09.1998. The Award was made a Rule of the Court in terms of the judgment of the

learned Civil Judge dated 17.04.1999 and the appeal filed against the same was dismissed by the learned Additional District Judge vide order dated 05.02.2004. The petitioner has invoked the jurisdiction of this Court now under Article 227 of the Constitution of India challenging the order dated 05.02.2004.

3. Learned Civil Judge found that the objections filed by the petitioner were in the form of a reply and even if they were considered, they were way beyond time. No prayer had been made for condonation of delay nor was any ground made out therefor. After the petitioner had appeared on 01.10.1997, the objections were filed on 11.09.1998, i.e., almost more than 11 months later. The petitioner sought to make out a case that he has not originally received the Award and that the copy received was not legible and it is only when he received the legible copy, the Court had granted him further time to file objections. This plea was negated by the trial court on the ground that nothing could be found out from the record that any such time-period had been extended by the Court.
4. The plea of the petitioner of there being any absence of agreement for reference of disputes to arbitration was

also found to be without any merits. In this behalf, reference was made to Bye-Law 247 of the Stock Exchange which provided for such arbitration and it was found that when the petitioner entered into dealing / transaction with the Members of the Stock Exchange, the same would be bound and governed by the Bye-Laws made by the Competent Authority. The Civil Judge found that it could not accept the plea of the petitioner that no notice of making of the Award was given to the petitioner.

5. The first appellate court also considered the pleas of the petitioner and once again on the basis of record, it was found that the explanation furnished by the petitioner of the absence of any legible copy and, thus, the petitioner having the right to file objections on 01.11.1998 was frivolous and not borne out from the record. There was further no denial on the record with regard to receipt of the copy of the Award sent in pursuance to the letter dated 02.11.1994.
6. The appellate court referred to the judgment of the Apex Court in Banwari Lal Kotiya v. P.C. Aggarwal, AIR 1985 SC 1003 for carving out a distinction between a bare agreement providing for reference to arbitration and an

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agreement where the party can straightway approach the Arbitrator for redressal of the disputes. The case was also one where the dispute was referred to arbitration in view of the Bye-Laws of the Stock Exchange and after going through the Bye-Laws, it was found that the arbitration agreement was one as envisaged under Section 2(a) of the said Act. This would imply that the acceptance of the parties to actual reference is already present apart from there being a statutory reference. The petitioner had failed to produce the material before the Arbitrators despite opportunities and, thus, had failed to substantiate the case of any absence of a contract.

7. The petitioner appearing in person once again sought to raise the same pleas before this Court. It is trite to say that this Court in exercise of jurisdiction under Article 227 of the Constitution of India does not act as appellate court. The jurisdiction of this Court is vested to correct a patent error or erroneous exercise of jurisdiction. In the present case, the petitioner had the first round before the Arbitrators, thereafter the right to file objections before the Civil Judge and appeal before the first appellate court and then has filed the present petition.

There have been, thus, three tiers of scrutiny already, which have taken place. There cannot be an indefinite number of tiers of scrutiny.

8. The petitioner has not been able to point out any patent error or erroneous exercise of jurisdiction by the courts below. The petitioner failed to participate in the arbitration proceedings. It was for the petitioner to put forth the defence in respect of the contract notes or any other factual matrix before the Arbitrators. The Court while dealing with objections of an Award also has a limited jurisdiction and, in fact, does not act as an appellate court. Even in those proceedings, the petitioner seems to have defended himself in a callous manner by appearing in Court on 11.10.1997 and thereafter not filing the objections till 10.09.1998 and that too in the form of a reply. The petitioner professes to be an Advocate and is, thus, well versed in legal proceedings. At this stage, once again, an enquiry cannot take place into how the petitioner was served in pursuance to the notice sent on 02.11.1994 in respect of the Award. The petitioner, in any case, had entered appearance on 01.10.1997. The present case is one relating to the transactions by the petitioner in the Stock

Exchange and the regulations of the Stock Exchange themselves provide for settlement of disputes through the mode of arbitration. It is in these circumstances that the appellate court has rightly held that the transaction in question would be governed by the arbitration in view of the observations of the Apex Court in Banwari Lal Kotiya's case (supra).

9. Learned counsel for the respondent further points out that the endeavour of the petitioner to get the Award declared null and void by filing Suit No. 430/1994 also failed as the said suit was dismissed on 30.02.1995. This suit was filed after the Award dated 01.11.1994 and the respondent's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 succeeded.
10. In view of the aforesaid, I find no merits in the petition.
11. Dismissed.

September 13, 2006
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SANJAY KISHAN KAUL, J.

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