STATE OF U.P. A

v.

ALLIED CONSTRUCTIONS

JULY 31, 2003

[V.N. KHARE, CJ., K.G. BALAKRISHNAN AND S.B. SINHA, JJ.] B

Arbitration Act, 1940: Arbitration—Force majeure clause of agreement—Contract between the parties for construction of a bridge-cum-fall—Work partly done by contractor destroyed by flood—Claim by contractor for loss sustained—Matter referred to arbitrator who made an award in favour of C *contractor—Plea of State Government to invoke force majeure clause of agreement rejected—Held, a perusal of relevant clause of the agreement shows that it protected the State from liability and damage occasioned by unprecedented flood which could not have been foreseen or avoided as a prudent person—No evidence was led before the arbitrator to show that the* D *rain as a result of which the loss was sustained by the respondent was unprecedented and in fact it was an act of God—A fact to this effect has been recorded by the arbitrator as well as the High Court and, therefore, both came to the conclusion that force majeure clause of the agreement was not attracted—Contract—Force majeure clause in the agreement—Applicability of.* E

Award by arbitrator—Setting aside of—Held, award made by an arbitrator can be set aside only if one or the other term specified in sections 30 and 33 of the Act is attracted—The arbitrator is a judge chosen by the parties and his decision is final—Court is precluded from reappraising the F *evidence—Once it is found that the view of the arbitrator is a plausible one, court will refrain itself from interfering—On facts, it is not a case wherein it can be said that the arbitrator has misconducted the proceedings—Interpretation of a contract is a matter for arbitrator to determine—It was within his jurisdiction to interpret the force majeure clause of the agreement having regard to the fact situation obtaining therein—The award is a speaking* G *one—The arbitrator has assigned sufficient and cogent reasons in support thereof.*

M/s. Sudarsan Trading Co. **v.** *The Government of Kerala,* **AIR (1989) SC 890;** *U.P. State Electricity Board* **v.** *Searsole Chemicals Ltd.,* **[2001] 3** H

A **SCC 397;** *ISPAT Engineering & Foundry Works, B.S. City, Bokaro* **v.** *Steel Authority of India Ltd. B.S., City, Bokaro,* **[2001] 6 SCC 347, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14152 of 1996.

B From the Judgment and Order dated 18.12.1995 of the Allahabad High Court in F.A.O. No. 715 of 1994.

Ravi Prakash Mehrotra and Garvesh Kabra for the Appellant.

Uday Umesh Lalit for the Respondent.

C

The following Order of the Court was delivered :

Under a contract entered into by and between the appellant and the respondent, the respondent undertook construction of bridge-cum-fall at Munda Khera Scape at the estimated cost of Rs. 37.2 lakhs. While the work was in D progress, the work area was flooded in the night of August 25 and 26, 1991.

The respondent-contractor herein filed a claim on account of loss sustained by him due to flooding of the work area. Ultimately, the matter was referred to an arbitrator. The arbitrator gave an award for payment of a sum of Rs. 12,55,365 together with interest at the rate of 18 per cent from 1.11.1991 E till the date of the award and 6 per cent thereafter. The respondent filed the award for being made rule of the Court. The appellant herein filed a petition, *inter alia*, on the ground that the arbitrator has misconducted the proceedings, inasmuch as the *force majeure* contained in Clause 47 disentitled the respondent from making any claim which was on account of unprecedented F rain. The said objection was rejected and the award was made rule of the Court. The appellant thereafter filed a first appeal from order before the High Court and the same was dismissed. It is against the said judgment, the appellant is in appeal before us.

Learned counsel appearing for the appellant reiterated his argument G raised before the High Court. In fact, his argument based on *force majeure* is that because of unprecendented rain the liability of loss cannot be thrust upon the appellant. We do not find any merit in this contention. Clause 47 of the Agreement runs as under:

"Neither party shall be liable to the other for any loss or damage H occasioned by or arising out of act of God, such as unprecedented

flood, volcanic eruption, earthquake or other convulsion of nature and other acts such as but not restricted to general strikes, invasion, the act of foreign countries; hostilities or warlike operations before or after declaration of war; rebellion, military or usurped power which prevent performance of the contract and which could not have been foreseen or avoided by a prudent person." A B

A perusal of Clause 47 reproduced above shows that it protected the State from liability and damage occasioned by unprecedented flood which could not have been foreseen or avoided as a prudent person. The appellant herein did not lead any evidence before the arbitrator that the rain as a result of which the loss was sustained by the respondent was unprecedented and in fact it was an act of God. In absence of such an evidence, the arbitrator as well as the High Court has recorded a finding of fact that the flood which has caused loss to the respondent was not due to the unprecedented rain and, therefore, Clause 47 of the Agreement was not attracted. C

Any award made by an arbitrator can be set aside only if one or the other term specified in Sections 30 and 33 of the Arbitration Act, 1940 is attracted. It is not a case where it can be said that the arbitrator has misconducted the proceedings. It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for arbitrator to determine (see *M/s. Sudarsan Trading Co.* v. *The Government of Kerala,* AIR (1989) SC 890). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law. An error apparent on the face of the records would not imply closer scrutiny of the merits of documents and materials on record. Once it is found that the view of the arbitrator is a plausible one, the Court will refrain itself from interfering [see *U.P. State Electricity Board* v. *Searsole Chemicals Ltd.,* [2001] 3 SCC 397 and *ISPAT Engineering & Foundry Works, B.S. City,* D E F G H

A *Bokaro* v. *Steel Authority of India Ltd., B.S. City, Bokaro,* [2001] 6 SCC 347].

For that reason, we are of the view that the appeal has no merit and must fail. However, the parties are agreed that from the date of filing of the claim till the date of award the interest chargeable would be at the rate of 12 B per cent in place of 18 per cent. For that reason, the award and judgment under challenge stand modified to that extent.

The appeal is disposed of in the aforesaid terms. There shall be no order as to costs.

R.P. Appeal disposed of