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B.B.M. ENTERPRISES

v.

THE STATE OF WEST BENGAL AND ANR.

B

(Civil Appeal No. 2834 of 2020)

JULY 30, 2020

[R. F. NARIMAN, NAVIN SINHA AND INDIRA BANERJEE, JJ.]

C

Arbitration and Conciliation Act, 1996:

s. 34 – Petition under – Filed after expiry of limitation period of 120 days – Dismissed by District Judge – High Court setting aside the order of District Judge remanded the matter – In second round of litigation District Judge dismissed the petition – High Court by impugned order again remanded the matter to be adjudicated afresh – Appeal to Supreme Court – Held: District Judge had disposed of the petition u/s. 34 giving adequate reasons – High Court wrongly remanded the matter – Appeal disposed of.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2834 of 2020.

From the Judgment and Order dated 26.03.2019 of the High Court at Calcutta in FMA No. 1298 of 2017.

F

With

Civil Appeal No. 2835 of 2020.

G

Saurav Agarwal, Priyankar Saha, Sarad Kumar Singhania, Anshuman Chowdhury, Ms. Rashmi Singhania, Advs. for the Appellant.

Sidharth Luthra, Sr. Adv., Ms. Madhumita Bhattacharjee, Ms. Srija Choudhury, Saifuddin Shams, Mohd. Shakeib Naru, Advs. for the Respondents.

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The Judgment of the Court was delivered by

R.F. NARIMAN, J.

1. Leave granted.

2. We have heard learned counsel for the parties at great length.

3. Mr. Sidharth Luthra, learned Senior Advocate, appearing on behalf of the respondent, painstakingly took us through the records, including the Award, in order to point out various deficiencies which, according to him, fell within the parameters of a Section 34 petition as a result of which we should not therefore disturb the judgment of the High Court, which has merely remanded the matter and directed that the matter be disposed of in six months.

4. This matter has a chequered history. The Award that was made by the learned Arbitrator was on 16.09.2009. Five claims were made before him amounting in all to Rs. 2,08,59,989. However, ultimately the Award that was made in favour of the appellant herein was to the extent of Rs. 1,38,44,430 plus 15% on a sum of Rs. 1,17,77,080 as *pendente lite* interest plus Rs. 2,67,350 by way of costs without interest. If the said amount, dehors costs, was not paid in four months, the interest figure would become higher and would attract 18%.

5. When the Award was put into execution, the Executing Court pointed out that by the date of its order dated 11.02.2010, the 120 day period – beyond which no Award can be challenged – was already over and therefore proceeded with the execution. It was only when an order of 17.02.2010 was made directing the RBI to disburse the awarded amount after attaching the Government's Bank Account, and the reply of the RBI dated 20.02.2010 stating that adequate funds were not in such account, that the matter was then remitted by the High Court by an order dated 24.02.2010 stating that the Government was willing to deposit, at that point of time, 50% of the decretal dues in two weeks. At this stage, therefore, the High Court set aside the Executing Court's order dated 17.02.2010. It is only after these proceedings that the respondent woke up and filed a Section 34 petition challenging the Award on 02.04.2010.

6. In the first round of litigation, the Section 34 petition was dismissed by the learned District Judge on 22.03.2012, stating that the period of 120 days was over, and hence no foray into the merits would

A be permissible at this stage. However, by an order dated 11.01.2013, the Division Bench set aside this judgment and remanded the matter for a fresh hearing.

7. The learned District Judge, in the second round, by an order dated 22.12.2016, heard learned counsel for both parties and found as B follows:-

> "A court must not substitute its interpretation as against the views and interpretation of the arbitrator, the finding of the arbitrator requires to be accepted without demur because court has no power or jurisdiction to sit over the finding of fact arrived at by the C arbitrators. In the instant case, so far I could realize from the argument as advanced by the Ld. Advocate of the petitioner and also from the petition under Sec. 34 of Arbitration & Conciliation Act and the photo copy of documents placed before the court that the petitioner challenges the finding of facts but nothing is oozing out from record that the impugned award is perverse either D on account of interpretation of law or any other collateral aspect and consequent decision taken by the Arbitrator. The ground upon which the award is challenged is an entirely factual issue; in no way covered by any ground as enumerated in Sec. 34 of the Arbitration and Conciliation Act. We cannot forget that since the E arbitrator is a judge appointed by the parties, the parties are bound by his decision. His decision is final unless the reasons given by him in arriving at his decision are totally perverse or award is based on wrong proposition of law. In this case the dispute arises out of work contract, its execution and payment, i.e. Amount of claim, that aspect totally comes within the jurisdiction of arbitrator F that very finding cannot be interfered in a proceeding under Sec. 34 of the Arbitration and Conciliation Act. In a case titled Union of India vs. Kalinga Construction Company, reported in AIR 1971 SC 646 it has been categorically held by the Hon'ble Supreme Court that it is not open to the court to re-examine and reappraise G the evidence considered by the arbitrator to hold that the conclusion reached by the arbitrator is wrong. It is also settled principle that award cannot be challenged on the ground arbitrator has arrived at a wrong conclusion or has failed to properly appreciate the facts and evidence. As per ratio of decision reported in 1994 (1) Arbi. L.R. 45, AIR 2003 NOC 156 (Raj) and in consonance with H

the object of Arbitration & Conciliation Act jurisdiction of the court has been fettered. In Narayan Prasad Lohia vs. N. Kunj Kumar Lohia reported in (2002) 3 SCC 572, it has been held that one of the objects of the said Act is to minimize the role of Courts in the arbitration process. This has been find place in Sec. 5 of the Arbitration & Conciliation Act and Sec. 5 of the Arbitration & Conciliation Act speaks that Judicial authorities should not interfere except where, so provided in the Act. It is the intention of the legislature that there should be a minimum interference with the award. It can only be challenged under Sec. 34 of the Arbitration & Conciliation Act. Taking the risk of repetition I again mentioned there is no valid ground in the petition under Sec. 34 of the Arbitration & Conciliation Act for challenging the award. On perusal of the award it has come to my notice that Ld. Arbitrator has dealt with all the pleas/issues at the time of arbitration hearing and there is nothing which may tantamount to any glaring procedural defect or there is any manifest error on the point of law or any miscarriage of justice had been taken place. Ld. Arbitrator has given a detailed, speaking and well reasoned award. Therefore, there is no iota of evidence to cast doubt about the integrity of award or arbitrator was biased because Arbitrator has the jurisdiction and authority to decide the question of entitlement of contractor's enhanced claim. I get support of this view from the decision reported in 2003 (2) Arbi L.R. 280 (DB). So, award requires no interference."

8. The impugned order dated 01.03.2019 set aside the learned District Judge's order stating:

"Even assuming that the award was assailable on the basis of unamended provisions of Section 34 of the Arbitration and Conciliation Act, the Court would expect that there would be some discussion on the merits of the objection on the award and not a mechanical affirmation of the award by simply stating that the award does not come within any of the grounds of challenge enumerated in Section 34 of the Act. The learned Trial Judge did not indicate the reason as to why the award is unassailable under Section 34 of the Arbitration and Conciliation Act."

Having so held, the matter was remanded to be disposed of in six months. The stay that has been granted throughout the hearing would

A continue. A resume of these facts would show that the matter has gone up and down already twice. We may only state that even though it does not appear that, in the second round, the point of limitation was argued, since a *de novo* hearing by the Division Bench was ordered on 11.01.2013, this point also stared at the Court like a sore thumb. We are not satisfied that there is any answer to the limitation point. Even otherwise, B having perused the order of the learned District Judge, we are of the view that adequate reasons were given to dispose of the Section 34 petition filed by the respondent. We do not agree with the High Court that no reasons were given as a result of which a remand ought to be ordered. Resultantly, therefore the impugned High Court judgment is set C aside and the judgment dated 22.12.2016 passed by the learned District Judge is affirmed.

9. At the fag end, Mr. Sidharth Luthra, learned Senior Advocate, made a fervent appeal to reduce the rate of interest which would be 18% after the four months from the date of the Award expired. We D think the interest of justice requires that 18% be set aside and that the respondent pay interest at the rate of 15%. Further, he prayed that six months' time be granted in order to pay the balance amount under the Award. We think, in the circumstances of the case, a period of three months is reasonable.

E 10. The appeals are disposed of accordingly.

Kalpana K. Tripathy Appeals disposed of.