(2020) 07 SC CK 0032

Supreme Court Of India

Case No: Civil Appeal No. 2834, 2835 Of 2020

B.B.M Enterprises		APPELLANT
	Vs	
State Of West Bengal And Anr		RESPONDENT

Date of Decision: July 30, 2020

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 5, 34

Citation: (2020) 9 SCC 448 : (2020) 9 Scale 629

Hon'ble Judges: Rohinton Fali Nariman, J; Navin Sinha, J; Indira Banerjee, J

Bench: Full Bench

Advocate: Saurav Agarwal, Priyankar Saha, Sarad Kumar Singhania, Anshuman Chowdhury, Rashmi Singhania, Sidharth Luthra, Madhumita Bhattacharjee, Srija Choudhury, Saifuddin Shams, Mohd. Shakeib Naru

Final Decision: Disposed Of

Judgement

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 Ã¢â‚¬

beyond which no Award can be challenged Ã¢â‚¬" 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 GovernmentÃ¢â‚¬â„¢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 CourtÃ¢â‚¬â„¢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 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 follows:-

Ã¢â‚¬Å“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 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 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 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 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 HonÃ¢â‚¬â„¢ble Supreme Court that it is not open

to the court to re-examine and reappraise 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 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 contractorÃ¢â‚¬â„¢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.Ã¢â‚¬â€‹

8) The impugned order dated 01.03.2019 set aside the learned District JudgeÃ¢â‚¬â„¢s order stating:

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

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

10) The appeals are disposed of accordingly.