

(1993) 12 DEL CK 0012

Delhi High Court

Case No: Suit No. 945A of 1985

Pesticides India

APPELLANT

Vs

State Chemicals and
Pharmaceuticals Corporation of
India and Others

RESPONDENT

Date of Decision: Dec. 16, 1993

Citation: (1994) 53 DLT 42 : (1994) 28 DRJ 104

Hon'ble Judges: Sat Pal, J

Bench: Single Bench

Advocate: B.S.C. Singh and Mohd. Athar, for the Appellant;

Judgement

Sat Pal, J.

(1) On receipt of the award dated 22nd May, 1985 in the matter of Arbitration between M/s. Pesticides India (hereinafter referred to as the petitioner) and State Chemicals and Pharmaceuticals India Corporation Ltd. (hereinafter referred to as the Corporation), notices of filing of the award were issued to the parties on 30th May, 1985. Thereafter the petitioner filed an application bearing is No.4120/85 containing objections to the award. The objections were controverted in the reply filed on behalf of the respondents. On 19th January, 1988, the following issues were framed:

(1) Whether the award is liable to be set-aside for the objections? (2) Whether the award is not liable to be made rule of the Court? (3) Relief.

(2) On the same date the objector was directed to file affidavit by way of evidence within eight weeks and non-objectors were directed to file their counter-affidavit within four weeks thereafter. Pursuant to this order the affidavit on behalf of the objector and the counter-affidavit on behalf of the non-objector have been filed. The arguments were heard on 4th October. 1993, 3.11.93, 26.11.93 and 6.12.93.

(3) Dr. Bakshi Singh, learned counsel appearing on behalf of the petitioner submitted that in the present case the award was not given within the period prescribed under the Arbitration Act, 1940. He further submitted that the Court was not approached by any of the parties for enlargement of the time in making the award. He, Therefore, contended that the award is liable to be set-aside on this short ground. In support of this contention, learned counsel placed reliance on a judgment of the Supreme Court reported in State of Punjab VS. Hardyal, 1985 Sc 920.

(4) Learned counsel for the petitioner further submitted that the finding of the learned arbitrator that the respondent was entitled to forfeit the earnest money, was illegal. He also submitted that where loss in terms of the money can be determined, the party claiming compensation must prove loss suffered by him. He further submitted that in the present case the respondent had failed to prove that they had suffered actual loss equivalent of the earnest money and as such they were not entitled to forfeit the security deposit. In support of this contention, the learned counsel placed reliance on three judgments of the Supreme Court reported in the cases of [Fateh Chand Vs. Balkishan Das](#), , [Maula Bux Vs. Union of India \(UOI\)](#), and [Union of India \(UOI\) Vs. Rampur Distillery and Chemical Co., Ltd.](#), . The learned counsel submitted that since the respondent had failed to prove the actual loss suffered by them, there was an error" apparent on the face of the award in upholding the forfeiture of the earnest money. He, Therefore, contended that the award was liable to the set-aside. In support of this contention he placed reliance on a judgment of the Supreme Court reported in the case of [The Upper Ganges Valley Electricity Supply Company Ltd. Vs. The U.P. Electricity Board](#), .

(5) No arguments were addressed on behalf of respondents No. 1 to 3 as none appeared on behalf of the said respondents. Learned counsel for the defendant No.4 also did not advance any argument as no relief has been claimed against the defendant No.4.

(6) I have given my anxious consideration to the submissions made by the learned counsel for the petitioner and have perused the record. From the arbitration proceedings I find that the petitioner had been appearing before the Arbitrator throughout and had never taken the objection that the time for making the award had expired. In the case of Har Dayal (supra) which has been relied upon by the learned counsel for the petitioner himself, the Supreme Court has held that u/s 28(2) of the Arbitration Act, the Court has the power to extend time for making the award and this power can be exercised even by the Appellate Court. Since the petitioner had been appearing through their representative before the learned Arbitrator throughout, I am of the view that it is a fit case for enlarging the time in making the award. Accordingly, I extend the time for making the award till the date on which the award was made. Accordingly, I reject the contention of the learned counsel for the petitioner that the award is illegal as the same was not given within the

stipulated period of four months.

(7) As regard the contention of the learned counsel for the petitioner that since the respondent did not prove the actual loss suffered by them, they were not entitled to forfeit the security deposit and the finding of the learned arbitrator upholding forfeiture of the security deposit is illegal, I do not find any merit even in this contention. In this connection, it will be relevant to refer to Clause 3 of the terms and conditions, which reads as under :-

"FORFEITURE of earnest money :-earnest money given and bank guarantees furnished are liable to be forfeited in case of any default/failure on the part of the actual users/allottees in complying-with all or any other terms and conditions prescribed by Opc in regard to said registration and/or allocation order that may be issued by CPC."

(8) From the above clause, I find that there is nothing in this clause that the earnest money can be forfeited only if the respondent proves the actual loss suffered by them. In terms of the said clause, earnest money can be forfeited in case of any default/ failure on the part of the actual user/allottee in complying all or any of the terms and conditions prescribed by CPC. The learned arbitrator while upholding the forfeiture of the earnest money has held that it is beyond dispute that the petitioner had to do the needful three days before the arrival of the vessel and the vessel concerned "State of Punjab" arrived on 17.10.79 whereas petitioner had yet to complete the document seven on 20th October, 1979. He has also observed that it fulfilled its obligation on 26.10.79 and thus failed to comply with the terms of contract and the Corporation was justified in forfeiting the proportionate amount of earnest money i.e. Rs.2,08,800.00 . Thus there is relevant and proper evidence to support the conclusion of the Arbitrator .Here I may refer to a judgment of the Supreme Court reported in the case of [Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.,](#) . In this case it was held that the Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon any legal proposition which is erroneous. Accordingly, the objection raised in respect of the forfeiture of the earnest money being without any merit is dismissed.

(9) The judgments in the case of Fateh Chand (supra), Maula Baksh (supra) and Rampur Distillery & Chemical (supra) are of no assistance to the petitioner as in the present case there is no term and condition in the contract between the parties to the effect that the earnest money can be forfeited only in case the respondent Corporation proves that it has actually suffered the loss. In the case of Upper Ganges Valley Electricity Supply Co. Ltd. (supra) relied upon by the learned counsel for the petitioner. the Supreme Court held that an award can be set-aside only if there is an error of law on the face of record. Since there is no error of law on the face of record, as explained hereinabove, the present award cannot be set-aside.

(10) From the aforesaid reasons, the objections contained in objection petition bearing IANo.4120/85 are dismissed. The award is made rule of the Court. Decree may be drawn accordingly. The award shall form part of the decree. The parties are, however, left to bear their own costs.