(2000) 12 MP CK 0008

Madhya Pradesh High Court

Case No: Miscellaneous Appeal No. 332/97

Jyoti Talkies and Others		APPELLANT
	Vs	
M.P. Film Development Corporation Ltd.		RESPONDENT

Date of Decision: Dec. 1, 2000

Acts Referred:

- Arbitration Act, 1940 - Section 30, 33
- Stamp Act, 1899 - Article 12, 35

Citation: (2001) 5 MPHT 303 : (2001) 2 MPJR 150

Hon'ble Judges: S.P. Srivastava, J; Arun Mishra, J

Bench: Division Bench

Advocate: V.R. Rao, for the Appellant; Shobha Menon, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Arun Mishra, J.

Appellants have preferred this appeal aggrieved by the order dated 28-11-1996 passed by the Court of Vth Addl. District Judge, Bhopal, making the award passed by the Managing Director of M.P. Film Development Corporation Ltd., dated 25-5-95 as rule of the Court. The award was passed for a sum of Rs. 15,70,705.77 paise.

The appellants M/s. Jyoti Talkies and others obtained a loan from respondent M.P. Film Development Corporation Ltd., Bhopal in collaboration with National Films Development Corporation. An amount of Rs. 7 lac was sanctioned. A sum of Rs. 6 lac was released and Rs. 1 lac was adjusted on account of interest and Rs. 1 lac was adjusted on account of interest for the period 5-2-85 to 26-8-86. It appears that the appellants made certain defaults in making the repayment of the loan. Hence, as per Clause 13 of the agreement dt. 29-11-84 the dispute was referred to the Managing Director of the M.P. Film Development Corporation Ltd., Bhopal who was ex-officio arbitrator Shri S. Laxminarayan, ultimately passed an award holding the liability of M/s Jyoti Talkies to pay a sum of Rs. 15,70,705.77 paise with interest at the rate of 14.50% per annum w.e.f. 1-10-94. It appears that the award was filed before the 5th Addl. District Judge, Bhopal for making it a rule of the Court. It appears that certain objections were filed and in the objections filed u/s 30 read with 33 of the Arbitration Act it was contended by the appellants that the award passed is based on misconduct of the arbitrator. The award was not on the stamp paper. The arbitrator could not order the sale of the hypothecated property. There was no dispute between the parties as to the amount payable. Hence, the matter could not be referred to the arbitrator.

Learned Court below vide order dt. 28-11-96 has made the award rule of the Court and found that no misconduct was committed by the arbitrator. It came to the conclusion in that merely by the fact that the arbitrator was a Managing Director, it can not be said that he was not an independent person. Before the arbitrator it was admitted that the amount was due. However, liability to pay was denied on the ground that the amount was not released as required and project cost has also enhanced. It was also prayed that the interest be waived.

In the present appeal learned counsel Shri V.R. Rao appearing for the appellants has submitted that there was no dispute as to the amount payable. Hence, the matter could not be referred to the arbitrator. The second submission is that the amount of interest has not been quantified and the same includes penal interest. The arbitrator has no jurisdiction to award the penal interest as that was not the term agreed between the parties. His third and last submission is that the award is not on the stamp paper, hence, cannot be made as a rule of the Court.

Learned counsel appearing for the respondent Smt. Shobha Menon has supported the impugned order and submits that no interference is called for in the present appeal.

The first submission raised by learned counsel for the appellants that there was no dispute between the parties as to the amount payable, hence, the matter could not be referred to the arbitrator, is devoid of substance as clearly dispute has arisen between the parties, as the appellant denied its liabilities to pay the amount under the agreement of loan as per its term. There was default in making the repayment as per the schedule fixed under the agreement and the case of the appellant was that its conduct was justified in not making the payment and it has also prayed waiver of the interest. Para 13 of the agreement we reproduce thus :

"(13) In the event of any dispute or difference or question arising between the parties hereto however touching this Agreement or as to the construction or effect of this Agreement or any of the terms, clauses or things herein contained or as to the rights, duties and liabilities of the parties hereto under these presents or otherwise however on any account, then the same shall be referred to the sole arbitration of the Managing Director of the MPFDC whose decision shall be final and binding upon the parties and it shall not be objected by the party on the ground that the said Arbitrator is interested in the MPFDC or in the dispute or difference on question or that he/she has dealt with any matter in dispute or difference or that he/she has in the course of his duties expressed views on all or any of the matters in dispute or difference or question and the decision of the said arbitrator shall be final concluding and binding on all the parties. The venue of such arbitration shall be at Bhopal and subject to this provision the Courts in Bhopal alone will have jurisdiction in the matter. Notwithstanding the provision for arbitration either party may resort to a Court of law for enforcing any of the negative convenants herein contained or for an appointment of a Receiver or for an order for injunction."

It is apparent from the reading of Para 13 of the agreement that the dispute arose between the parties touching the agreement and involved violation of term of the agreement and whether relaxation in the period of instalment was called for or interest could be waived. All these disputes were within the ken of Clause 13 of the agreement. Thus, we find no force in the first submission made by learned counsel for the appellants as to the arbitrability of the matter.

The second submission raised is that it has not been specified by the arbitrator that penal interest has been awarded by the arbitrator. With respect to the interest, Clause (1) of the agreement is relevant, which we quote below :

"(1) NFDC loan portion will carry an interest of 12.5% and that of MPFDC 14.5% with 2% rebate for prompt payment. In case of default in payment of principal and interest by the Borrower on the due date, he shall be liable to pay interest 14.5% on the entire defaulted amount including the share of NFDC till payment.

Thus, as a matter of fact the award of interest 14.5% is not a penal interest, but, only 2% rebate which was admissible on the loan advance by MPFDC but is not available to the appellant as he defaulted and in case of default of the loan liability of NFDC, the rate of interest has to be 14.5% not 12.5%. As this was the term agreed between the parties it cannot be said that the arbitrator has exceeded the jurisdiction in any manner. Arbitrator has not travelled beyond the term agreed between the parties as to interest. Thus, the second submission raised is also devoid of merit.

The third and last submission is that the award is not on stamp paper and for this purpose learned counsel has submitted that under Article 12 of Schedule I-A of Stamp Act as applicable in Madhya Pradesh the award, that is to say decision in writing by an arbitrator or umpire, not being an award directing a partition, on a reference made, otherwise than by an order of the Court in the course of a suit, where the amount or value of the property to which the award relates exceeds Rs. 10,000/-, the stamp duty for such amount has to be paid as mentioned in the Schedule.

No doubt that this submission was raised in the objections submitted, but, it appears that at the time of final hearing this objection was not pressed before the Court below. Moreover, this ground has not been taken in the memo of appeal before this Court. Hence, this question cannot be raised at the time of final argument in appeal. Without prejudice to the aforesaid we have also given our anxious consideration to the question. We find on facts that the submission raised is not correct. The stamp duty has been paid under the orders of the Court while making the award rule of the Court.

Hon"ble Shri Justice A.S. Anand (as he then was, now the Chief Justice of India), in case of Behari Lal Suri Vs. Executive Engineer, has also considered the question and has held in para 7 that :

"Thus, the settled law on the point is that an unstamped award cannot be acted upon or admitted into evidence but becomes admissible in evidence after the defect is cured u/s 35 of the Stamp Act and can be acted upon thereafter."

In case of Rikhabdas Vs. Ballabhdas and Others, , their Lordships considered the case of Nani Bala Saha Vs. Ram Gopal Saha and Another represented by pleader guardian Babu Kumar Gurukrama Mozumdar and Another, and observed towards the concluding portion of the judgment that it was open to the parties to take such steps, if any, as were available to them at law for curing the defect arising from the award being on an unstamped paper......" We find in the instant case that the stamp papers have been submitted.

In AIR 1969 SC 1238 the Apex Court has held that "The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law. The party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument......"

In case of Anant Ram v. Murli Dhar AIR 1924 Nag 204 it was held that an unstamped award may be admitted in evidence and filed in the Court after payment of the duty and penalty under the provisions of Indian Stamp Act."

A Division Bench of Patna High Court in case of Pradip Trading Co. Vs. The State of Bihar, laid down that "An unstamped arbitration award contravenes Article 12, Stamp Act but will only be defective and not invalid within the meaning of Section 30 Arbitration Act. Words "otherwise invalid" in that Section 30(c) cannot be read ejusdem generis with its other Clauses (a) and (b) and should be restricted to grounds other than those mentioned in the section". Thus, it is merely a curable defect which stands cured in the instant case.

We do not find any merit in any of the submissions raised by learned counsel for the appellants. The appeal is devoid of merit and same is dismissed. However, the parties are left to bear their own costs as incurred in the appeal.