(1983) 12 CAL CK 0014

Calcutta High Court

Case No: C.R. No. 854 of 1979

Kailash Saving Units Pvt. Ltd.	APPELLANT
Vs	
Santi Ranjan Ghosh and Another	RESPONDENT

Date of Decision: Dec. 13, 1983

Acts Referred:

- Arbitration Act, 1940 - Section 28

Citation: 88 CWN 338

Hon'ble Judges: R.K. Sharma, J

Bench: Single Bench

Advocate: S.N. Saraf and Gauri Sankar Gupta, for the Appellant;Amal Kumar Mitra, for the Respondent

Judgement

R.K. Sharma, J.

This Rule arises at the instance of Kailash Saving Units Private Limited, hereinafter called the Company which felt aggrieved by order No. 21 dated 30.11.1978, passed by the learned Chief Judge, City Civil Court, Calcutta, in Misc. Case No. 390 of 1977. The learned Chief Judge in passing that order was hearing an application u/s 28 of the Arbitration Act, 1940 filed on behalf of the company for extension of time for making the award. The learned Chief Judge by his aforesaid order held that the appointment of the Arbitrator was invalid and was inclined not to exercise the discretionary power of the court u/s 28 of the Arbitration Act and therefore refused the company''s prayer for extension of time. Aggrieved by that order the present Rule was obtained. Briefly stated the petitioner''s case is that this company granted loan to opposite party No. 1 Shanti Ranjan Ghosh under a scheme known as Kuri scheme according to the rules and regulations of the company relating to the said scheme. Opposite Party No. 2 Smt. Dipika Ghosh wife of Shanti Ranjan Ghosh was the guarantor for the due repayment of the loan. The rules and regulations of the scheme included an arbitration clause. In course of time a dispute arose between the parties and the petitioner by a letter dated 7th August, 1976 referred the said

dispute to the arbitration of Shri Om Prakash Malhotra. This gentleman was the Managing Director of the company. The Arbitrator duly entered upon the reference on 9th August, 1976 and by a letter of the same date intimated to the opposite parties that the petitioner had referred to him the dispute and differenences between the company and themselves in accordance to the arbitration clause and called upon them to answer the claim by 30th August, 1976 at 10 A.M. On that date the Company was represented by its employee Shri S.K. Karmakar but in spite of service of notice no one appeared for the opposite parties. In the circumstances the arbitrator decided to give another chance to the opposite parties for the ends of justice and issued a letter dated 15th September, 1976 and called upon the opposite parties to appear peremptorily before him on the noon of 8th October, 1976 at the office of the company at 23A, Netaji Subhas Road, Calcutta. The opposite parties were also warned that their failure to appear before the arbitrator would lead to hearing of the arbitration proceeding ex-parte. Thereafter no further notice was given as there was no sufficient time for holding the meeting by the arbitrator. The time to make '' and publish the result of the award by the arbitrator expired on the 9th December, 1976. Talks of settlement were also going on between the parties and in the meantime an application u/s 28 of the Arbitration Act, 1940 was filed before the court below for ex-tension of time for making the award.

2. The opposite parties who contested the proceedings filed their affidavit and urged several grounds opposing the prayer for extension or enlargement of time for making the award. The first ground urged was that the appointment of Shri Om Prakash Malhotra, Managing Director of the company was mala fide and illegal inasmuch as the Arbitrator cannot but support his own cause and thereby deny justice to the opposite parties. The next ground taken was that the application of the company contained misstatement and untruth showing mala fide attempt to explain the delay in making the award. Therefore, the prayer for enlargement of time should not be granted.

3. The learned Court below held that in view of the fact that the arbitrator was nobody else other than the managing director of the company himself there was a possibility of bias. He further held that the order recorded by the arbitrator on 8.10.1976 shows that the arbitrator somehow or other consciously or unconsciously identified himself with the petitioner company. In this connection, the use of the word ''so'' by the arbitrator was taken exception of. Therefore, taking the facts and circumstances into consideration he passed the impugned order.

4. Mr. Saraf appearing on behalf of the petitioner submits that the learned court below was in error in holding that there was a possibility of bias. Mr. Mitra appearing on behalf of the opposite parties supports the order passed by the learned Court below. I have considered the matter. The company in question is a private limited company. The Managing Director is the person in charge of the interest of the company and he is to safeguard the interest of the company. He is

the executive head of the company as well. In the capacity of the executive head of the company he will have first to decide and then refer the dispute to the arbitrator between the company and the opposite parties after giving his decision the company being able to appoint arbitrator. The managing director took the unsafe effort to appoint himself as the sole arbitrator. The net result is that the company became its own judge in its own cause. The person who is interested in prosecuting the company''s cause is ultimately the managing director. Therefore when the managing director himself resumes the office of the arbitrator he becomes a judge in his own cause. Therefore, in the facts and circumstances, actual bias need not be proved. The possibility of bias cannot be denied. In my opinion, the learned Court below was justified in holding that there was possibility of bias.

5. The learned court below held that there was no dispute between the parties to go to arbitration. But on this I am not satisfied. It appears that in one of his communication to the company the opposite party had contended that it had paid more than Rs. 25000/- whereas his liability was only to the extent of Rs. 23000/-. On the other hand the company''s case was that the opposite party made payment to the extent of Rs. 10,000/- and adding the interest @ 12% per annum the outstanding dues against the opposite party was Rs. 23,000/-. This I find to be the position and the parties before me have admitted this position emerging out of their correspondence. Therefore, in the facts and circumstances of the case, I do not agree with the learned court below that there was no dispute between the parties.

6. The Rule is thus discharged without any order as to costs. Although this Rule is discharged, liberty is given to the petitioner company to appoint an impartial arbitrator in accordance with terms of agreement and to settle the dispute between the parties. If the petitioner company wants to proceed further it may take steps within three months hereof.