

(2001) 09 DEL CK 0136

Delhi High Court

Case No: Suit No. 1294-A/81 and I.A. 907/82

Vishwa Nath Bhartiya

APPELLANT

Vs

Rukmani Devi Kanodia and
Others

RESPONDENT

Date of Decision: Sept. 3, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 14, 17

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: Anurag Kumar Aggarwal, Umesh Mishra and Suresh Singh, for the Respondent

Judgement

V.S. Aggarwal, J.

The present suit has been filed by Vishwa Nath Bhartiya (hereinafter described as "the petitioner") invoking Sections 14 and 17 of the Arbitration Act for making the award a rule of the court and for a decree, to be passed in terms of the same. The petitioner had been appointed as the arbitrator and he states that he had entered into the reference. Parties, in pursuance of the notice issued, had appeared before him on 20.11.1980. On 23.11.1980, he had conducted the arbitration proceedings and had passed the award.

2. Notice was issued to the respondent. Objector (Respondent No.9) Shri Madan Mohan Kanodia has filed the objections. It has been asserted that the award has been made without following the basic norms of the judicial procedure and in violation of the principles of natural justice. The arbitrator did not act in a judicial manner and the enquiry was made by him in a slipshod manner. He conducted himself in a manner, which did not subserve the interest of justice and in that manner had misconducted himself. Plea has been raised that no hearing had been given nor even the notice of hearing was issued by the arbitrator. The arbitration agreement is purported to have been signed on 10.11.1980 on a stamp paper and accepted by the arbitrator on 13.11.1980. On the said date, the arbitrator was not in

Delhi. The arbitration agreement never been sent to him at Calcutta where the arbitrator lives. Similarly, it is asserted that Pushpa Gupta does not live in Delhi and was not in Delhi on 10.11.1980.

3. Plea has further been raised that the arbitrator was known to the family of the respondent No.5. On 22.11.1980 the wedding of Hari Prakash, son of respondent No.5 was to be preferred. There was a ceremony on 21.11.1980 at 10.30 a.m. The arbitrator had also been invited. He came to Delhi on 21.11.1980. Respondent No.5 had booked two rooms in Hotel Maidens and the arbitrator enjoyed the hospitality of respondent No.5. Even fare for coming from and going to Calcutta was paid by respondent No.5.

4. Further-more, as per respondent No.5, the arbitrator had taken blank signatures from the objector as well as the respondent. There was no question of proceedings having been held at 4.00 p.m. on the date, namely 23.11.1980. This is for the reason that the wedding of Hari Prakash was only completed at 4.00 a.m. The version is stated, thus, to have been set up which is concocted. Further-more, plea has been raised about the distribution or partition to have not been fair and stated to be arbitrary.

5. Replies had been filed separately. Respondents 1 & 2 denied the assertions of respondent No.9 that the arbitrator has misconducted himself. Disputes had arisen with respect to the properties in question. It was agreed that it should be referred to the arbitrator Vishwa Nath Bhartiya. The agreement was reduced into writing. It is admitted that there was a marriage of Hari Prakash son of respondent No.5 on 22.11.1980 but it is denied that the arbitrator had been arbitrary or had not conducted any proceeding.

6. Respondent No.5 has also filed a separate reply to the objections of respondent No.9, controverting the assertions which, by and large are identical.

7. Rejoinder has been preferred by the petitioner, reiterating his assertions and the objections.

8. From these pleadings of the parties, this Court, on 9.8.1984 had framed the following issues:-

1. Whether there was a valid and binding arbitration agreement between the parties?
2. Whether the arbitrator was not validity appointed as alleged?
3. Whether the arbitrator had not at all entered upon the reference according to law?
4. Whether the award is liable to be set aside on the objections of respondent No.9?
5. Whether the award is vitiated on account of being a non-speaking one?

6. Relief.

ISSUES NO. 1 TO 3:

9. There the objector-respondent No.9 has denied that there was a valid or binding arbitration agreement, but during the course of submissions, the said plea had not been seriously pressed. Irrespective of that, it is not in dispute that the arbitration agreement on the record is signed by the objector/respondent No.9. If his signatures had been obtained on a blank piece of paper, ordinarily he would be protested much earlier rather than when the stage of objections to be filed has arisen. A person, who had signed certain papers knowingly that he is signing on a blank piece of paper, would protest and take all remedies available in law. It is too late in a day to raise such a plea. Consequently, it must be held in the absence of any other cogent reason that there was a valid and binding arbitration agreement between the parties and the arbitrator had validly been appointed.

ISSUE NO.4:

10. In this regard, learned counsel for the objector asserted that the award is contrary to the findings. It is opposed to the principles of natural justice and the arbitrator had enjoyed the hospitality of respondent No.5 because he stayed with him.

11. To appreciate the said contention, reference can well be made to the agreement that had been arrived at between the parties. The disputes had arisen amongst the parties in respect of the property and in order to settle the same, it was referred to Shri Vishwa Nath Bhartiya of Calcutta. It was agreed:

1. that all the aforesaid parties shall present their disputes etc. relating to their respective shares in the aforesaid property before the Panch Sh. Vishvanath Bhartiya R/o 43, Zakaria Street, Calcutta-7 and the decision given by the said Panch shall be acceptable to all the parties and all the parties shall be bound by this decision. The said Panch shall, in due course, and at the earliest, start hearing in respect of the aforesaid dispute.

2. that the aforesaid dispute and the decision of the Panch and all the matters relating to the hearing/proceedings shall be disposed of under the India Arbitration Act, 1940 and all the decisions would be in accordance with the provisions of the said Act and all the provisions of the said Act shall be applicable on the aforesaid decision and hearings/proceedings.

12. It is in pursuance of the same that the arbitrator has entered into the reference to settle the said controversy.

13. The proceedings took place before the arbitrator on 20.11.1980. The objector had also appeared and on the said date the arbitrator recorded the following order:-

Heard all the parties in respect of their disputes and came to the conclusion that all the parties should sit together and negotiate and if possible mutually settle their disputes. After no settlement is arrived at, the matter is adjourned to 23.11.80 at 10.00 A.M. It is also directed that all the parties will produce the documents in support of their claims and statements etc. will also be recorded on that day.

14. It appears that the parties were not able to settle their disputes and on 23.11.1980, the arbitrator had asked certain questions to which it had been admitted that all the persons present, had their share in the disputed property. Radha Kishan, Shyam Sunder and Radha Raman had jointly purchased the property No.8, Lancers Road, Banarasi Dass Estate, Delhi vide a registered sale deed. It was admitted by them that they are members of the family and they live in the property. Smt. Prabha Khemka, however, lives in Greater Kailash and Smt. Pushpa Gupta at Kanpur. They were not claiming any share. They told the arbitrator that they can not live together and the disputes have arisen. Thereupon, the arbitrator had recorded in the award that he had sent notices to the parties and held the proceedings in Room No. 102, Oberoi Maidens and it was followed by the award that has been pronounced giving specific portion to a particular person.

15. On basis of these facts, it has been asserted that no notice had been issued by the arbitrator and that the principles of natural justice had been violated nor proper proceedings have been held. The learned counsel for the objector relied upon the decision of this case in the case of [Mehta Teja Singh and Co. Vs. Union of India and Another](#). This court held that proceedings should not be contrary to the principles of natural justice. The precise findings of the Court have been recorded as under:-

.....The principles of natural justice require that a party must know that case he has to meet, Natural justice is nothing else but fair play in action. Today parties litigate with their cards open at the table. It is true that an arbitrator is not bound by the technical rules of evidence or court procedures. But certainly he has a duty to be fair. That duty is laid upon everyone who is called upon to decide a dispute impartially. Refusal to order production of a document which is the foundation of the claim is a denial of justice. This is why when the matter came before Court Prithvi Raj, J. ordered production. He rejected the claim of privilege.

25. The arbitrator's procedure should not be opposed to natural justice. He should perform his function in a quasi-judicial manner and should not make a force of the enquiry before him. But if he does not follow the fundamental rule governing judicial procedure he commits misconduct. The word misconduct does not involve moral turpitude. It is a technical misconduct. The words "misconducted the proceedings" in S.30 mean in the words of Atkin, J., "such a mishandling of the arbitration as is likely to cause some substantial miscarriage of justice". (William v. Wallis (1914) 2 KB 478. Once instance of such mishandling is this case.

16. The principle in law indeed has not been disputed at either end, but the question that has come up for consideration is as to whether it can be taken that the said principle in the facts of the present case has been violated or not. Even if no notice had been given, still once the objector was before the arbitrator, he can not be permitted to raise this plea. The purpose of issuing of notice to the parties is that he should know the disputes and the controversy. When the purpose himself has appeared then he can only take the plea that he was not aware as to what was going on. Thus, the disputes has to be tested on the touch stone of prejudice if any. If no prejudice is caused, on that ground the proceedings can not be held to be violative of principles of natural justice.

17. In the facts of the present case, It can not be termed that any prejudice has been caused to the objector. The arbitrator and objector was aware of the controversy. He had inquired as to what was their share and who had purchased the property. In that view of the matter, it has not been shown that any prejudice on that account has been caused.

18. Reliance has further been placed on the decision of the Supreme Court in the case of [K.P. Poulose Vs. State of Kerala and Another](#), . The Supreme Court held that where the arbitrator has ignored the material documents, then it must be taken that he has mis-conduct the proceedings. The ratio decidendi of this decision will have little role in the facts of the present case. The question that the arbitrator has asked to the parties, it is patent that there was little controversy about the building that the disputes have arisen and that they wanted partition of the property because they could not live together. It can not be termed in that view of the matter that the arbitrator had ignored material documents to prompt this court to conclude that he has misconduct himself.

19. It has been alleged that the arbitrator enjoyed the hospitality of respondent No.1 and thus the argument is that the award should be set aside. Indeed, if that was so, the court would take a view, but the facts of the case can not take a hind seat. It is admitted by the objector that the marriage was in the family of respondent No.5. Arbitrator was known to the parties. Thus he has come to Delhi. In that view of the matter if he stayed in the hotel booked for guests and was to decide the matter, there appears nothing objectionable. In the facts, thus, the plea must be rejected.

20. Confronted with that position, the learned counsel for the objector eloquently pointed that the division is unfair and improper. He had drawn the attention of the court to certain facts in this regard. Even on that court, since there was a domestic tribunal appointed, the arbitrator indeed was not bound by the strict procedure of Code of Civil Procedure. If he decides the controversy then unless there is an error apparent on the face of the record, this court will not sit as a court of appeal to pronounce an order even if it thinks otherwise. Consequently, when the arbitrator has supplied the mind and suggested in the award different shares, which have to be given effect to, it can not be termed that it is an error apparent on the face of the

record. The Court in objections against the award has a limited scope, referred to above and keeping in view the same, this particular plea necessarily must also fail. The award, on that count is not liable to be set aside on these assertions.

ISSUE NO.5:

21. Indeed it is not a speaking award. The agreement does not show that it has been agreed between the parties that the award shall record the reasons. Once the parties had agreed and it is not one of the terms that the arbitrator shall pass a speaking, in that view of the matter, on this ground itself, it can not be held that the Award is liable to be set aside. This issue is decided against the objector.

ISSUE NO. 6:

22. For these reasons, the objections must fail and are dismissed. The award is made a rule of the Court. A decree in terms of the same is passed. Parties are left to bear their own costs.