

A GOA, DAMAN AND DIU HOUSING BOARD
v.
RAMAKANT V.P. DARVOTKAR

SEPTEMBER 6, 1991

B [B.C. RAY, M.H. KANIA, K. JAGANNATHA SHETTY,
LALIT MOHAN SHARMA AND J.S. VERMA, JJ.]

Arbitration Act, 1940: Section 16—Award—When to be remitted to Arbitrator—No allegation of bias or illegality—High Court remanding awards for giving reasons—Whether justified.

C The appellant-Housing Board, which had entered into four contracts with the respondent for construction of tenements within a certain time limit, terminated them after giving notice on the ground that the respondent had failed to complete the construction work despite several extensions granted to him, and filed a suit in the Court of Civil Judge claiming damages of over Rs.4 lakhs. The respondent filed applications under Sections 34 and 20 of the Arbitration Act, 1940, for stay of the suit and for directions to the appellant-Board for filing the arbitration agreement in the Court and also for appointing arbitrator in terms of clause 25 of the agreement. As per Court's order, the appellant filed the agreement in the Court and appointed the Arbitrator.

F The Arbitrator made four awards granting the claims of the respondent to the extent of over Rs.8 lakhs and filed them in the Court for making them Rule of the Court. The appellant's objections for setting aside the awards on the ground that the Arbitrator had misconducted himself by not framing the main issue, viz., whether or not the claimant abandoned the work and thereby committed the breach of the agreement, by ignoring the letter of termination where in it was clearly stated that the termination had been done on account of the abandonment of the work by the claimant, and failed to decide upon the question of the abandonment of work and wholly side-tracked the issue and also by not giving reasons for the award as required under the agreement, under which he was appointed, were rejected by the Civil Court, which confirmed the awards and made them the Rule of the Court. The appellant's appeals against this decision was allowed by the High Court, which set aside the Civil Court's order and sent back the awards to the arbitrator for giving reasons, as required under clause 25 of the agreement which specifically provided that in all cases where amount of

claim was Rs.50,000 and above, the Arbitrator was bound to give reasons.

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In the appeal before this Court, on behalf of the appellant-Housing Board it was contended that having held that the arbitrator was guilty of misconduct and the awards were liable to be vitiated on that ground, the High Court ought to have set aside the awards instead of sending them back for recording reasons, which was totally unwarranted by law.

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On behalf of the respondent, it was contended that the High Court's order remanding the awards for recording reasons clearly fell within the purview of Sec. 16(1)(c) of the Arbitration Act, as the objection to the legality of the award was apparent on the face of it, and not within the provisions of Sec. 30 of the Act, inasmuch as the arbitrator had not misconducted himself or the proceedings and the awards in question had not been improperly procured.

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Dismissing the appeals and confirming the awards, this Court,

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HELD: 1.1 Section 16 empowers the Court to remit the award to the Arbitrator for reconsideration only in three cases specified therein. Clause (c) of Sub-Section (1) provides that the award shall be remitted to the Arbitrator by the Court where an objection to the legality of the award is apparent on the face of it. [710D]

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1.2 No doubt, in the instant case, the High Court has come to a finding that the Arbitrator was guilty of misconduct for his failure to give reasons as required but there is nothing to show that the Arbitrator misconducted himself or the proceeding in any other manner, nor is there anything to show that the awards have been improperly procured nor any allegation, far less, any finding, that the Arbitrator was biased or unfair or he had not heard both the parties or he had not fairly considered the submissions of the parties in making the awards in question. [710E]

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1.3 It is evident from the four awards made by the Arbitrator that the Arbitrator has considered all the specific issues raised by the parties in the arbitration proceedings and came to his finding after giving cogent reasons. The awards cannot under any circumstances be considered to be made by the Arbitrator without recording any reasons for the same. In such circumstances, it cannot be held that the Arbitrator has misconducted himself or in the proceedings in the matter

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- A** of giving the awards. The decision of the High Court remitting the awards back to the Arbitrator for giving reasons is set aside and the awards made by the Arbitrator are upheld and made Rule of the Court. [710F-G, 711A]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3236-39 of 1984.

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From the Judgment and Order dated 7.2.1983 of the Bombay High Court in F.C.A. Nos. 35/B, 36/B, 37/B & 38/B of 1981.

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Ashok H. Desai, Solicitor General, Ravinder Narain, Aditya Narain, Rajan Narain, S. Sukumaran, D.N. Mishra and Pallav Sishodia for the Appellant.

G.L. Sanghi, S.K. Mehta, Dhruv Mehta and Aman Vachher for the Respondent.

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The Judgment of the Court was delivered by

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RAY, J. The above four appeals on special leave by the appellant were filed against the judgment and order dated February 7, 1983 made by the Panaji Bench of the Bombay High Court in First Civil Appeal Nos. 35/B to 38/B of 1981 disposing of all the four appeals filed by the appellant against the judgment and order of the learned Civil Judge, Senior Division, Panaji, Goa dated 26.8.1981 confirming four different awards by an arbitrator appointed in pursuance to the agreement between the parties. Appeal No. 35 of 1981 relates to the award, awarding to the respondent against the appellant Rs.2,75,091.13. Appeal No. 36 of 1981 relates to an award, awarding to the respondent a sum of Rs.1,88,968.36. Appeal No. 37 of 1981 relates to an award, awarding to the respondent Rs.3,36,230.36 and Appeal No. 38 of 1981

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relates to an award, awarding to the respondent Rs.46,321.32.

The facts leading to these appeals are as follows:

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The appellant Goa, Daman & Diu Housing Board entered into two contracts on 15.3.72, and one contract each on 11.7.73 and on 4.7.73 with the respondent for the construction of tenements at Vagoda-Gama, Goa. The appellant accepted two tenders of the respondent on 9.3.72 and remaining two on 24.2.73. There was a time limit in all the aforesaid four contracts for the completion of the work referred to therein. Several extensions were granted to the respondent for completing the work out the respondent failed to complete the construction

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work undertaken by him under the said four contracts. On July 1, 1975 the appellant issued a notice to the respondent under clause 3 of the said contract for exercising the right of termination in view of the fact that the respondent was unable to fulfil the contractual obligation of completing the construction work in spite of the various extensions granted to the respondent. On July 14, 1975, the Engineer-in-Charge of the appellant Board exercised its unilateral right of terminating the contract under clause 3 of the agreement in view of the fact that the respondent did not complete the work of construction undertaken by him in spite of various extensions granted to him. On July 31, 1975, the Chairman of the appellant board confirmed that all the four contracts stood rescinded. On May 17, 1976, the respondent served a notice to the appellant on the ground that the appellant had rescinded the work contracts. The respondent stated therein various reasons why the work could not be completed. Thereafter in April, 1978, the appellant filed a suit claiming damages for a sum of Rs.4,38,786.96 with interest against the respondent in the Court of the Civil Judge, Senior Division, Panaji, Goa. Subsequently, an application was filed by the respondent under section 34 of the Arbitration Act for stay of the suit. Respondent also made another application to the Court under section 20 of the Arbitration Act for directing the Housing Board to file the arbitration agreement in Court and in pursuance of clause 25 of the agreement to appoint an arbitrator. Accordingly, the Court by its order dated 28.2.1979 had the agreement between the parties filed in court and directed the Housing Board to appoint an arbitrator. On March 29, 1979 Shri J.S. Pinto, retired Superintending Engineer was appointed as Arbitrator.

The Arbitrator on March 23, 1981 submitted four awards granting the claims of the respondent as stated hereinbefore on the basis that the appellant was responsible for the slow progress and non completion of work and the work could not be completed as the contract was terminated by the appellant, the Housing Board. The said award was filed in the Court of Civil Judge, Senior Division, Panaji, by the Arbitrator on 31st March, 1981 for making the award Rule of the Court. The appellant submitted his objections for setting aside the awards on April 27, 1981 on the grounds *inter alia* that the Arbitrator had misconducted himself by not framing the main issue i.e. whether or not the claimant abandoned the work and thereby committed breach of the agreement. The Arbitrator misconducted himself by ignoring the letter of termination wherein it was clearly stated that the termination has been done on account of the abandonment of the work by the claimants; the learned Arbitrator failed to decide upon the

A question of the abandonment of work and has wholly side tracked the issue; the learned Arbitrator misconducted himself by not giving reasons for the award as required under the agreement under which he was appointed.

B The learned Civil Judge, Senior Division, Panaji by his Order dated 26th August, 1981 rejected all the objections raised on behalf of the appellant against the said awards and confirmed the same. All the four impugned awards have been made Rule of the Court.

C The appellant thereafter filed the aforesaid First Civil Appeal Nos. 35/B, 36/B, 37/B and 38/B of 1981 against the said Order of the learned Civil Judge, Senior Division, Panaji, Goa on the ground that the Civil Judge did not consider that the Arbitrator misconducted himself in making the awards without recording any reasons for the same, even though the claim was Rs.50,000 and above as provided in clause 25 of the agreement between the parties and as such the awards should have been set-aside by the Court.

D The High Court held that having regard to the clause 25 of the terms of the agreement specifically providing that in all cases where amount of claim in dispute is Rs.50,000 and above the arbitrator was bound to give reasons for his award. The statements that has been made by the Arbitrator while giving his findings could not be considered to be the reasoning for his finding of the award. The Court also held that:

E “The award no where contains any reasoning for the same nor does it even obliquely mentions that in giving his findings the Arbitrator has even sought to adopt the reasoning of either of the parties. In our view as the obligation of the Arbitrator under Clause 25 of the agreement stands, the reasons should appear to be so in this case.”

F It was further held that as the arbitrator failed to give reasons for the award it would be a misconduct on his part and the award was liable to be vitiated on that ground. The Court allowed all the appeals. The order of the lower court was set-aside and the awards were remanded back to the arbitrator for giving reasons for the same as required under clause 25 of the arbitration agreement and thereafter to file the same in the court of Civil Judge, Panaji, within eight weeks after the order is served on him.

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Against this judgment and order the impugned appeals by special leave were filed.

The learned counsel on behalf of the appellants has contended that the High Court acted illegally in not considering at all that the arbitrator did not record any reasons for making awards allowing the claims each of which exceeds Rs.50,000 as provided under clause 25 of the arbitration agreement and as such the arbitrator has misconducted himself in the proceedings and instead of sending the awards made by the arbitrator to him for recording his reasons ought to have set-aside the awards under section 30 of the Arbitration Act. It has also been contended that the High Court though it held that the arbitrator was guilty of misconduct and the awards made by him were liable to be vitiated on that ground yet inspite of setting aside the awards they were sent to the arbitrator for recording reasons which is totally unwarranted by law.

The learned counsel appearing on behalf of the respondent, on the other hand, submitted that the awards made by the arbitrator after hearing the parties cannot be said to be illegal or unwarranted as the same were made after considering all papers and documents filed by the parties and after duly hearing the parties. As such there was no illegality nor any misconduct committed in making the awards. The arbitrator has fairly considered the issues and made the awards in question. The misconduct, if any, on the part of the arbitrator does not concern with the probity and impartiality of the arbitrator. The only allegation against the arbitrator is that he has not recorded the reasons for the awards made by him as per term of clause 25 of the arbitration agreement. It has, therefore, been contended by the learned counsel on behalf of the respondent that the order of the High Court in remanding the awards to the arbitrator for recording reasons clearly falls within the purview of section 16(1)(c) of the Arbitration Act, 1940 as the objection to the legality of the award is apparent on the face of it. It does not fall within the provision of section 30 of the said act in as much as the arbitrator has not misconducted himself or the proceedings and the awards in question have not been improperly procured. Several decisions have been cited at the bar in support of the respective contentions advanced by the counsel for the parties.

Before considering the question whether the directions made by the High Court in remitting the award to the Arbitrator for giving reasons do fall within the purview of Section 16 of the Arbitration Act, 1940, it is appropriate to set out the relevant provisions of section 16(1):-

A “Sec. 16(1): The Court may from time to time remit the award or any matter referred to arbitration to the arbitrators or umpire for reconsideration upon such terms as it thinks fit--

B (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration and such matter cannot be separated without affecting the determination of matters referred; or

C (b) where the award is so indefinite as to be incapable of execution; or

(c) where an objection to the legality of the award is apparent upon the face of it.”

D Section 16 empowers the Court to remit the award to the Arbitrator for reconsideration only in three cases specified therein. Clause (c) of Section 16(1) provides that the award shall be remitted to the Arbitrator by the Court where an objection to the legality of the award is apparent on the face of it. Of course, the High Court has come to a finding that the Arbitrator was guilty of misconduct for his failure to give reasons as required. There is, however, nothing to show that the Arbitrator misconducted himself or the proceedings in any other manner nor there is anything to show that the awards have been improperly procured. There is no allegation, far less, any finding, that the Arbitrator was biased or unfair or he has not heard both the parties or he has not fairly considered the submissions of the parties in making the awards in question. In our opinion, it is evident from the four awards made by the Arbitrator that the Arbitrator has considered all the specific issues raised by the parties in the arbitration proceedings and came to his finding after giving cogent reasons. The above awards cannot under any circumstances be considered to be made by the Arbitrator without recording any reasons for the same. Therefore, in such circumstances, it is not proper to hold that the Arbitrator has misconducted himself or in the proceedings in the matter of giving the awards.

H In these circumstances, we are unable to hold that the four awards made by the Arbitrator are bad for not recording reasons. We, therefore, uphold the said awards and we do not think it necessary to decide the question as regards the scope of Section 30 or Section 16 of

the Arbitration Act. The decision of the High Court remitting the awards back to the Arbitrator for giving reasons is set aside and the awards made by the Arbitrator are upheld. Let these awards be made rule of the Court. The appeals are, therefore, dismissed. There will be no order as to costs. A

N.P.V.

Appeals dismissed. B