

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 13th OF MAY, 2024

MISC. APPEAL No. 3747 of 2005

BETWEEN:-

M/S LILADHAR LAXMINARAYAN AGRAWAL THR.
PROPRIETOR DENISH AGRAWAL GANDHIGANJ,
CHHINDWARA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SURENDRA VERMA - ADVOCATE)

AND

1. MANAGING DIRECTOR M.P. RAJYA BEEJ EVAM
VIKAS NIGAM, E-1/88-A ARARO COLONY BHOPAL
(MADHYA PRADESH)
2. REGIONAL MANAGER M.P. RAJYA BEEJ EVAM
VIKAS NIGAM NEW MARKET MALVIYA NAGAR,
BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SIDHARTH SETH - ADVOCATE)

This appeal coming on for admission this day, the court passed the following:

ORDER

Appellant has filed this appeal against judgment dated 24.09.2004 passed by 5th Additional District Judge, Bhopal in Arbitration Case No.130/2002.

2. Learned counsel for the appellant submitted that agreement dated 30.1.1993 was executed between the parties by which appellant agreed to purchase food grains from different centres at agreed rates. Appellant purchased the food grain for Rs.1,69,494.33 and paid Rs.1,84,494.38 and he is

entitled for refund of Rs.15,000/- along with interest. Appellant made request for settling the matter by way of Arbitration which was not responded by respondents. Thereafter appellant filed an application under section 11(1) of Arbitration Act, 1940 which was registered as MJC No.8/1996. Said application was allowed vide order dated 17.9.1996 by 5th Additional District Judge and direction was given to dispose of case under section 3 Schedule 1, Rule 3 of the Act within four months in accordance with law. Award was passed on 28.7.1997. Appellant challenged the award under section 30 and 31 of the Act which was registered as MJC No.33/1997. Court remanded the matter back for fresh disposal in accordance with law. Arbitrator passed award on 28.8.2002 and dismissed the claim. Appellant preferred an application under section 34 of Arbitration and Conciliation Act, 1996 for setting aside arbitration award. Application under section 34 was dismissed on 24.09.2004.

3. Learned counsel for the appellant submitted that objection under section 30 could not be decided without complying with the requirement of section 14 of the Act. Reliance is placed on judgement reported in **1997 MP Weekly Notes (1) 223 (Dharamchand Jain vs. M.P. Housing Board, Bhopal) and AIR 1987 Orissa 180 (Smt. Susama Acharya and another vs. Baikunthanath Acharya and others)**. It is argued that Arbitrator has misconducted himself in the proceedings. Prayer is made for setting aside the award and allowing the appeal and directing respondents to refund the money with interest at the rate of 18% per annum.

4. Learned counsel for the respondents had supported the order dated 24.9.2004 and submitted that no error has been committed in dismissing the application as grounds raised do not fall within scope of section 30 and 33 of Arbitration Act 1940 read with Arbitration and Conciliation Act 1996.

5. Heard the learned counsel for the parties.

6. Main issue raised before the Court for consideration is whether reference Court of Additional District Judge, Bhopal in Arbitration Case No.130/02 has committed illegality and procedural impropriety in deciding reference case without award being filed in the Court.

7. Learned counsel for appellant has relied upon the judgment passed by this Court in Miscellaneous Appeal No.264/1992 decided on 18.12.1996, note 223 reported in MPWN. In said case, it was held that resort to Section 30 of Arbitration Act, 1940 could not be had without first complying with requirement of Section 14. Committee No.20 of the High Court on 11.11.2020 has passed the resolution not to place reliance on the head notes or short notes. Reporting in Madhya Pradesh Weekly Notes is short notes of the case, therefore, reliance of MPWN cannot be placed.

9. Now it is to be examined whether the Court can proceed to hear reference without complying with Provision of Section 14 of the Arbitration and Conciliation Act. Sections 14(1)(2) and 31 of the Arbitration and Conciliation Act, 1940 are quoted as under:-

14. Award to be signed and filed:- (1) when the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof and of the amount of fees and charges payable in respect of the arbitration and award.

(2) The arbitrators or umpire shall, on the request of any party to the arbitration agreement or any person claiming under them or, if so directed by the court and upon payment of the fees and charges due in respect of the arbitration and award of the costs and charges of filing the

award, cause the award or signed copy of it together with any depositions and documents which may have been taken and proved before them to be filed in the court and the court shall thereupon give notice to the parties of the filing of the award.

31. **Jurisdiction:**(1) subject to the provisions of the Act, an award may be filed in any court having jurisdiction in the matter to which the reference relates.

(2) notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the court in which the award under the agreement has been, or may be filed, and by no other court.

(3) all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings, shall be made to the court where the award has been, or may be, filed and to no other court.

10. On carefully going through said provisions, it is found that after passing of award same shall be signed by Arbitrator and notice in writing is to be given to parties for signing of award and to deposit fees and charges payable in respect of arbitration award. After payment of fees and charges in respect of arbitration award and cost of charges of filing of award, Arbitrator shall sign the award or sign copy of the award along with depositions of witnesses and evidence to be filed in the Court. Thereafter, Court shall give notice to the parties regarding filing of award. As per Section 31 of Arbitration and Conciliation Act 1940, all objections regarding validity of award shall be made

to Court where award has been filed or may have been filed and to no other court.

11. Section 31 of the Arbitration and Conciliation Act determines the jurisdiction of Court to hear the objection. Court where award is to be filed or may be filed is having jurisdiction to decide the objections regarding validity of arbitral award in proceedings. Word used in Section 31 (3) "may be filed". There is no bar in said section that objections can only be made when award is filed. Section 31 determines the Court which has to hear objections. Arbitrator has to file award in Court which has jurisdiction over the subject matter. Applications may be filed in the Court where award is to be filed. In view of same, no bar is created by Section 31 that Court cannot entertain application in respect of award until same has been filed.

12. Matter is of the year 2005 and no purpose will be served by sending it back to Court for passing fresh orders on objection. Reference Court has carefully considered all the objections and has rightly come to a conclusion that application for appointment of Arbitrator was filed and registered in the Court on 25.07.1996. Due to Section 21 of the Arbitration and Conciliation Act, arbitration proceedings said to have commenced on 25.07.1996. Arbitration and Conciliation Act, 1996 was brought into operation on 22.08.1996. As per Section 85 of the Act of 1996 pending proceedings will continue under the old Act.

13. In view of said sections, reference Court has not committed an error in considering the objections under Act of 1940. On merits Reference Court has specifically held that award has not been passed in violation of agreement. Clauses of agreement has carefully been dealt with by reference Court and finding has been given. It has also been held that Arbitrator has not

misconducted himself and no ground is made out within scope of Section 30 of the Arbitration and Conciliation Act for interference.

14. In view of aforesaid, I do not find any illegality or procedural impropriety in award dated 24.09.2004. Accordingly, present miscellaneous appeal is **dismissed**.

(VISHAL DHAGAT)
JUDGE

mm/pn

