

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.505A/2001 and IA No.984/2002**

Date of Decision: January 07, 2010

N.D.M.C.

.....Plaintiff

Through: Mr.Arvind Shah, Advocate.

VERSUS

RAKESH KUMAR SHUKLA

.....Defendant

Through: Mr.A.K.De, Advocate.

% **CORAM:**  
**HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest? Yes

## **J U D G M E N T**

**ARUNA SURESH, J.**

1. Plaintiff filed an application under Sections 13 and 17 of the Arbitration Act, 1940 (hereinafter referred to as the 'Act') for making the award dated 29<sup>th</sup> January, 2001, made by Shri D.V. Kapoor, a Rule of the Court. Defendant is a dealer of aquarium and fishes and accessories associated with it and has wide experience in the said field. Plaintiff NDMC entered into an agreement with the defendant on 14<sup>th</sup> June, 1985, initially for a

period of three years, to be extended later, on fulfillment of certain conditions contained in the agreement, for maintenance of ten aquariums displayed for public viewing at Grotto, Children park, India Gate, New Delhi in exchange of a space for a sale counter to remain in exclusive possession of the defendant at the back of the display aquariums inside Grotto, Children Pak, India Gate. After the expiry of three years, NDMC issued a letter dated 5<sup>th</sup> May, 1988, followed by another letter dated 26<sup>th</sup> September, 1988 and called upon the defendant to vacate the premises. Defendant filed a civil suit in the District Court seeking restraint order against the NDMC from dispossessing him from the said premises.

2. Vide order dated 5<sup>th</sup> October, 1988, the Civil Court ordered NDMC to maintain status quo in respect of the premises in question. Disputes and differences arose *inter se* the parties relating to extension/renewal of the agreement and for payment of Rs.10,000/- against the supply of aquariums; which was to be made to the defendant by the plaintiff. Defendant wrote a letter to the Administrator, NDMC asking him to refer the dispute between the parties to arbitration under clause 15 of the

agreement. Since Administrator refused to refer the dispute, defendant filed a petition being Suit No.961A/1990 under Section 20 of the Act before this Court for appointment of an Arbitrator and for referring the disputes to him for adjudication. Vide order dated 11<sup>th</sup> July, 1990, this Court directed the plaintiff to maintain status quo with respect to the possession of the suit premises and maintenance of aquariums with further direction to the Administrator, NDMC to appoint an Arbitrator and refer the disputes to him.

3. In compliance of the orders of this Court, plaintiff appointed Shri D.V.Kapoor, Advocate as the sole Arbitrator, who passed his award on 29<sup>th</sup> January, 2001. NDMC filed this case for making the said award a Rule of the Court. On receipt of notice, defendant has filed objections challenging the validity of the award on the grounds that Arbitrator misconducted himself by entertaining the counter-claim filed by the plaintiff and considering the same while making the impugned award. He also challenged the merits of the award on the grounds that Arbitrator did not properly appreciate the terms and conditions of the agreement, the evidence of

the respondents and also by considering that plaintiff had already given him adjustment of Rs.10,000/- out of the total sum awarded in favour of the plaintiff. He has prayed that the award, being against principles of natural justice, be set aside.

4. Mr.A.K.De, counsel appearing for the defendant/objector has argued that, plaintiff did not raise any counter-claim in the petition filed by the defendant under Section 20 of the Act and, therefore, plaintiff could not have raised any counter-claim before the Arbitrator. Hence, the Arbitrator misconducted himself when he entertained the counter-claim of the plaintiff. Not only this, the Arbitrator framed the issues during the writing of the award and not at the relevant time when the proceedings were conducted and acted beyond the terms of the reference and adjudicating upon the same.

5. Mr.Arvind Shah, counsel appearing for the plaintiff has argued that, plaintiff was within its right to raise its counter-claim as the High Court had directed that disputes between the parties be referred and not just disputes raised by the defendant/objector.

Defendant is restrained from taking the instant objection, as he failed to take this objection during the arbitration proceedings and, therefore, the Arbitrator rightly considered and adjudicated upon the counter-claim of the plaintiff and passed the impugned award.

6. The principal question to be decided is whether the Arbitrator misconducted himself by traveling beyond the reference made to him by entertaining and adjudicating upon the counter-claim of the plaintiff. The relevant clauses of Agreement No.7 dated 14<sup>th</sup> June, 1985, *inter se* the parties, containing the arbitration clauses are reproduced as below:-

“8. M/s. Tropiquarium will have a sale counter in the covered area behind the display area.

9. The contract of display in the aquarium in the Children Park, India Gate will be valid for a period of three years and extension on satisfactory display and mutual agreement.

10. The offer given by M/s. Tropiquarium through their letter dated 24<sup>th</sup> April, 1985 is superseded with the above mentioned terms and conditions.

11. The existing accrelyc aquarium would be the property of NDMC.

12.The contract of display and maintaining of the aquarium is given to M/s. Tropiquarium for a period of three years with effect from 14.5.85.

13. That M/s. Tropiquarium will abide by the instructions given by the New Delhi Municipal Committee from time to time. In case of any violation of the terms and conditions of this agreement of the rules/instructions framed by the Committee in regard to aquarium, the contract of work awarded to M/s. Tropiquarium will be cancelled/revoked forthwith.

14. Other items not covered in this agreement, shall be mutually settled by both the parties.

15. That any dispute arising between the parties will be settled by the Arbitrator to be appointed by the Administrator, NDMC, whose decision shall be final and binding on both the parties.

16. On the expiry of the period of the contract, M/s.Tropiquarium will be bound to hand over the peaceful use and possession of the aquarium to New Delhi Municipal Committee without any demur and shall not be entitled to claim any compensation in this regard.”

7. Thus, it is clear that the premises in suit were given to the defendant initially for a period of three years w.e.f. 14<sup>th</sup> May, 1985 for display and maintenance of aquarium. After the expiry of three years, defendant was

required to hand over the peaceful use and possession of the aquarium to the plaintiff without any demur and was not entitled to claim any compensation in this regard, of course, subject to the parties agreeing to extend the period of three years on satisfactory display and mutual agreement.

8. In the petition filed under Section 20 of the Act, defendant sought appointment of an Arbitrator and for reference of all the disputes and differences among the parties to him, as per the agreement between the parties. The said petition was allowed by this Court vide its order dated 11<sup>th</sup> July, 1990, with the following observations:

“S.No.961-A/90

Despite service of notices, no written statement has been filed.

The petitioner has stated that there is an arbitration agreement between the parties contained in Clause 15 of Agreement No.7 dated 14<sup>th</sup> of June 1985 for maintenance work of 10 aquariums displayed for public viewing at Grotto, Children Park, India Gate, New Delhi. According to the petitioner, he was entitled to renewal of the agreement under Clause 9 thereof, but the

respondents have failed to do so. The petitioner has also raised a dispute with regard to non-payment of Rs.10,000/- claimed by the petitioner. Thus, disputes have arisen between the parties to which the agreement applies.

I am satisfied that an arbitration agreement exists between the parties, that disputes have arisen between them, and that the arbitration agreement applies to the disputes.

Therefore, I direct the Administrator of the N.D.M.C. to appoint an arbitrator within four weeks from today and to refer the above-mentioned disputes to him in accordance with the arbitration agreement.

The petition is allowed. No costs."

9. Thus, it is clear that the disputes mentioned in the petition were referred to the Arbitrator to be appointed by the Administrator of the NDMC in accordance with the arbitration agreement.

10. Administrator NDMC, appointed Shri D.V.Kapoor, Advocate as the sole Arbitrator and made the following reference to the Arbitrator:-

" I, Ramesh Chandra, Administrator, NDMC, therefore, by virtue of powers

conferred on me under clause 15 of the said agreement, hereby, appoint Shri D.V. Kapoor, Advocate, H-25, Green Park, Ext., New Delhi-110016 as a sole Arbitrator to decide and make his reasoned award regarding the claims/disputes raised by the claimant as per copy of Writ filed by the Contractor before Delhi High Court in Suit No.961-A/90 and counter-claims of NDMC to follow, if any, subject, however, to their admissibility under clause 15 of the said agreement.”

11. It is pertinent to mention here that plaintiff had not filed any reply to the petition under Section 20 of the Act raising any counter-claim therein. The Arbitrator in his award dated 29<sup>th</sup> January, 2001, passed the following directions:-

I. The claimant shall vacate the premises giving its peaceful possession to the respondent (NDMC) within 30 days from the date of receipt of this award.

II. The claimant shall pay a sum of Rs.6,29,000/- plus amount calculated for the current year at the rate of Rs.6,285/- per month to the respondent by 31<sup>st</sup> March, 2001, subject to installments/extension of time of payment, if any, granted by the Chairman, NDMC acting for and on behalf of the respondent.

III. The delay in making the awarded payment would attract

simple interest at the rate of 1.25% per month subject to conditions laid down in installments/time extension, if any, granted by the Chairman, NDMC on application made before him by the claimant.

IV. Parties were left to bear their own costs.

12. Thus, the Arbitrator dismissed the claim of the defendant and allowed the counter-claim of the plaintiff vide the impugned award.

13. If an application under Section 20 of the Act was allowed and the Court referred the disputes to the Arbitrator, the Arbitrator would be required to decide only such question and all such questions, which he considered are covered by the reference. An Arbitrator derives his power from the reference, which furnishes a prescribed limit of his authority. The Arbitrator has, therefore, no right to traverse beyond the particular matters submitted to him for decision. His award must strictly conform both in substance and infer to the submissions. If he goes beyond the scope of the reference in deciding a dispute not submitted to him, the award is bad. So long as the Arbitrators are within the scope of their authority, their decisions are valid and

binding. Arbitrators cannot enlarge the scope of the reference and it is pre-requisite for validity of an award that it confirms to the submissions.

14. In ***Orissa Mining Corporation Ltd. Vs. M/s. Prannath Vishwanath Rawlley, AIR 1977 SC 2014,*** the Division Bench of the Supreme Court, in para 11 of the judgment analyzed the provisions contained in Section 20 of the Act in the following manner:

“11. Section 20(1) of the Arbitration Act, 10 of 1940, provides that where a difference has arisen and where any persons have entered into an arbitration agreement they may apply to the court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in court. Sub-section (4) to Section 20 provides that the court shall order the agreement to be filed and shall make an order of reference to the arbitrator appointed by the parties. When an agreement is filed in court and order of reference is made then the claim as a result of the order of reference is limited to a particular relief and the arbitrator cannot enlarge the scope of the reference and entertain fresh claims without a further order of reference from the court.”

15. In ***Natwarlal Shamal Das & Company, Bombay-1 Vs. The Minerals and Metal Trading***

**Corporation of India Ltd., New Delhi, AIR 1982, Delhi 44**, while referring to the **Orissa Mining Corporation Ltd's** case (*supra*), this Court observed as follows:-

“24. It will be recalled that the arbitration proceedings were preceded by an application under S.20 of the Act. Under sub-s.(4) of S.20 the court ordered the agreement to be filed and made an order of reference to the sole arbitrator. Safer J. referred to the arbitrator “disputes which are subject matter of controversy between the parties”. These disputes were specified in the application in terms of rupees, annas and pies. Now the order of reference defines the limits of the authority and jurisdiction of the arbitrator. The arbitrator’s authority has its source in the order of reference. He cannot traverse beyond the reference made by the Court. If he does so he acts without jurisdiction. The arbitrator has necessarily to restrict his award only to the claim as put forward before the Court in Section 20 proceedings. This principle was laid down in Orissa Mining Corporation Ltd. Vs. M/s. P. V. Rawlley, AIR 1977 SC 2014. The Supreme Court said (at p. 2017):-

“When an agreement is filed in court and order of reference is made then the claim as a result of the order of reference is limited to a particular relief and the arbitrator cannot enlarge

the scope of the reference and entertain fresh claims without a further order of reference from the court.”

16. It was further observed in para 28 as follows:-

*“28. There can be acquiescence in arbitration proceedings which are clearly beyond the Court’s order of reference. A party is not precluded from objecting to the award later on the ground that the award was in excess of jurisdiction and the entire proceedings were invalidated thereby. Attending and taking part in the proceedings will not cure the defect where the arbitrator lacks inherent jurisdiction. The Supreme Court in Orissa Mining case (AIR 1977 SC 2014) has definitely laid down that a fresh claim cannot be entertained by the arbitrator if it was not made before the Court in proceedings under Section 20 of the Act. A further order of reference from the Court would be required to entertain a new claim. This is the ratio of that case. The arbitrator has no power to enlarge his jurisdiction when the Court by order of reference has circumscribed the area of controversy and told the arbitrator in clear terms what he has to decide.”*

17. Learned counsel for the defendant in support of his submissions has also referred to ***Union of India & Ors. Vs. Santiram Ghosh & Ors., AIR 1989, SC 402, Smt. Saiyada Mossarrat Vs. Hindustan Steel Ltd. Bhilai Steel Plant, Bhilai (M.P.) & ORS., AIR 1989***

**SC 406, S.S. Sobti Vs. Union of India & Ors., AIR 1982 DELHI 51, M/s. G.S. Atwal & Co. Vs. Union of India & Anr., AIR 1976 DELHI 150, Niranjana Lal Dalmia Vs. Union of India 7 Anr., AIR 1976 DELHI 154, Jivarajbhai Ujamshi Sheth & Ors. Vs. Chintamanrao Balaji & Ors., AIR 1965 SC 214, Ajit Singh & Anr. Vs. Fateh Singh & Ors., AIR 1962, Punjab 412 and Durga Dass s/o L.Balasa Rama & Ors Vs. baru Ram & Ors., AIR 1962, Punjab 417.**

However, the same are of no help to the defendant.

18. Thus, it is clear that the Arbitrator could not have enlarged the scope of reference by entertaining the counter-claim of the plaintiff corporation and adjudicating upon it. Therefore, he misconducted himself and acted beyond his jurisdiction. He was required to confine himself to the reference made to him by this Court under Section 20 of the Act. As discussed above, plaintiff did not file any written statement nor made any counter-claim in the said petition, which could have been referred to the Arbitrator to be appointed by the Administrator NDMC to adjudicate upon the disputes *inter se* the parties.

19. Reference made by the Administrator, NDMC does speak of the power of the Arbitrator to enter into reference and adjudicate upon the disputes *inter se* the parties including the counter-claim of the plaintiff, if it fell within clause 15 of the Agreement No. 7 dated 14<sup>th</sup> June, 1985. However, the counter-claim made by the plaintiff before the Arbitrator, was to seek possession of the suit premises as well as the charges for use and occupation. The counter-claim, therefore, made by the plaintiff before the Arbitrator was beyond the terms and conditions of the agreement *inter se* the parties.

20. It is pertinent that NDMC once challenged the jurisdiction of the Arbitrator in the matter and moved the Estate Officer to evict the defendant under P.P. Act. The Estate Officer observed on 11<sup>th</sup> February, 1988 that the matter could not be continued before two different authorities and that NDMC should have dropped the arbitration case with the direction/order of the High Court, which requirement was not followed by it before requesting for proceedings under P.P. Act. As reflected from the award, the proceedings under the P.P. Act were stayed *sine die*.

21. What was the fate of the civil suit filed by the defendant seeking stay against the plaintiff from dispossessing him from the premises in question, except in due course of law and also for restraining the plaintiff to open the tenders invited by them for allotment of the premises in suit is not known.

22. Obviously, the Arbitrator travelled beyond the scope of the reference and even in violation of the terms and conditions of the agreement. The agreement does not speak of referring the disputes to the Arbitrator for eviction of the defendant from the suit premises by invoking arbitration clause. The agreement is also silent if the plaintiff can invoke clause 15 of the agreement for claiming charges for use and occupation of the impugned premises till they were vacated by the defendant. Under these circumstances, ***Haryana Engineering & Foundry Works Vs. Union of India & Anr. 1987 (1) ALR 1***, is of no help to the plaintiff. In that case, the petitioner had withdrawn his application under Section 20 of the Act and it was Union of India who made a reference.

23. In **Charuvil Koshy Varghese Vs. State of Goa, 1998 (2) BomCR 387**, in similar circumstances, it was observed in paras 5, 7 and 9 as follows:-

“5. It is now well settled that an Arbitrator cannot enlarge the scope of reference made under section 20 of the Arbitration Act. The Arbitrator derives jurisdiction from the order of reference which determines the limits of his authority to act thereunder. Therefore, he cannot travel beyond the reference and if he does so he exceeds his jurisdiction.

6. xxx xxx xxx xxx xxx

7. In the case before the Delhi High Court in Food Corporation of India v. T.R. Behl (supra) it was found that there was no claim made by the Food Corporation before the Court and therefore no directions were given by the Court that the counter claim of the Food Corporation should also be entertained by the Arbitrator. However, the Arbitrator had entertained the counter claim of the Corporation. The short question which came up for determination before the Delhi High Court was whether the Arbitrator could entertain counter claim which was not referred by the Court and the same was answered in the negative after placing reliance on the judgment of the Apex Court in Orissa Mining Corporation v. M/s. Prannath Rawley (supra).

8. xxx xxx xxx xxx xxx

9. The position is exactly similar in the case before me. The dispute which was ordered to be referred by the District Judge in Arbitration Suit No. 95/85 by judgment dated 31st July, 1990 related only to the claim put forward by the appellant vide letter dated 16-10-85. It was only the said dispute which was ordered to be referred to the Arbitrator. The counter claim was never placed by the respondent before the Court and the same was never ordered to be referred to Arbitrator. In such circumstances, the Arbitrator had no jurisdiction to entertain the counter claims put up by the respondent.”

24. Coming to the merits of the award, as regards interpretation of the agreement, this Court cannot interfere in the findings of the Arbitrator based on oral as well as documentary evidence. Considering the evidence of the parties placed on record, the Arbitrator was within his right to interpret the terms and conditions of the agreement. Hence, this Court cannot sit in appeal against the award and reassess the evidence of the parties on fact finding made by the Arbitrator in the award as no perversity on the part of the Arbitrator in giving finding on interpretation of the terms and conditions of the agreement have been pointed out by the defendant.

25. Consequently, I conclude that the Arbitrator exceeded in his jurisdiction and misconducted himself in entertaining the counter-claim of the plaintiff which he could not have sustained. The objection petition, therefore, partly succeeds.

26. Accordingly, the award so far as it relates to grant of counter-claim is hereby set aside. The remaining part of the award is hereby made a Rule of the Court. There are no orders as to costs. Decree sheet be prepared accordingly.

**ARUNA SURESH  
(JUDGE)**

**JANUARY 07, 2010**  
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