M/S BHARAT COKING COAL LTD. A

v.

M/S C.K. AHUJA AND ANR.

FEBRUARY 14, 1995

[P.B. SAWANT AND G.N. RAY, JJ.] B

Arbitation Act 1940—Ss. 14(2), 17 and 29—Award—Delay in filing objections—Forum for dealing with award where arbitrator appointed by Supreme Court—Held, objection as to award, including objection as to forum, should be dismissed being filed long after period of limitation, as also on merits—Held further, where arbitrator appointed by Supreme Court and no further directions given, forum for taking further action is Supreme Court—Limitation. C

This Court by order dated Novemeber 12, 1991 referred the disputes and differences to arbitration by consent of parties. The award of the arbitrator made on February 14 1994 was filed before this Court. The Registry gave notice on April 29, 1994 of filing of the award to counsel for both parties. The respondents made an application under the Arbitration Act 1940 that the award be made rule of the court and interest at the rate of 24% be awarded to them from the date of filing of the award. When the interlocutory applications came up for hearing, the appellant prayed for fresh notice which was issued without prejudice to the contentions of the respondents that the period for filing objections were already barred by limitation. Even thereafter, while inspection of the award was taken on October 3, 1994, the objections to the award were filed on November 20, 1994, i.e. not within 30 days from such inspection. The appellant, besides contending that the award was not filed and signed in the proper manner and that they had not been supplied a copy as is required, further submitted that the award was not filed in the proper court. Accordingly, it was urged that there was no question of limitation running from the date of filing the award. D E F G

Disposing of the applications, this Court

HELD : 1. Where the arbitrator was appointed by this Court by consent of parties and no further directions were given in the said order which would indicate that this Court had not divested itself of its jurisdic- H

tion to deal with the award or matters arising out of the award, the forum for taking further action is this Court. In the absence of any other court having been invested with such jurisdiction, the only conclusion that is possible is that further orders must be passed only by the court that passed the order, namely, the Supreme Court. [69-G-H]

State of M.P. **v.** *M/s Saith and Skelton (P) Ltd.,* **[1972] 1 SCC 702, followed.**

Punjab State Electricity Board **v.** *Ludhiana Steels Pvt. Ltd.,* **[1993] 1 SCC 205, distinguished.**

Food Corporation of India **v.** *E. Kuttappan,* **JT (1993) 4 SC 90;** *Nilkantha Shidramappa Nindashetti* **v.** *Kashinath Somanna Ningashetti,* **[1962] 3 SCR 551 and** *Indian Rayon Corporation Ltd.* **v.** *Raunaq and Co. Pvt. Ltd.,* **[1988] 4 SCC 31, referred to.**

2. In any event, even if it is assumed that the award should be filed in other court when the notice of filing of the award was given by the Registry of this Court, objection as to the award including objection as to forum ought to have been raised before this Court and it will not be open to the parties to altogether ignore the notice of filing the award given by the Registry. Accordingly, such objection should not be permitted to be raised at this stage as the objection to the award has been filed long after the period of limitation. Even on merits, no interference is called for against the award. [70-C-D]

CIVIL APPELLATE JURISDICTION : Interlocutory Application No. 9 to 12 of 1994.

IN

Civil Appeal Nos. 3882-85 of 1990.

From the Judgment and Order dated 11.5.89 of the Patna High Court in C.R. Nos. 199-202 of 1989 (R).

G.L. Sanghi and G.S. Chatterjee for the Appellant.

M.C. Bhandare and R.P. Gupta for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J. In Civil Appeal Nos. 3882-85 of 1990 and SLP (Civil) Nos. 10832-33 of 1989 this court by order dated November 18, 1991, referred the disputes and differences in the said Civil Appeals and leave applications to arbitration by consent of parties. The order passed on November 18, 1991 is to the following effect :-

> "The disputes and differences referred to in the aforesaid matter are by consent referred to the arbitration of Mr. J.P. Thakur, Dy. Chief Engineer (Civil) Koylanagar P.O., Koylanagar District, Dhanbad, Bihar. Both the parties undertake to file a regular reference agreement before the said arbitrator within two weeks. Award to be made within four months thereafter."

The sole arbitrator thereafter entered the reference and parties to the arbitration appeared before the arbitrator and made submissions. The arbitrator thereafter made an award on February 14, 1994 and such award was filed before this Court by the arbitrator. The Registry of this Court gave notice of filing of the award on April 29, 1994 to the learned counsel for both the parties. the respondents namely M/s C.K. Ahuja and another made an application under Sections 14(2), 17 and 29 of the Indian Arbitration Act, 1940 on July 11, 1994 before this Court *inter alia* praying that the award dated February 14, 1994 delivered by the sole arbitrator, Shri J.P. Thakur, be made rule of Court and interest @ 24% be also given to the appellants on the awarded sum from the date of the award. It appears that Civil Appeal Nos. 3882-85 of 1990 were listed on March 22, 1993 for hearing but in view of the fact that the disputes relating to the appeals had been referred to arbitration by consent of parties this Court by order dated March 22, 1993 dismissed the said apeals.

The applications under Sections 14(2), 17 and 29 of the Indian Arbitration Act came up for hearing but on the prayer of Mr. G.S. Chatterjee, the learned counsel for M/s Bharat Coking Coal Ltd., a direction was given to issue fresh notice on M/s Bharat Coking Coal Ltd. about the filing of the award. Such notice, however, was issued without prejudice to the contentions of learned counsel for M/s C.K. Ahuja and another that the period for filing objections was already barred by limitation. The objections to the award have, however, been filed on November 20, 1994.

The said applications under Sections 14(2), 17 and 29 of the Indian Arbitration Act have been numbered as I.A. Nos. 9-12 of 1994 in Civil

A Appeal Nos. 3882-85 of 1990. At the hearing of the said applications, learned counsel appearing for M/s Bharat Coking Coal Ltd. has contended that as the award was not filed and signed in proper manner, the same should not be taken into consideration. It was also contended that the copy of the award was required to be supplied to the parties and since copy of
B the award was not given to M/s Bharat Coking Coal Ltd., the question of filing objections did not arise. It was also contended that the said award was not filed in proper court. Accordingly, there was no question of limitation running from the date of filing the award. In support of the contention that there will be no question of limitation if the award is not filed in proper court reliance is made to a decision of this Court in *State*
C *of Madhya Pradesh* v. *M/s Saith and Skelton (P) Ltd.,* [1972] 1 SCC 702. It may be stated here that the learned counsel for M/s Bharat Coking Coal Ltd. took inspection of the award on October 3, 1994 but the objection to the award was not filed within thirty days from such inspection. Disputing the said contentions, Mr. Bhandare, the learned counsel appearing for M.s
D C.K. Ahuja and another, has contended that the reference to arbitration has been made by this Court on the prayer of the parties. Accordingly, the arbitration proceedings have originated in this Court Therefore the award is required to be filed before this Court. Consequently, the objection if any to the award is also required to be filed before this Court. He has also
E submitted that at no point of time, any objection was raised by M/s Bharat Coking Coal Ltd. about the alleged impropriety in filing the award before this Court even though the notice of the counsel was drawn about filing of the award in April, 1994. Even in the petition of objection filed before this Court, no objection has been taken by M/s Bharat Coking Coal Ltd. that
F the award should not have been filed before this Court. Accordingly, such contention should not be allowed to be raised at the hearing of these applications. Mr. Bhandare has also contended that when the award has been filed in the Court and the attention of the learned counsel of the parties drawn by the Registry of this Court about the filing of the award, the period of limitation for filing objection to such award will run from the
G date of the notice. Although on the prayer of the learned counsel for the objector, a fresh notice was issued later on, the limitation for filing objection to the award cannot be counted from the date of such notice isued subsequently by this Court at the instance of the learned counsel for M/s Bharat Coking Coal Ltd. In support of this contention Mr. Bhandare has
H referred to a decision of this Court in *Food Corporation of India and others*

v. *S. Kuttappan,* JT (1993) 4 SC 90. In the said decision reference was made to an earlier decision of this Court in *Nilkantha Bhidramappa Ninoashetti* v. *Kashinath Somanna Ninoashetti and others,* [1962] 2 SCR 551 and *Indian Rayon Corporation Ltd.* v. *Raunaq and Company Pvt. Ltd.,* [1988] 4 SCC 31. It has been held in the decision in *Food Corporation of India's* case (supra) that the obligation of filing the award in court is a legal imperative on the arbitrator and when the award was filed in Court and the parties were aware of such filing of the award in Court, the limitation to file objection would run from the date of filing the award being made known to the parties, and not from any subsequent date when a notice of filing of such award was subsequently issued to the parties concerned.

Mr. Bhandare has contended that in the instant case the Registry of this Court specifically drew the attention of the counsel in April. 1994 about the filing of the award but despite such knowledge, the appellant, M/s Bharat Coking Coal Ltd. did not choose to file any objection to the said award. Even after taking inspection of the award on October 3, 1994, the objection has not been filed within a period of thirty days from such inspection but the objection has been filed only on November 20, 1994. Accordingly, the objection to the award should not be considered as the same is hopelessly barred by limitation.

In our view, the contention raised by Mr. Bhandare is wholly justified. The Registry of this Court gave notice to the learned counsel for the parties about the filing of the award in April, 1994. It is nobody's case that counsel had an authority to take such notice on behalf of either of the party. It was also open to the counsel to take inspection of the award. As a matter of fact, such inspection was also taken on October 3, 1994 but no objection was filed within thirty days either from the notice given by the Registry in April, 1994 or from the date of inspection of the award on October 3, 1994. It has been held by this Court in *State of Madhya Pradesh* v. *M/s Saith and Skelton (P) Ltd.,* [1972] 1 SCC 702 that where the Arbitrator was appointed by the Supreme Court by consent of parties and no further directions were given in the said order which indicate that the Supreme Court had not divested itself of its jurisdiction to deal with the award or matters arising out of award, the forum for taking further action is the Supreme Court. It has also been held in the said decision that in the absence of any other court having been invested with such jurisdiction, the only conclusion that is possible is that further orders must be passed only by the Court that

A pased the order, namely, the Supreme Court. Mr. Bhandare has relied on a later decision of this Court in *Punjab State Electicity Board* v. *Ludhiana Steels Private Ltd.*, [1993] 1 SCC 205 in support of his contention that when reference to arbitration was made by this Court, the award is to be filed in this Court only. We may only indicate that the said decision has a distinguishing feature inasmuch as in that case after making reference to arbitra-
B tion, this Court specifically directed that the award would be sent to Registry of this Court. In any event, even if it is assumed that the award should be filed in other Court when the notice of filing of the award was given by the Registry of this Court, objection as to the award including objection as to forum ought to have been raised before this Court and it
C will not be open to the parties to altogether ignore the notice of filing the award given by the Registry of this Court. We may also indicate here that in the petition of objection it has not been urged that there has been any impropriety in filing the award in this Court. Accordingly, such objection should not be permitted to be raised at this stage as the objection to the
D award has been filed long after the period of limitation, the same should be dismissed. We may also indicate here that even on merit, we do not think that any interference is called for against the award. We, therefore, allow the Interlocutory Application Nos. 9 to 12 of 1994 and direct the award to be made rule of Court. It also appears to us that in the facts of the case, the applicants M/s C.K. Ahuja and another, are entitled to get an
E award of interest @ 12% from the date of the award till realisation. The Interlocutory applications are accordingly disposed of. There will be no order as to cost.

U.R. Petitions disposed of.