A SATWANT SINGH SODHI

v.

STATE OF PUNJAB AND ORS.

MARCH 26, 1999

B [DR. A.S. ANAND, CJ. AND S. RAJENDRA BABU, J.]

Arbitration Act, 1940 :

Section 14—Award made and signed by the arbitrator—Award not C *delivered or pronounced or filed in the Court—Whether award becomes final—Held, an award will be complete as soon as it is made and signed by the arbitrator.*

Interim Award—When it will have the effect of a complete award—Whether it will have effect even after the final award is delivered—Held, D *if the interim award is intended to finally determine the rights of the parties it will have the force of a complete award and will have effect even after the final award is delivered .*

Words & Phrases—'Interim Award'—Meaning of in the context of the Arbitration Act, 1940.

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Appellant entered into an agreement with the respondent regarding construction of High Level Bridge over River Ghaggar on Pehawa Road at Devigarh. Disputes arose between them in respect of certain claims made by the appellant and the matter was referred to arbitration pursuant to an order made by the court. The appellant submitted his claim before the Arbitrator F **seeking an interim award in respect of Item No. 1. The Arbitrator made an interim award regarding Item No. 1 in favour of the appellant. Thereafter, the Arbitrator made another award in respect of all claims including Item No. 1. The appellant made an application under Section 14 of the Arbitration Act for making both the awards rule of the court which was allowed by the** G **trial court. The trial court held that the interim award in regard to Item No. 1 should be made the rule of the court and Item No. 1 of the subsequent award shall merge in the interim award, and the second award should be made rule of the court except for Item No. 1 for which the interim award had already been granted. Against the Judgment of the trial court, Respondent Nos. 1 and 2 preferred an appeal before the High Court which was allowed by** H **holding that the interim award was not pronounced though it was made and**

signed by the Arbitrator and was open to correction and it was superseded by the final award, and that the trial court fell in error in making the interim award the rule of the court. Against the Judgment of the High Court, the appellants have filed the present appeal. A

The contentions of the appellant were that on the award being made by the Arbitrator in so far as Item No. 1 was concerned it was not open to the Arbitrator to revise the award made by him earlier as he had become functus officio with regard to that particular Item of the Claim; that the award was made and signed by the Arbitrator which made the award binding and merely because no notice was given to the parties it could not be held to be invalid and the notice to the parties could be postponed; and that the interim award having been made and being final in character it was not open for modification or alteration except in terms as provided in Section 13 (d) of the Act. B C

Allowing the appeals, the Court

HELD : 1. The question whether interim award is final to the extent it goes or has effect till the final award is delivered will depend upon the form of the award. If the interim award is intended to have effect only so long as the final award is not delivered it will have the force of the interim award and it will cease to have effect after the final award is made. If, on the other hand, the interim award is intended to finally determine the rights of the parties it will have the force of a complete award and will have effect even after the final award is delivered. The terms of the first award do not indicate that the same is of interim nature. The award was made after examining the oral and documentary evidence and after considering the arguments and counter arguments. [234-G] D E

2. Section 14 of the Arbitration Act provides that when the arbitrator or umpire has made his award, he 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. In the language of the Section, an award will be complete as soon as it is made and signed. Thus mere writing of an award would not amount to making of an award. There can be no finality in the award except when it is signed because signing of the award gives legal effect to it and to give validity to an award, it is not necessary that it should also be delivered or pronounced or filed in the court. Making and delivery of the award are different steps of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The Word 'made' suggests that the mind of the Arbitrator as being F G H

declared and it is validly deemed to be pronounced as soon as the Arbitrator has signed it. [235-A-B]

Janardhan Prasad **v.** *Chandrashekhar* **AIR (1951) Nagpur 198,** *Badarla Ramakrishnamma & Ors.* **v.** *Vattikonda Lakshmibavamma* **& Ors. AIR (1958) Andhra Pradesh 503,** *Ram Bharosay* **v.** *Peary Lal* **AIR (1957) All. 265 and** *Asad-ul-lah* **v.** *Muhammad Nur,* **ILR 27 All. 459 (A), approved.**

3. Once an award has been given by the Arbitrator he becomes functus officio and it is not open to the Arbitrator to re-determine the claim and make an award. If the arbitrator has made the award the question of superseding the same cannot arise. Thus, the claim in relation to Item No. 1 could not have been adjudicated by the Arbitrator again and it has been rightly excluded by the trial court from the second award made by the Arbitrator. [235-C]

Rikhabdas **v.** *Ballabhadas & Ors.,* **[1962] 1 SCR Supp. 475 and** *Juggilal Kamlapat* **v.** *General Fibre Dealers Ltd.,* **[1962] 2 SCR Supp. 101, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1743 of 1999 Etc.

From the Judgment and Order dated 18.10.96 of the Punjab & Haryana High Court in F.A.O. 942 of 1996.

Avadh Behari Rohtagi and H.M. Singh for the Appellants.

Ranbir Yadav and R.S. Sodhi for the Respondent and Appellant in C.A. No. 1744/99.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted.

In relation to the construction of High Level Bridge over river Ghaggar on Pehawa Road at Devigarh, an agreement was entered into between the appellant and respondents. The disputes between them arose in respect of certain claims made by the appellant and the matter was referred to arbitration (respondent No. 3) pursuant to an order made by Sub-Judge (1st Class), Patiala. The appellant submitted his claim before the Arbitrator and sought for an interim award in respect of Item No. 1 with a claim for 18% compound interest from 1.2.1981 to 15.3.1992. The Arbitrator, by award made on November

26, 1992, awarded a sum of Rs. 7.45 lacs in respect of Item No. 1 with interest @ 18% compound yearly from 1.2.1981 to 15.3.1992. On January 28, 1994, the Arbitrator made another award inclusive of Item No.1 and awarded a sum of Rs. 3.75 lacs and interest @ 12% per annum with effect from 1.2.1981 to 15.3.1992 on the amount and also in respect of other claims. The appellant made an application under Section 14 of the Arbitration Act, 1940 (hereinafter referred to as 'the Act') for making the awards dated November 26, 1992 and January 28, 1994 as the rule of the court. The trial court made the award as the rule of the court holding that the interim award in regard to Item No. 1 should be made the rule of the court and that award having covered Item No.1 should not be taken note of in the award made on January 28, 1994. Thereby the trial court took the view that interim award made on November 26, 1992 is liable to be made the rule of the court with regard to Item No. 1 and that Item No.1 of the award made on January 28, 1994 will merge in the same deciding that aspect of the matter against the respondents and in favour of the appellant. The award dated January 28, 1994 was ordered to be made the rule of the court except for Item No.1 for which interim award has already been granted.

Respondent Nos. 1 and 2 preferred an before the High Court which was allowed by holding that the trial court fell in error in making the interim award the rule of the court which was superseded by the final award made on January 28, 1994.

In these appeals by special leave, the appellant contended that on the award being made by the Arbitrator insofar as Item No. 1 was concerned it became final but the High Court lost sight of the fact that it was not open to the Arbitrator to revise the Award made by him earlier as he had become functus officio. It is submitted that High Court erred in holding that the award made on November 26, 1992 was not pronounced though it was made and signed by the Arbitrator and, therefore, was open to be corrected. Assailing this conclusion, it was contended that the Arbitrator has to make and sign the award and it is valid in law if he does so and merely because no notice has been given to the parties it cannot be held to be invalid and notice to the parties could be postponed. The requirement of making and signing the award simultaneously is sufficient to result in binding award. It was next contended that the view of the High Court that the Arbitrator himself superseded the award made on November 26, 1992 by treating it to be an interim award was erroneous and it was submitted that the interim award having been made and being final in character it was not open for modification

A or alteration except in terms as provided in Section 13(d) of the Act.

The trial court adverted to the facts leading to the award being made on Item No.1. The appellant claimed for interim award in respect of Item No. 1 for Rs. 10,05,422 with compound interest @ 18% with effect from 1.2. 1981 to 15.3.1992. The Arbitrator made an award on Item No.1 to the B tune of Rs. 7.45 lacs with interest @ 18% compound per annum from 1.2.1981 to 15.3.1992 after examining the oral and documentary evidence and after considering the arguments and counter arguments. It is necessary to notice the manner in which the Arbitrator dealt with this aspect of the matter in the award made on January 28, 1994. At page 3 of the award, the C Arbitrator has mentioned as under :

> "The Executive Engineer, Provincial Division No. 2, PWD B & R Branch, Patiala informed during the hearing on December 2, 1992 that the Hon'ble High Court heard the case on November 23, 1992 and subsequently on December 2, 1992 and stayed the operation of D the arbitration proceedings. In view of the order of the learned court dated September 23, 1992, the proceedings were taken up and both parties appeared on various dates. After hearing the parties and as per the directions regarding the finalisation of the interim award as the case in respect of Item No. 1 was heard and was considered to announce interim award but in view of the stay granted on December E 2, 1992 which was informed by the Executive Engineer, Provincial Division No. 2, Patiala on December 2, 1992 during the hearing the award as such was not announced, which has been incorporated in the present award as given hereinbelow."

F The question whether interim award is final to the extent it goes or has effect till the final award is delivered will depend upon the form of the award. If the interim award is intended to have effect only so long as the final award is not delivered it will have the force of the interim award and it will cease to have effect after the final award is made. If , on the other hand, the interim award is intended to finally determine the rights of the parties it will have the G force of a complete award and will have affect even after the final award is delivered. The terms of the award dated November 26, 1992 do not indicate that the same is of interim nature.

Section 14 of the Act provides that when the arbitrator or umpire has made his award, he shall sign it and shall give notice in writing to the parties H of the making and signing thereof and of the amount of fees and charges

payable in respect of the arbitration and award. In the language of the Section, an award will be complete as soon as it is made and signed. Thus mere writing of an award would not amount to making of an award. There can be no finality in the award except when it is signed because signing of the award gives legal effect to it and to give validity to an award. It is not necessary that it should also be delivered or pronounced or filed in the court. Making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The word 'made' suggests that the mind of the Arbitrator as being declared and it is validly deemed to be pronounced as soon as the Arbitrator has signed it and once an award has been given by the Arbitrator he becomes functus officio. If this is the position in law, it becomes difficult to support the view taken by the High Court in stating that the interim award was not pronounced though it was made and signed by the Arbitrator. If he had made the award the question of superseding the same could not arise. Therefore, the view of the High Court appears to us to be fallacious.

On this aspect of the matter we may refer to some of the decisions on the aspect as to when an award becomes final. In *Janardhan Prasad* v. *Chandrashekhar,* AIR (1951) Nagpur 198, after examining the scope of Section 14 of the Act, it was held as follows :

> "..... the award becomes valid and final so far as the arbitrators or umpire are concerned the moment it is made and signed by them. The provision for giving 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 the award is for the purpose of limitation under Art. 178 of the Limitation Act, entitling either party to apply to the Court for the filing in Court of the award.
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> No time is fixed for the giving of such notice by the Arbitrator and it has been held in several cases that it may be done within reasonable time either by the Arbitrator or by his agent. A notice may be given to one party and may not be given to another party for a much longer period. It cannot be said that an award becomes final so far as the first party is concerned and no as against the other entitling the Arbitrators to scrap the award and make a fresh one."
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> ".....There is thus a fundamental difference between the making signing and delivery of a judgment and making and signing and giving notice of an award. In the former case all three must be

A simultaneous acts and parts of the same transaction. In the latter case the first two may be simultaneous and the notice of the award can be postponed.

That award does not become invalid because notice of the making of it has not been given. An Arbitrator is entitled to file an award in B Court under Section 14, sub-s. (2). If he does so, the Court is bound to give notice to the parties of the filing of the award."

The circumstances in which these observations are made by the court are as follows :

C The Arbitrators had made and signed an award on January 11, 1944 which was registered on January 13, 1944. Thereafter the Arbitrators made a second award on January 26, 1944. It was contended that as they did not pronounce the award by issuing a notice of having signed it, they had not become functus officio and could, therefore, make and deliver the second award dated January 26, 1944. The learned Judges of the High Court refused D to hold that the first award was not final and could be superseded by the second award because no notice was given before January 26, 1944. This view was followed by the *Andhra Pradesh High Court in Badarla Ramakrishnamma & Ors.* v. *Vattikonda Lakshmibayamma & Ors.*, AIR (1958) Andhra Pradesh 503, at para 2. Again in *Ram Bharosay* v. *Peary Lal*, AIR E (1957) All.265, it was observed as under :

"It is true that in the present case the Arbitrators did not give notice to the parties of the making and the signing of the award. But the arbitrators after making and the signing the award filed it in the court. The validity of the award does not depend upon the notice of the F same being given to the parties. When an award is duly made, signed and filed in Court it is a valid document."

This position was reiterated in *Asad-ul-lah* v. *Muhammad Nur*, ILR 27 All. 459(A) and it was held that :-

G "for the making of an award it is enough that the Arbitrators act. together and finally make up their minds and express their decision in writing. This writing must be authenticated by their signatures. The award is thus made and signed and is complete and final so far as the Arbitrators are concerned."

H This *Court in Rikhabdas* v. *Ballabhdas & Ors.*, [1962] 1 SCR Supp. 475,

held that once an award is made and signed by the Arbitrator, the Arbitrator becomes functus officio. In *Juggilal Kamlapat* v. *General Fibre Dealers Ltd.*, (1962) 2 Supp. 101, this Court held that an Arbitrator having signed his award becomes functus officio but that did not mean that in no circumstances could there by further arbitration proceedings where an award was set aside or that the same Arbitrator could never have anything to do with the award with respect to the same dispute. Thus in the present case, it was not open to the Arbitrator to re-determine the claim and make an award. Therefore, the view taken by the trial court that the earlier award made and written though signed was not pronounced but nevertheless had become complete and final, therefore, should be made the rule of the court appears to us to be correct with regard to Item No.1 inasmuch as the claim in relation to Item No. 1 could not have been adjudicated by the Arbitrator again and it has been rightly excluded from the second award made by the Arbitrator on January 28, 1994. Thus the view taken by the trial court on this aspect also appears us to be correct. Therefore, the trial court has rightly ordered the award dated January 28, 1994 to be the rule of the Court except for Item No. 1 and in respect of which the award dated November 26, 1992 was ordered to be the rule of the court.

In the circumstances aforementioned, we have no option but to reverse the view taken by the High Court and restore that of the trial court. The appeals stand allowed accordingly.

A.T. Appeals allowed.