

M/S. GORA LAL

A

v.

UNION OF INDIA

DECEMBER 18, 2003

[V.N. KHARE, C.J. AND S.H. KAPADIA, J.]

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Arbitration Act, 1940—Work Contract—Arbitration clause—Reference of dispute to arbitrator—Arbitrator to give finding in his award along with sum awarded on each item of dispute—Arbitrator awarding sum on each item—Award made rule of court by Single Judge of High Court—However, set aside by Division Bench—Aggrieved party pleading that arbitrator has given findings in his award—On appeal, held: In terms of the arbitration clause words ‘findings’ with ‘on each item of dispute’ denotes ‘reasons’, in support of the conclusion on each item of dispute, therefore, arbitrator required to give ‘reasons’ in support of his finding along with the sum awarded—As no findings recorded on each item, High Court justified in setting aside the award.

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Appellant and the respondent entered into a work contract and in terms of the contract dispute arising out of the contract was to be referred to an arbitrator. Arbitrator passing an award was to indicate his findings along with the sum awarded separately on each individual item of the dispute. Dispute arose between the parties regarding final payment for the work undertaken by the appellant. Appellant filed an application seeking reference of the dispute to an arbitrator. Arbitrator was appointed who entered upon reference. Thereafter, he passed an award, awarding a sum on each item which was later made rule of the Court. Aggrieved respondent filed letters patent appeal. Division Bench of High Court allowed the same. It set aside the award and directed the respondent to appoint new arbitrator to enter upon reference and pass a speaking award. Hence the present appeals.

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Appellant contended that the expression ‘reason’s is not akin to the expression ‘finding’; that the expression ‘finding’ denotes ‘conclusion’ and not ‘reason’; and that since the Arbitrator has already given ‘findings’ in his award, the judgment under challenge suffers from legal infirmity and is liable to be set aside.

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A Dismissing the appeals, the Court

B HELD : In the instant case, the Arbitrator on each item has awarded a sum which is not a finding but merely a conclusion. Under the arbitration clause, the arbitrator was required to identify each individual item of dispute and give his findings thereon along with the sum awarded. In this context, the word 'findings' is to be read with the expression "on each item of dispute" and if so read it is clear that the word "finding" denotes "reasons" in support of the said conclusion on each item of dispute. Therefore, applying the above test to the arbitration clause, the Arbitrator was required to give reasons in support of his findings on the items of dispute along with the sums awarded. As no finding has been recorded on each item as required by the arbitration clause, the High Court was justified in setting aside the award. [1132-F-H; 1133-A-B]

D *Words and Phrases, Permanent Edition 17, West Publishing Co., referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4350-4351 of 2002.

E From the Judgment and Order dated 8.12.99 of the Jammu and Kashmir High Court in L.P.A. (C) No. 7 of 1998 and CIMA. No. 8 of 1998.

P.P. Rao and Ashok Mathur for the Appellant.

F N.N. Goswami, Ms. Rekha Pandey, Ajay Sharma, Ms. Sushma Suri (NP) and B.V. Balram Das (NP) for the Respondent.

The Judgment of the Court was delivered by

G V.N. KHARE, CJ. : The appellant and the respondent herein entered into a written contract on 4.1.1982 whereby and whereunder certain work contract was awarded to the appellant herein. The said contract stipulated that in the case of any dispute arising out of the contract, the dispute would be referred to an arbitrator. It is alleged that during the period of contract, the respondent took additional work from the appellant. It is not disputed **H** that the appellant completed the allotted work. However, certain disputes

arose as regards the final payment for the work undertaken by the appellant. A
It is alleged that the appellant accepted the final bill under protest.

Subsequently, the appellant moved an application before the High Court under Section 20 of the Arbitration Act, 1940 (hereinafter referred to as "the Act") seeking reference of dispute to an arbitrator. The respondent contested this application. However, a learned single Judge of the High Court referred the matter to the arbitrator and on 5.2.1990, one Col. M.P. Sikka was appointed as sole Arbitrator who entered upon reference and invited claims and counter-claims of the parties by issuing notices to them. The parties put up their claims before the Arbitrator and subsequently the Arbitrator gave his award on 3.11.1990. Thereafter, the award was filed in the Court for being made rule of the Court. The respondent filed an objection petition under Sections 30 and 33 of the Act. However, the learned single judge of the High Court by an order dated 12.2.1998, with certain modification, directed that the award be made rule of the Court. D

Aggrieved, the respondent filed a letters patent appeal before a Division Bench of the High Court. The appellant also filed a counter cross-objection in the said appeal. The Division Bench of the High Court allowed the letters patent appeal preferred by the respondent. The Division Bench set aside the award and directed the respondent to appoint a new Arbitrator to enter upon the reference and made a speaking award. It is against the said judgment of the High Court, the appellant is in appeal before us by way of special leave. E

Shri P.P. Rao, learned senior counsel appearing for the appellant urged that there is a distinction between the expressions 'finding' and 'reason'; the expression 'reason' is not akin to the expression 'finding'; the expression 'finding' denotes 'conclusion' and not 'reason'; and since the Arbitrator has already given 'findings' in his award, the order and judgment under challenge suffers from legal infirmity and is liable to be set aside. We do not find any substance in the argument. The borderline between the expressions 'finding' and 'reason' is very thin. F G

The arbitration clause 70 of IAFW 2249, *inter alia*, provided as under: H

A “The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of case and pleadings in defence.

B The Arbitrator may, from time to time, with the consent of the parties, enlarge the time upto but not exceeding one year from one year the date of his entering on the reference, for making and publishing the award.

C The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, alongwith the sum awarded, separately on each individual item of the dispute.”

D A perusal of the aforesaid clause would show that the Arbitrator is required to indicate a finding along with the sum awarded separately on each individual item of the dispute. While giving a finding, the Arbitrator necessarily has to take into consideration the disputes, claims and counter-claims of the parties and after considering the evidence on such claims and the legal position, has to record his finding on each disputed item. In the present case what we find is that the Arbitrator on each item has awarded a sum which according to us is not a finding but it is merely a conclusion.

E The point for determination in this case is : Whether the Arbitrator ought to have given reasons in support of his findings, along with the sum awarded, on each item of dispute. To decide this point, we have to go by the text and the context of Clause 70 of the arbitration agreement quoted above. Under the said Clause, the Arbitrator was required to identify each individual item of dispute and give his findings thereon along with the sum awarded. In this context, one has to read the word “findings” with the expression “on each item of dispute” and if so read it is clear that the word “finding” denotes “reasons” in support of the said conclusion on each item of dispute. The word “finding” has been defined in ‘Words and Phrases’. Permanent Edition 17, West Publishing Co.’ to mean “an ascertainment of facts and the result of investigations”. Applying the above test to Clause 70, we are of the view that the Arbitrator was required to give reasons in support of his findings on the items of dispute along with the sums

awarded. We make it clear that this order is confined to the facts of this case and our interpretation is confined to Clause 70 of the arbitration agreement in his case. A

In such a situation as in the present case, there having been no finding recorded on each item as required by the arbitration clause, the High Court was justified in setting aside the award. We, therefore, do not find any merit in these appeals. They are, accordingly, dismissed. B

Before we part with the case, we would like to clarify that we are not expressing any opinion on any other matter and all contentions available to the parties may be raised before the Arbitrator. The Arbitrator shall give his award within a period of four months from the date of receipt of this Order. C

N.J.

Appeals dismissed.