

SACHIN GUPTA AND ANOTHER
v.
K.S. FORGE METAL PRIVATE LIMITED
(Civil Appeal No.2058 of 2013)

MARCH 01, 2013

[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

ARBITRATION AND CONCILIATION ACT, 1996:

s.34(2)(a)(iii) - Held: High Court could have set aside the Award u/s 34(2)(a)(iii) only on the ground that Award has been rendered against the respondent without issuance of any notice and without hearing the respondent - It was certainly not necessary to examine the dispute between the parties minutely or to make strong remarks against any of the parties - Judges at all levels are required to be restrained and circumspect in use of the language, even when criticizing the conduct of a party - Having set aside the Award, it would have been appropriate if the matter had been referred back to the Arbitrator - Instead of leaving parties to seek their remedy in accordance with law, the matter ought to have been referred to a specific arbitrator - Accordingly, arbitrator appointed - Judicial restraint.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2058 of 2013.

From the Judgments & Orders dated 07.11.2012 of the High Court of Delhi at New Delhi in FAO (OS) No. 539 of 2012.

R.S. Suri, A.K. Singh, Ajay Bauri, Shantanu Singh, Nikilesh Ramchandran for the Appellants.

Sandeep Aggarwal, Manjeet Kirpal for the Respondent.

The following order of the Court was delivered

A

ORDER

1. Leave granted.

2. We have heard learned senior counsel for the appellants as well as learned counsel for the respondent.

B

3. We are satisfied that the High Court could have set aside the Award only on the ground that the Award has been rendered against the respondent without issuance of any notice and without hearing the respondent. On this ground alone, the Award was liable to be set aside under Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1996. There was no necessity for the learned Single Judge to convert itself into a Court of First Appeal. It was certainly not necessary to examine the dispute between the parties so minutely or to make such strong remarks against any of the parties. Judges at all levels are required to be restrained and circumspect in use of the language, even when criticizing the conduct of a party. However, we agree with the conclusion of the High Court that the Award had to be set aside as no notice had been served on the respondent. But, having set aside the Award, it would have been appropriate if the matter had been referred back to the Arbitrator. In the event, any of the parties were not satisfied, an independent arbitrator agreeable to both the parties could have been appointed.

C

D

E

4. In view of the above, we deem it appropriate to set aside the order passed by the High Court. As noticed above, instead of leaving the parties to seek their remedy in accordance with law, the matter ought to have been referred to a specific arbitrator. Learned counsel for the parties are agreed that we appoint Mr. Justice A.P. Shah, former Chief Justice of the Delhi High Court, residing at F-6A, Hauz Khas Enclave, New Delhi-110 016, as the Arbitrator. We order accordingly. The learned Arbitrator shall be at liberty to determine his remuneration/fees in consultation with the parties.

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5. It is made clear that the arbitrator shall proceed with the arbitration proceedings without, in any manner, being influenced by any observations made either by the learned Single Judge or by the Division Bench of the High Court. **A**

6. The appeal is, accordingly, disposed of. **B**

R.P.

Appeal disposed of.