

IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 750/2011

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24.04.2012

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Judgment dated 24.04.2012

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KANTI KUMAR SHARMA Petitioner

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Through None.

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versus

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ARUN KUMAR GOEL Respondent

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Through Mr. R.M. Sinha, Advocate.

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CORAM:

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HON'BLE MR. JUSTICE G.S.SISTANI

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G.S.SISTANI, J (ORAL)

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1. None for the petitioner despite the matter being passed over once and called a second time.

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2. This is a petition under Section 34 of the Arbitration and Conciliation Act against the award dated 4.8.2011. The necessary facts which are required to be noticed for the disposal of the present petition are that the petitioner and the respondent are both partners of a firm duly constituted under the name and style of M/s. Kumar Digital Lab. The

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partnership firm was formed to carry on the business of developing of photograph from Digital Photo Development Machine. As per the partnership agreement, the business was to be conducted from C-3, Panchsheel Garden, Naveen Shahdara, Delhi. The parties signed the partnership deed dated 25.02.2005 as per which it was agreed between the parties that the profit and losses of the firm after the salary payable to the partners were to be divided in equal proportions i.e. 50% each. According to the respondent, who was the claimant before the Id. Arbitrator, the parties had decided to carry on their business at another premises belonging to the respondent herein i.e. 1/11620, Panchsheel Garden, Naveen Shahdara, Delhi. According to the statement of claim, the respondent agreed to let out the premises at a monthly rent of Rs.15,000/- to the partnership firm to carry on the business from the said site. With a view to carry on their trade and business the partnership firm purchased a Digital Photo Developing Machine for a sum of Rs.48 lakhs out of which Rs.25 lakhs was to be financed from the Bank and the remaining Rs.23 lakhs was to be paid by the partners in equal shares.

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3. The respondent raised various claims, however, the arbitrator has allowed only one claim with regard to the amounts paid by the respondent herein as instalments to the bank which had granted loan to the partnership firm for the purchase of the said machinery. The case set up by the respondent before the Id. Arbitrator was that to secure the loan obtained from the bank, the respondent herein had mortgaged his property with the bank and thus he was left with no option but to pay the installments in order to avoid the mortgaged property from being sold on account of non-payment of dues. The Arbitrator after taking into consideration that amounts were paid to the bank between 16.09.2005 and 9.04.2009 in the sum of Rs.16,62,000/- has divided the liability between both the partners and saddled the petitioner herein with a liability of Rs.7,56,000/- together with interest @ 8%.

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4. I have perused the objections which have been raised by the petitioner. I have also carefully examined the award passed by the Id. Arbitrator.

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5. The arbitrator had taken into consideration the various payments made by the respondent herein which are detailed below:-

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DATE

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AMOUNT (RS.)

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16.09.2005

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10,000.00

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12.05.2006

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75,000.00
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 15.05.2006
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 25,000.00
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 23.02.2007
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 40,000.00
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 30.03.2007
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 50,000.00
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 25.04.2007
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 2,25,000.00
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 31.12.2007
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 23,000.00
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 31.12.2007
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 2,00,000.00
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 29.03.2008
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 2,00,000.00
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 31.03.2008
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 20,000.00
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 24.06.2008
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 24,000.00
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 30.06.2008
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 1,85,000.00
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 29.09.2008
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 25,000.00
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 29.09.2008
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 1,70,000.00
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 28.11.2008
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 60,000.00
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 31.03.2009
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 90,000.00
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 31.03.2009
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 50,000.00
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 09.04.2009
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 1,90,000.00
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6. The Arbitrator has decided this claim of the respondent in the following manner:-

?However, having regard to the totality of facts and circumstances, I am of the view that the Respondent has not succeeded in refuting the claim of the Claimant in respect to the amount deposited by the Claimant towards the payment of Bank installments for the loan of Rs.25 Lacs raised by him. Hence, the claimant has succeeded in proving that he had made the following payments. The total comes to Rs.16,62,000/-.

Now, so far as the Bank liability vis-?-vis the cost of the Machines is concerned, the Claimant in this Table assessing his claim has mentioned the Bank liability as Rs.11,50,000/- whereas the cost of the Machine has been assessed at Rs.10,00,000/-. Hence, deducting the cost of machine, the remainder amount with the Firm comes to be Rs.1,50,000/- only. Hence, the balance amount after deducting Rs.1,50,000/- from Rs.16,62,000/- comes to be Rs.16,62,000/- Rs.1,50,000/- = Rs.15,12,000/-.

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 7. There is no infirmity with the reasoning of the learned Arbitrator as the amount has been calculated simply by taking into consideration the payment made by the respondent to the bank. It is trite law that the jurisdiction of the court to interfere with an award made by an Arbitrator is extremely limited and consequently the court while entertaining an objection petition under Section 34 of the said Act cannot sit as a Court of Appeal and that evidence is not to be re-appreciated. In the case of Markfed Vanaspati and Allied Industries Versus Union of India reported in (2007) 7 Supreme Court Cases 679 in paragraph17 the concept of Arbitration has been laid down by the Apex Court in the following words which are reproduced as under:
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?Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavour of the court should be to honour and support the award as far as possible?.

8. In paragraph 12 of Vanaspati and Allied Industries (supra), the Court while relying upon Bijendra Nath Srivastava (Dead) through LRs Versus Mayank Srivastava And Others reported in (1994) 6 Supreme Court Cases 117 has observed that:

12. ?The arbitrator is under no obligation to give reasons in support of the decision reached by him, unless the arbitration agreement or deed of settlement so required. If the arbitrator or umpire chooses to give reasons in support of his decision, then it would be open to the court to set aside the award upon finding an error of law. The reasonableness of the reasons given by the arbitrator cannot, however, be challenged. It is not open to the court to look for the reasons and proceed to examine whether they were right or erroneous. The arbitrator is the sole judge of the quality as well as the quantity of the evidence. It will not be for the court to take upon itself the task of being a judge of the evidence before the arbitrator. The court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal?.

9. In the case of Municipal Corporation of Delhi Versus Jagan Nath Ashok Kumar reported in (1987) 4 SCC 497 it has been held by the Apex Court that ?the appraisal of evidence by the arbitrator is ordinarily never a matter which the Courts questions and considers. It may be possible that on the same evidence the Court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award?.

10. In Delhi development Authority versus R. S. Sharma and Company, New Delhi reported in (2008) 13 Supreme Court Cases 80 the Apex Court after referring to a catena of judgments has laid down the principles for interference with an arbitral award under Section 34 (2) of the 1996 Act the relevant portion of paragraph 21 is reproduced as under:-

21. ?(a) An Award, which is

- (i) Contrary to substantive provisions of law; or
- (ii) the provisions of the Arbitration and Conciliation Act, 1996 ; or
- (iii) against the terms of the respective contract ; or
- (iv) patently illegal, or
- (v) prejudicial to the rights of the parties,

is open to interference by the Court under Section 34(2) of the Act.

(b) the Award could be set aside if it is contrary to :

- (a) fundamental policy of Indian Law; or
- (b) the interest of India; or
- (c) justice or morality;

(c) The Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

(d) It is open to the Court to consider whether the Award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India?.

11. Recently, in P.R. Shah, Shares and Stock Brokers Private Limited Versus B.H.H. Securities Private Limited And Others reported in (2012) 1 Supreme Court Cases 594 the Apex Court in paragraph 21; the relevant portion of which is reproduced as under has observed that:

21. ?A Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34 (2) of the Act. Therefore, in the absence of any ground under section 34 (2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at?.

12. Applying the law laid down by the Apex Court to the facts of the present case and on perusal of the award, I find no merit in the present objections and the same are accordingly dismissed.

G.S.SISTANI, J

APRIL 24, 2012

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