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Kanoria v Esols Worldwide Ltd [2006] EWCA Civ 323 (08 March 2006)
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A3/2005/2673

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT
(MRS JUSTICE GLOSTER DBE)

Royal Courts of Justice
The Strand
London
WC2A 2LL

8 March 2006

Before:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Phillips of Worth Matravers)
THE MASTER OF THE ROLLS
(Sir Anthony Clarke)
LORD JUSTICE MAY

AJAY 🇮🇳 KANORIA 🇮🇳
ESOLS WORLDWIDE LIMITED
INDEKKA SOFTWARE PVT LIMITED Appellants
and
TONY FRANCIS GUINNESS Respondent

(Computer Aided Transcription by
Smith Bernal, 190 Fleet Street, London EC4A 2HD
Telephone 020 7421 4040
Official Shorthand Writers to the Court)

MR LOUIS FLANNERY (instructed by Messrs Howes Percival) appeared on behalf of THE
APPELLANTS
MR TIMOTHY YOUNG QC (instructed by Messrs Myers Fletcher & Gordon) appeared on behalf
of THE RESPONDENT

HTML VERSION OF JUDGMENT

THE LORD CHIEF JUSTICE:

1. We gave judgment in this case on the basis of the facts that were put before us at the hearing of the appeal. Those facts included a two-page document headed "Oral Submissions made on behalf of Mr **Kanoria**, Indekka Software Pvt Limited and eSols Worldwide Limited at the time of the hearing in the Arbitration Proceedings". These were placed before us by the appellants as representing the submissions that were made to the arbitrator prior to the award. They provided for the first time a possible juridical basis for the award, although it is right that the arbitrator did not refer to them. Our decision was based on the premise that a case was advanced before the arbitrator against Mr Guinness of which he had no knowledge and therefore which he was unable to meet.
2. Since we gave judgment, but before the order was drawn up, we have received submissions and evidence that provides further information about the two-page document. The solicitors then acting for the appellants gave notice to the solicitors acting for Mr Guinness that they intended to adduce this evidence before Gloster J. The solicitors acting from Mr Guinness said that they would not agree to that. They questioned the provenance of the document and said that if the appellants wished to adduce it in evidence their counsel would have to apply to do so.
3. A decision was then taken by those acting for the appellants not to seek to place this evidence before Gloster J. Indeed, when she asked whether there was any possible juridical basis for the award, counsel then acting for the appellants told her that there was not.
4. The submissions which we initially received requested us to reconsider our order in the light of this additional material. Our initial inclination was to deal with this on paper because we could not see that the additional information affected the basis for our decision, which was that Mr Guinness had had no notice of the case being advanced against him before the arbitrator. However, we thought that, in justice, we ought to reconvene to give Mr Flannery an opportunity to add to his submissions.
5. Mr Flannery has sought, first, to resile from what was accepted to be the case when this was before us, which was that the two-page document and the submissions it contained were a possible basis for the arbitrator's decision. He now submits that we should proceed upon the basis that the arbitrator for some reason took no account at all of the submissions made to him. He has further sought to advance additional argument in effect in an attempt to reargue matters which were before us at the hearing.
6. We cannot see that the additional facts that have come to light affect the basis for our decision or provide any reason for us to change the decision that we have reached.
7. For these reasons the record will be perfected in due course.

ORDER: Application dismissed with costs.

