

(2001) 09 J&K CK 0019
In the Jammu And Kashmir High Court
Case No : C.R. Nos. 107, 108, 109 of 2001

Ajit Singh etc

APPELLANT

Vs

Shri Mata Vaishno Devi Shrine Board, Katra

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : AIR 2002 J&K 108

Hon'ble Judges : A.M.Mir, J

Bench : Single Bench

Advocate : M/s. G.A. Lone, S. D. Sharma and R. Sharma, M/s. P. Kohli and Rohit Kapoor, Advocates appearing for the Parties

Judgement

These three revision petitions have been filed for invoking revisional jurisdiction of this Court in setting aside order dated 3152001 passed by

SubJudge Reasi. RespondentBoard floated a tender notice on 1331999, inviting applications for allotment of shops at Lambi Keri.

Petitionersplaintiffs applied for allotment of shops and vide an order dated 3131999, each of the petitioner was allotted a shop for a period of two

years and they were inducted into possession vide a license from 341999 to 342001. The Boardrespondent later, in December, 1999 seems to

have made addition of one more route to the Holy Shrine. This, according to the plaintiffs, affected their business.

2. The case of the petitioners is that when they represented before the Board, the latter orally agreed that their license would be renewed for a

further period of one year by way of compensation for the loss they sustained by opening of a new route.

3. The suits were filed on 2232001, when the licence was subsisting. Suits were

for permanent prohibitory injunction restraining the defendantsrespondents from forcibly evicting them from their shops, along with a pertinent residential store accommodation.

4. The Trial Court issued an interim direction in the first instance, asking the respondentdefendant to maintain statusquo. This interim direction was subject to objections of the other side. On 2042001 detailed objections to the application for temporary injunction were filed. On the same date the respondentdefendant moved an application in terms of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter called the Act), for reference of the dispute to an Arbitrator. According to the Trial Court the application was filed before filing the objections. It is this application which was decided by the impugned orders.

5. I have heard the learned counsel for the parties at length and gone through the record.

6. Mr. G. A. Lone, appearing for the petitioners, has assailed the order impugned on the following grounds :

1. That there was absolutely no agreement for arbitration between the parties. Old written agreement had come to an end and that a new oral agreement had come into existence. Once that was so the agreement in writing could not be relied upon for the purpose of reference of the parties to the arbitrator;

2. That application under Sec. 8 could not be entertained by the Court because the first statement of the case was tendered in the form of objections. Once that was done, the Court had no power to refer the matter to the Arbitrator;

3. A case for temporary injunction could not be referred to arbitration.

7. Mr. Lone has referred to some judgments in support of his arguments, Mr. Kohli, appearing for the respondentBoard has vehemently rebutted the grounds raised by Mr. Lone and argued that there was no fresh agreement worth the name. Sec. 8 relaxes the position and empowers the Court to refer the parties to arbitration, even where the application and the first statement is filed simultaneously and that the Act amplified the powers of the Court in dealing with any sort of case or issue.

8. I have considered the matter. I propose to deal with the grounds taken above in the following manner :

1EXISTENCE OF ARBITRATION AGREEMENT :

As already observed, suits before the trial Court were filed on 2232001 when the licence (effective from 3499 to 342001) was in operation. This

goes a long way in establishing that the status of the parties will be determined by the agreement between the parties which is in writing. Clause 24

of the licence deed, which postulates an arbitration agreement, reads as under :

In case of any dispute as to interpretation of terms and conditions of the deed or any other conditions stipulated in tender notice and arising out of

or relating to the deed, shall be referable to arbitration of a person to be nominated by Chairman of Shrine Board.

The petitioners have tried to escape from the arbitration agreement by raising a plea that a fresh oral agreement was made. This argument, though

attractive, is not borne out by the pleadings. What is pleaded in paras 8 and 10 of the plaint is that the defendants had agreed to renewal of the

licence for one year. In this behalf both these paras are reproduced as under :

8. That defendant orally agreed with the plaintiff that his licence shall be renewed for further one year in order to compensate him due to the

opening of new route and by installation of cold drink stalls opposite the said shop on the new terms and conditions to be settled between the

parties.

xx xx xx

10. That plaintiff approached the defendant with the request that licence of running said shop for further one year be renewed as per agreement

between the parties and not to give licence to any other person. But defendant paid no heed to the request of plaintiff and threatened to forcibly

evict the plaintiff from the suit shop and throw his machinery and goods on the road. Plaintiff has fulfilled his part of contract and defendant refused

to perform his part of contract.

9.A perusal of the above two paras shows that there has been no fresh agreement but only a promise to make an agreement. Mr. Lone's legal

edifice that a new oral agreement had replaced the old agreement and that the arbitration clause was not applicable therefore, falls like a house of

cards. In fact the agreement, couched as a licence deed dated 441999, bound the petitioners to surrender the shops in favour of the

respondent Board without any let or hindrance. In this behalf paras 20 and 21 of the deed are noteworthy. Same are reproduced as under :

20. That the licensee hereby covenant that after a period of licence granted hereunder, the licensee shall surrender the user of the shop in favour of

the Shrine Board without any let and hindrance and remove all his articles and belongings. On the failure of the licensee to surrender the premises

or any part thereof to the licensor the premises or any part thereof at the expiry of period of licence stipulated herein the licensee shall be liable to

pay damages at the rate of Rs. 12500/ +1500/ per day.

21. That in case the licensee fails to surrender the premises or part thereof at the expiry of period of licence it shall be lawful for the licensor, it's

employees and officials to enter upon the premises and remove all the belongings and articles of the licensee.

10. Petitioner/plaintiffs have unsuccessfully tried to come out of the agreement. However, in case they find that any term of the agreement was

violated, parties on that issue could varily be referred to the arbitrator. Therefore, while finding no oral agreement having either been floated or

proved, the first ground fails.

11. 2STAGE OF REFERENCE :

For determining as to which is the stage at which an application can be made, Section 8 of the Act requires to be keenly noticed. It reads as under

:

8 Power to refer parties to arbitration where there is an arbitration agreement

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not

later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly

certified copy thereof.

(3) Notwithstanding that an application has been made under subsection (1) and that the issue is pending before the judicial authority, an arbitration

may be commenced or continued and an arbitral award made.

12. On a bird's eye view of the above reproduced provision it becomes clear that

the application could not be made later than point of time when first statement on the substance of the dispute is submitted. The bold distinction between Section 34 of the Arbitration Act 2002 and Sec. 8 of the Act is vivid. Under Section 34 of the Arb. Act an application for reference of the matter to arbitration could be filed only before filing a written statement or taking any other steps in the proceedings. Under that Act even seeking an adjournment for filing a written statement would be taken to be a step towards the proceedings. Therefore, before doing anything, a party had to apply for reference of the dispute to the arbitrator. Under Sec. 8 of the Act the position has been tremendously relaxed. The expression ""not later than when submitting his first statement on the substance of the dispute"" signifies that application under Section 8 can be made simultaneously with filing of the first statement. Had the intention of the legislature been same, as was working at the time of framing Section 34 of the Arbitration Act then the wording would have been altogether different. Therefore, in a case where the first statement and the application in terms of Section 8 are simultaneously filed, it cannot be said that the application has not been filed at the proper stage, envisaged by Section 8 supra. Apart from this legal position, the trial Court in this case has expressly said that the application was filed prior to filing of the objections, though on the same date. That being the position this ground also fails.

3 IS THE REFERENCE INCOMPETENT :

13. The argument qua point No. 3 was that this being a matter relating to temporary injunction could not be referred to arbitration. There is no solid foundation for this argument. Section 8, as reproduced above, empowers reference of the parties to arbitration in matters which are subject of an arbitration agreement. Since the arbitration agreement in the matter covers all the disputes which might arise between the parties, therefore, the Court did not commit any error in referring the parties to arbitration. In fact looking at the scheme of the Act, the powers exercisable by the Arbitral Tribunal, are far wider than those prescribed by the earlier Arbitration Act. In this behalf Sections 9 and 16 of the Act can be referred to.

14. The scope of Section 8 was discussed by their lordships of the Supreme Court in case titled P. Anand Gajapathi v. Raju reported in (2000) 4

SCC 539 : (AIR 2000 SC 186). Their lordships held as under :

8. In the matter before us, the arbitration agreement covers all the disputes between the parties in the proceedings before us and even more than

that. As already noted, the arbitration agreement satisfies the requirements of Section 7 of the new Act. The language of Section 8 is peremptory.

It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in

the original action of the appeal arising therefrom. There is no question of stay of the proceedings till the arbitration proceedings conclude and the

award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by

the new Act including the right to challenge the award. The Court to which the party shall have recourse to challenge the award would be the Court

as defined in clause (e) of Section 2 of the new Act and not the Court to which an application under Section 8 of the new Act is made. An

application before a Court under Section 8 merely brings to the Court's notice that the subjectmatter of the action before it is the subjectmatter of

an arbitration agreement. This would not be such an application as contemplated under Section 42 of the Act as the Court trying the action may or

may not have had jurisdiction to try the suit to start with or be the competent Court within the meaning of Section 2(e) of the new Act.

15. Referring to the minimal scope of Court's intervention their lordships, while dilating upon Section 5 of the Act held as under :

Part I of the new Act deals with domestic arbitrations. Section 5 which is contained in Part I of the new Act defines the extent of judicial

intervention in arbitration proceedings.

It says that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I, no judicial authority shall

intervene except where so provided in that part. Section 5 brings out clearly the object of the new Act, namely that of encouraging resolution of

disputes expeditiously and less expensively and when there is an arbitration agreement, the Court's intervention should be minimal.

16. That being the position of law, I do not find any legal snag in the action of the Court when it makes a reference of the parties in respect of which

an injunction suit was filed in the Court. This ground No. 3 also fails.

17. After answering the three grounds taken, I find that no error of law or

infirmity has been committed by the judicial authority below in passing the order under revision. I accordingly dismiss these petitions and withdraw the interim direction issued on 1272001. No order as to costs.