

(2001) 04 CAL CK 0015
In the Calcutta High Court

Case No : Appeal No. 904 of 1993 and Special Suit No. 86 of 1992

Alakh Kumar Sinha

APPELLANT

Vs

The Oriental Insurance Company Ltd. and Another

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Arbitration Act, 1940 — Section 20, 20(1), 20(2), 20(3), 20(4)
Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2001) 2 CALLT 101 : 105 CWN 1002

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Asok Kumar Ganguly, J

Bench : Division Bench

Judgement

1. Heard counsel for the parties. This appeal is filed impugning a judgment dated 4th October, 1993 passed by a learned single Judge of this Court on an application u/s 20 of the Arbitration Act, 1940. The learned single Judge dismissed the application u/s 20 of the Arbitration Act, inter alia, holding that there has been an unauthorised inflation of the claim by the claimant so as to Invoke the Jurisdiction of this Court. The learned Judge also made certain observations while dealing with the application u/s 20 of the Act to the extent that if the Insurance Company pays the claimant a sum of Rs. 12,005/- within four weeks thereof, that will amount to satisfaction of the claim of the claimant.

2. We, however, do not agree with the approach adopted by the learned single Judge in disposing of the Section 20 application, though we find that there has been an unauthorised inflation of the claim by the claimant.

3. This Court finds that the particulars of the claim in this case have been given in paragraph 7 (at page 9) of the claim petition. The said claims are set out below:

Particulars:

1. Loss to the vehicle due to accident - Rs. 2,30,000.00 2. Garage charge @ Rs. 500.00 p.m. from May, 1991 to February, 1992 - Rs. 5,000.00 3. Idle charge

paid to staff for 10 months - Driver @ Rs. 100.00 p.m. Rs. 10,000.00
Conductor @ Rs. 850.00 p.m. Rs. 8,500.00 Cleaner @ Rs. 550.00 p.m. Rs.
5,500.00 Rs. 24,000.00 4. Loss of profit for 10 months @ Rs. 2000.00 p.m. Rs.
20,000.00 5. Interest payable on loan amount @ 18% - Rs. 5,200.00 6.
Compound interest on the amount claim - (Rs. 2,30,000.00) (r) 18% Rs.
4,000.00 7. Expenses Incurred for meeting the survey works etc. as required in
pursuing the claim Rs. 7,000.00 8. Legal expenses in the matter till date Rs.
2,000.00 9. Consequential loss and damages caused to vehicle because of lying
in garage. Rs. 1,60,000.00 10. Taxes payable to Govt. for as per Govt.
circulars)Rs. 13,386.00 ----- Rs. 5,00,586.00

4. We find, in order to invoke the jurisdiction of this Court a claim was made in paragraph 9 of the claim petition to the following effect:-

"9. The plaintiff states that, because of non-payment and/or refusal to make payment of the said sum of Rs. 5,00,586.00 the plaintiff has suffered further loss and damages in its business and/or reputation and/or goodwill which is estimated at Rs. 7,00,000/-."

5. We find that the said claim made in paragraph 9 of the claim petition is wholly unauthorised and we direct deletion of the said claim from the petition of claim filed by the claimant. But we do not think in the facts and circumstances of this case that the claimant has no case u/s 20 of the Arbitration Act. In this connection the relevant clause as contained in the arbitration agreement is set out herein below-

"If any difference shall arise as to the quantum to be paid under this policy (liability being otherwise admitted) such difference shall indepedently or any other questions be referred to the decision of the arbitrator to be appointed in writing by the parties to difference or if they cannot agree upon a single arbitrator to the decision of two dis-interested persons as arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required to do so in writing by the other party in accordance with the provisions of the Arbitration Act, 1940 as amended from time to time and for the time being in force. In case other party shall refuse or fail to appoint arbitrator within two calendar months after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint sole arbitrator; and in case of disagreement between the arbitrators the difference shall be referred to the decision of an Umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at the meetings.

It is clearly agreed and understood that no difference and dispute shall be referable to arbitration as hereinbefore provided, if the Company has disputed or not accepted liability under or in respect of this Policy.

It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that award by such

arbitrators or Umpire of the amount of the loss or damage shall be first obtained."

6. We also find that in this case a part of the claim is admitted which will appear from annexure D. The claim which is admitted is as follows:-

"1. Labour and towing charges - Rs. 12.025/-."

7. Therefore, there is a dispute and difference between the parties regarding the quantum of the claim in question.

8. In our opinion, before invoking the provisions of Section 20 of the Arbitration Act, 1940, certain conditions are to be satisfied. Section 20 of the Arbitration Act 1940 contains various sub-sections out of which, in our opinion, sub-section (1) to Section 20 is the key. When an application is filed by the claimant for invoking Section 20 of the Arbitration Act, the Court is not merely, to act as a post office but Court has a limited role to play. In Our opinion, in order to invoke the said section, the following conditions must be satisfied.

(i) There must be a valid and subsisting arbitration agreement between the two parties.

(ii) The said agreement must have been entered into prior to the institution of any suit.

(iii) The difference between the parties must be with respect to the subject matter of the Agreement or at least a part of the same.

(iv) In order to settle such disputes the parties instead of proceeding under Chapter II of Arbitration Act, 1940, which provides for arbitration without intervention of Court, must file application u/s 20 to a Court having jurisdiction in the matter to which the agreement relates for filing of the agreement in Court.

(v) The Court before invoking its power u/s 20 must be satisfied that the dispute relates to the subject matter of a suit.

9. If these conditions are satisfied then sub-sections (2) and (3) are mere procedural and if these procedures under sub-sections (2) and (3) are satisfied, order under sub-section (4) can be made. In that case the arbitration may proceed in view of sub-section (5) of Section 20 in accordance with the provisions of the said Act.

10. This being the scheme of Section 20, we do not think in the facts and circumstances of the case that the petition u/s 20 can be rejected totally on the ground that there has been unauthorised inflation of the claim as contained in paragraph 9 of the claim petition, as mentioned above.

11. Learned counsel appearing on behalf of the parties have cited various decisions in support of their respective contentions. Mr. Hiranmoy Dutt, learned senior counsel appearing in support of the appellant has relied on a decision of the Supreme Court in the case of A.M. Mair and Co. Vs. Gordhandass Sagarmull, . Reliance was placed by Mr. Dutt on paragraph 9 of the judgment for

the purpose of contending that once dispute is found to be within the scope of the Arbitration clause, it is no part of the province of the Court to enter into the merits of the dispute and the learned counsel has urged that in the instant case the learned Judge of the First Court erred in law by entering into the merits of the dispute while passing an order u/s 20 of the Arbitration Act.

12. The next Judgment on which reliance has been placed by Mr. Dutt was in the case of Wazirchand Mahajan and Another Vs. Union of India (UOI), . Particular reliance has been placed upon paragraph 7 of the said judgment by the learned counsel where the Hon"ble Judges of the Supreme Court observed that in dealing with an application for filing an Agreement, the Court must satisfy itself about the existence of the arbitration agreement which should be valid and subsisting and which must have been executed before the institution of the suit and if a dispute has arisen with regard to the subject matter of the Agreement, which is within the jurisdiction of the Court, a reference may be made and in dealing with the question the Court is not concerned whether the claim of the party was barred by limitation or not since that question has to be decided by the Arbitrator to whom the dispute may be referred to.

13. Mr. Dutt has also placed reliance on another judgment of the Supreme Court in the case of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., . While placing the said judgment, the learned counsel relied only on certain observations of the learned Judges, particularly in paragraph 7 of the said Judgment, to the effect that if any proceeding is not maintainable before a particular Court, the Court should not dismiss it but the proper course to be adopted in such circumstance is to return the plaint for presentation before the proper Court and not by dismissing the same outright.

14. Mr. Sinha Roy, learned counsel appearing on behalf of the Insurance Company, on the other hand, raised various issues and he cited various decisions of the apex Court mostly on the point that in order to constitute a dispute there must be assertion and repudiation of claim by the contesting parties. In support of the contention, learned counsel has relied on the judgment of the Supreme Court in the case of Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, . Mr. Sinha Roy also relied on the judgment of the Supreme Court in the case of Union of India (UOI) and Another Vs. L.K. Ahuja and Co., . In the said judgment the learned Judges of the Supreme Court considered the scope of Section 20 of the Act and made it clear that while considering the entitlement of a party to ask for a reference u/s 20, it would be wrong to mix up two aspects of the matter, viz. whether there was a valid claim for reference u/s 20 and secondly whether the claim to be adjudicated by the Arbitrator was barred by lapse of time. Learned Judges held that the second question is to be decided by the Arbitrator. The third Judgment on which Mr. Sinha Roy placed reliance was in the case of Jammu and Kashmir State Forest Corporation Vs. Abdul Karim Wani and Others, . The said Judgment was also dealing with the question that in the absence of repudiation by the Corporation of the respondent's rights, no dispute

can be said to have arisen. The fourth Judgment on which Mr. Sinha Roy placed reliance was in the case of S. Rajan Vs. State of Kerala and another, . In paragraph 10 of the Judgment the learned Judges of the Supreme Court considered various aspects of Section 20 of the Arbitration Act with which we are in respectful agreement.

15. Considering the aforesaid citations placed before us we are of the view that in the facts and circumstances of the case it was not proper on the part of the learned single Judge to express his view on the merits of the claim of the claimant. We, however, agree with the view taken by the learned single Judge that there has been an unauthorised Inflation of the claim for Invoking this Court's jurisdiction. Therefore, we direct deletion of the claim made in paragraph 9 of the claim petition. But that does not mean that in so far as the other claims made by the claimant is concerned, namely, in paragraph 7 of the claim petition the petitioner has no case u/s 20 of the Arbitration Act. It is obvious that having regard to the pecuniary jurisdiction of this Court, the said claim cannot be entertained by this Court. But that does not mean that the petitioner has no remedy. In that view of the matter, for ends of Justice, we deem it fit to transfer the said application u/s 20 of the Arbitration Act to the proper Court which, in the instant case, would be the City Civil Court. It is of course true that before us there is no petition for transfer. But on perusal of the provisions contained in Section 24 of the CPC it is clear that this Court can suo motu pass such an order of transfer. Mr. Sinha Roy, of course, has tried to urge before us that Section 24 of the CPC is not applicable in the facts of the case. We do not agree with the said contention of Mr. Sinha Roy in view of the provisions of section 41 of the Arbitration Act under which it has been provided that provisions of the CPC 1908 shall apply to all proceedings and all appeals under Arbitration Act. Apart from the same, we also find that in one of the judgments cited before us, the said question was also considered by the Supreme Court in the case of R. McDill & Co. Pvt. Ltd. v. Gouri Sankar Sardar and Ors. reported in Cal LT 1991(2) SC 9 where the learned Judges of the Supreme Court while quoting from the Law of Arbitration by R.S. Bachawat, Second Edition, 1987 page 585, has expressly approved a judgment of Allahabad High Court in the case of Union of India (UOI) Vs. Rup Kishore and Another, , where the learned Judges held that Section 24 of the CPC is applicable to a proceeding under Arbitration Act, 1940.

16. For the reasons aforesaid, we direct that the application u/s 20 of the Arbitration Act be transferred to City Civil Court and we direct the Chief Judge, City Civil Court to place the said application for hearing before the appropriate Bench having Jurisdiction at an early date, preferably within a period of one month from the transmission of the records of this proceedings to City Court and as soon as the said application is placed before the appropriate Bench, the said Bench may consider the same in accordance with law and keeping in view the claims made in paragraph 7 of the claim petition and not by not considering the claim made in claim 9 thereof, and in the light of the observations made in this judgment.

This appeal is thus disposed of. The judgment of the learned single Judge is set aside to the extent as indicated above.

Registrar, Original side of this Court is directed to transmit the records of the proceedings including Section 20 application to the Chief Judge, City Civil Court by a special messenger at the cost of the petitioner. Such cost may be deposited within 10 days from date hereof.

Let a xerox copy of the Judgment duly counter signed by the Assistant Registrar (Court) of this Court be given to the parties upon their undertaking to apply for and obtain certified copy of the same as expeditiously as possible.