
(2009) 07 AHC CK 0128
In the Allahabad High Court

Anurag and Others

APPELLANT

Vs

Judge Small Causes Court and Others

RESPONDENT

Date of Decision : 15-07-2009

Acts Referred:

Arbitration Act, 1940 — Section 14, 34
Constitution of India, 1950 — Article 227

Citation : (2009) 4 AWC 3429 : (2010) 7 RCR(Civil) 896

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—Heard Sri K.M. Garg, learned Counsel for the petitioner and Sri P.N. Khare learned Counsel for the respondents at length and perused the record.

2. The short matrix of the present controversy relates between the members of same family who are the petitioners and respondents. In the present writ petition, the respondent No. 3 had filed a suit for ejectment for arrears of rent with regard to property in question before Small Causes Court registered as Suit No. 7/94. the petitioner No. 1 and 2 including father Krishna Kumar were defendants in the said suit. During the pendency of said suit the parties including Sri Krishna Kumar entered into arbitration agreement deciding right title and shares of the members of the family on 31st July, 1994. Arbitration agreement was admittedly registered on 12.8.1994, before the Sub-Registrar, Chandpur District Bijnore. It has not been disputed that the arbitrator had given award on 24th August, 1994 and the award includes property in question. The share of Krishna Kumar was also adjudicated by the arbitrator. It is also mentioned in the award that the pending litigation before the Small Cause Court in District Bijnore, shall be withdrawn by parties on or before 21.12.1994. It is alleged that the arbitration award was given to Sri Suresh Chandra, so that he may file the award in the Court. However, it appears that the award was not filed by Sri Suresh

Chandra in the Court.

3. In view of the above, on 11.5.1995 Sri Krishna Kumar had initiated the proceeding in the Court of Civil Judge Bijnore by registering a case No. 127 of 1995 to make the award the rules of Court under Sub-section (2) of Section 14 of the Arbitration, 1940 (in short the Act). It has not been disputed that the delay in filing the application under Sub-section (2) of Section 14 of the Act, was condoned by the court concerned.

4. Subject to the aforesaid back drop, late Krishna Kumar had filed an application u/s 34 of the Act in the court of Small Cause, Bijnore in SCC Suit No. 7 of 1994 for staying the proceeding. It was pleaded that in view of the provisions of Section 34 of the Act of the Court should stay the proceeding of the suit and application moved under Sub-section (2) of Section 14 of the Act, should be adjudicated first.

5. The application filed by the petitioners was rejected on 19.4.1996 by the Small Cause Court, Bijnore by observing that whether the property in question is joint property or not is a subject matter which cannot be adjudicated without recording evidence. Feeling aggrieved by the order dated 19.4.1996 the petitioner preferred a revision which was registered as Revision No. 17 of 1996 in the Court of Additional District Judge, Bijnore and same was also dismissed upholding the orders passed by the trial court observing that it is not a fit case for staying proceeding u/s 34 of the Act. While passing the order dated 17.4.1997, it has been observed that whether the defendants are tenants or not, whether they are in agreement or not, are all matters of controversy which is required adjudication by recording of evidence.

6. Feeling aggrieved the petitioner approached this Court under Article 227 of the Constitution of India with the assertion that learned court below has failed to exercise the jurisdiction conferred by Section 34 of the Act. The submission of the learned Counsel for the petitioners is that arbitration award should have been given primacy over the suit and proceeding should have been stayed. The Court should have firstly adjudicated the application moved under Sub-section (2) of Section 14 of the Arbitration, 1940 for the enforcement of arbitration agreement. The things which were settled amicably should not be re-opened through regular suit unless arbitrator's award itself is held to be illegal or not sustainable under the law or on any other grounds.

7. While defending the impugned orders the learned Counsel for the respondents invited the attention to the para 4 of the counter affidavit and submitted that the courts below has observed that the respondent No. 3 is owner of property in question, hence, the dispute between the parties should be decided by deciding the pending suit on merit. The submission of the learned Counsel for the respondents in nut shell is that since respondent No. 3 is owner, right and title conferred by the arbitration agreement should not come in the way of pending regular suit. The suit should be decided to settle the controversy at rest between

the parties in question.

8. The Arbitration Act 1940 was legislated to settle the disputes amicably and to avoid the multiplicity of litigation with regard to dispute of movable or immovable property. Accordingly, Arbitrators appointed in terms of agreement were given ample power to decide the controversy between the parties. Ordinarily it is expected that once the arbitration agreement is finalized and arbitrator renders award then the parties shall abide by it to settle the controversy at rest. The award should be followed in its letter and spirit unless it suffers from substantial illegality or arbitrator acted with some malicious intent while rendering the award. In the present case, no argument has been advanced by respondents' counsel with regard to the award being biased or that they were not parties to the arbitration agreement.

9. Since the award was not enforced and was not filed in court, the application under Sub-section (2) of Section 14 of the Act was moved. The provision contained in under Sub-section (2) of Section 14 of the Act, is statutory and confers statutory right and once application is moved, then it is obligatory for the court concerned to record finding keeping in view the statutory provisions contained in the Act.

10. In Case during the pendency of the application under Sub-section (2) of Section 14 of the Act the regular suit is permitted to continue, then it shall frustrate the Act. It is always incumbent to the courts to exercise the jurisdiction to decide the application under Sub-section (2) of Section 14 of the Act expeditiously. The court has ample power to modify or cancel the award under the various provisions of the Act as reflected from Chapter 2 of the Act.

11. Section 34 of the Act gives ample powers to courts to stay the suit wherever there is an arbitration agreement between the parties. For convenience, Section 34 of the Act is reproduced as under:

34. Power to stay legal proceedings when there is an arbitration agreement.---Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reasons why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

12. It is settled law that keeping in view the facts of the case the provisions contained in a Section, "may" be construed as mandatory (vide, Dhampur Sugar Mills Ltd. Vs. State of U.P. and Others, Accordingly, keeping in view the facts and

circumstances of the case where there is no dispute with regard to award rendered by the arbitrator, the word, "may", used in Section 34 should be construed as mandatory.

13. A plain reading of the Section 34 of the Act indicates that if the court satisfied that the controversy has been settled in the arbitration agreement, then pending proceedings under suit should be stayed. The satisfaction of the court should be based on the genuineness of the arbitration agreement and not merely on the title of property. In case during arbitration agreement parties give up their rights and titles in each other's favour and agreement so entered, is registered, award is given and the award so given, does not suffer from any infirmity or substantial illegality at the face of record, then ordinarily, the application moved under Sub-section (2) of Section 14 of the Act should be given primacy over the pending suit and proceedings of the suit should be stayed till the court decides the application filed by a party under the Act. The satisfaction should be based on genuineness of award and not the right and title of parties with regard to property in dispute.

14. In the present case, only because the respondent No. 3 is alleged to be the owner of the property, shall not make out a case to render the award as waste paper. Once the agreement is duly signed and registered and the arbitrator renders award, then the proceedings of the regular suit ordinarily should be stayed by the court.

15. In view of the above, learned court below had incorrectly interpreted the provisions contained in Section 34 of the Act. The court below has failed to exercise the jurisdiction vested in it. The writ petition deserves to be allowed.

16. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 19.4.1996 passed by the opposite party No. 1 and the judgment and order dated 17.4.1997 passed by the respondent No. 2 with consequential benefits. The proceedings of JSCC Suit No. 7 of 1994 shall be stayed till final adjudication of the controversy by the court in pursuance of the powers conferred by Section 14 of the Act. The court concerned is directed to decide the application moved under Sub-section (2) of Section 14 of the Act in accordance with law after providing due opportunity to parties expeditiously and preferably within six months from the date of receipt of a certified copy of this judgment/order. It is clarified that while allowing the writ petition, this Court has not entered into the merit of the controversy. and the court concerned, shall decide the application moved by the petitioner independently.