
(1967) 02 DEL CK 0013

In the Delhi High Court

Case No : Civil Revision Appeal No. 122-D of 1966

Asad Ullah Khan

APPELLANT

Vs

The Metropolitan Financiers Private Ltd., New Delhi

RESPONDENT

Date of Decision : 28-02-1967

Acts Referred:

Citation : (1967) 3 DLT 291

Hon'ble Judges : Narain Andley, J

Bench : Single Bench

Advocate : K.L. Arya, K.C. Nayar and C.M. Nayar, for the Appellant;

Judgement

(1) These are five Civil Revisions Nos. 122-D, 131-D, 132-D, 133-D and 134-D all of 1966 against the common order dated 31st December, 1965, of Shri R. K. Synghal, Sub Judge 1st Class, Delhi, in five applications u/s 20 of the Indian Arbitration Act, 1940, which were registered as suit Nos. 249 to 253 of 1965.

(2) The facts out of which these revisions arise are that the petitioner on 7th May, 1965, filed an application u/s 20 of the said Act in the Court of the Munsif, Nainital, and obtained a preliminary injunction against the respondents. Thereupon, respondents on 24th May, 1965, filed the above said application u/s 20 of the said Act in the Court of the Senior Sub Judge, Delhi, which were ultimately transferred for trial by Shri R. K. Synghal, Sub Judge 1st Class. The petitioner then filed applications u/s 10 of the CPC for stay of the proceedings in the Delhi Court in view of the pendency of the proceedings in the Court of Munsif at Nainital, which had been previously instituted. The trial Court rejected these applications on the ground that the Munsif's Court had not the pecuniary jurisdiction to decide the applications and as the jurisdiction of the Munsif's Court was not concurrent with the jurisdiction of the trial Court at Delhi the proceedings at Nainital were without jurisdiction. In coming to this conclusion the trial Court considered that the pecuniary jurisdiction of the Munsif's Court at Nainital is only to the extent of Rs. 5,000.00 whereas the valuation for purposes of jurisdiction of petitions before the Delhi Court was more than Rs. 30,000.00.

(3) MR.NAYYER, learned counsel for the respondents has raised a preliminary objection that Civil Revisions Nos. 131-D to 134-D of 1966 are incompetent in as much as the order sought to be set aside or appealed against has not been filed with the petitions for revision. It appears that a certified copy of the common order of the trial Court was filed along with Civil Revision No. 222-D of 1966. Ordinary copies of this very order were also filed Along with Civil Revisions Nos. 131-D to 134-D of 1960 along with applications for exemption praying that the petitioner may be exempted from filing the certified copies of the common order as one certified copy had already been find. These four revisions were admitted on 10th March, 1966, by. They Dulat J., but no order appears to have been passed upon these applications for exemption. I may also mention, as it appears from the record, that following upon the common order dated 31st December 1965, the trail Court has passed several short orders in each of the other four petitions dismissing them for the reason recorded in the common, order. Copies of even these short orders were not filed Along with Civil Revisions Nos. 130-D to 134-D of 1966. .

(4) Mr. Arya, learned counsel for the petitioner, has contended that since no order was passed by the learned Judge admitting the revision petition, it should be deemed as if the learned Judge had passed an order exempting the production of the certified copies. He has relied upon Sarat Chandra Nag v. Rati Kanta Policy. In that. case the learned Single Judge was dealing with a case where a copy of the Judgment upon which the decree for partition was based had not been filed. The learned Single Judge was of the view that a copy of the judgment was not necessary for the purposes of the appeal and was not required for consideration by the Appellate Court. He was further of the view that when a judgment is not required for consideration by the Appellate Court, the Court would undoubtedly. dispensed with the filing of the judgment and he held that in view of the fact that dispensation would most certainly be granted in a case of that description the Court had in fact granted dispensation at the time of admitting the appeal. I do not see how the principle of this case, even if it is correctly decided, can be applied to the facts of the present case. In this case the several orders passed in the four petitions following upon the common order were not filed at all at the time of the filing of the revision petitions and they have not been filed up to date. If the matter had been brought to the attention of the learned Judge admitting the revisions, he would undoubtedly have taken some sort of undertaking from the counsel to produce the certified copies of the short orders in not of the common judgment. I do not think that these cases are cases where a dispensation would have been granted at the time of the admission of the revisions. In my view, Therefore, the four revision petitions Nos. 131-D to 134-D of 1968 are incompetent and are rejected.

(5) Coming to Civil Revision No. 132-D of 1968, the main point of controversy is whether the proceedings which were commenced by an application before the Munsif's Court at Nainital are "Suits" within the moaning of Section 10 of the Civil Procedure Code.

(6) Mr. Arya has contended that the proceedings in the Court of the Munsif's at Nainital are suits and he has relied upon various cases. The first case to which he has invited attention is *Govind Narayan Prabhu and others v. Venkatesh Laxman Kamafl*. This was a case where a Division Bench of the the Bombay High Court were considering whether an order under Order 38 of the CPC can be made in an application u/s 20 of the Second Schedule to the Civil Procedure Code as it existed at that time. I have no doubt in my mind that once an application u/s 20 of the Arbitration Act is filed and is registered as a suit, the procedural provisions of the CPC would apply and & reference to Section 41 of the Arbitration Act would clearly point to the conclusion that the provisions of the CPC are to apply to all "proceedings" before the Court. The question is whether the substantive part of the CPC as contained in Sections 10 or 11 would also apply and would be covered by the word "proceedings" used in Section 41 of the Act. Even in the Bombay judgment cited above, the learned Judges pointed out previous cases of the Bombay and Calcutta High Courts where the question had been raised whether Section 11 of the CPC would apply to proceedings which are commenced under the Arbitration Act and the learned Judges came to the conclusion that that question raises quite a different consideration from the one which they had to decide, namely, whether the Court had power to make an order under Order 38 which is a part of the procedural part of the Civil Procedure Code. The next case relied upon by the learned counsel for the petitioner is *Selvarayan Samson v. S. Amalorpavana dam*. This case also deals with the applications of the provisions of Order 9, rule 13, again a procedural part of the Civil Procedure Code, to proceedings under para 20 of Schedule Second of the Civil Procedure Code. The next case cited by Mr. Arya was *Firm Jai Narain Babulal v. Firm of Naraindas J animal*, which undoubtedly says that Section 10 of the CPC can be extended to Civil Miscellaneous proceedings by virtue of Section 141 of the Civil Procedure Code. The authority of this case has been doubted in *S. R. Maltora and Co. v. L. Sukhdayal Kapur*. On the other hand in *Htochand Balochand v. Kishinchand* and another a Bench constituted by the Judicial Commissioner and the Additional Judicial Commissioner held that an application to file a reference under clause 17 of Schedule Second, Civil Procedure Code, is not a suit.

(7) The weight of authority, as I find it is in favor of the view that an application made u/s 20 of the Indian Arbitration Act and which is registered as a suit is not a suit within the meaning of Section 10 of the Civil Procedure Code. In direct authority on the point is of the Lahore High Court, in *Gurbaksh Singh v. Sant Ram*", *Adison J.* had dealt with the identical question which arises in these matters and had held that an application u/s 20, Schedule Second, is not a plaint and that the hearing of such an application is not a suit though under sub- clause (2) Section 20, it is to be numbered and registered as a suit. It has further been held that Section 10 is applicable only to suits. To the same effect are-

(1)*Rajmal Girdhari Lal Marwade. v. Maruli Shivvaram and others*, and (2) *Satish Chandra Bose and another v. Paliram Aggarwala*.

Apart from authority under the CPC a suit commences by the institution of a plaint or in such other manner as may be prescribed. The argument of Mr. Arya with reference to order 33, rule 8 of the CPC will be covered by the words "In such other manner as may be prescribed occurring in Section 26 of the Civil Procedure Code. Apart from that, rule I of Order 33 talks of suits and rule 8 of Order 33 provides that upon the application for permission to sue in forma pauperis being granted, it shall be numbered and registered and shall be deemed the plaint in the suit. No comparison can be made of the language of rule 8 of order 33 with the language of sub-section (2) of Section 20 of the Arbitration Act for the proposition that an application under the latter provision becomes a suit for all purposes merely because it is to be registered as a suit. Mr. Arya has also cited *Munshi Ram v. Banwi Lal and another* I do not see how this case helps Mr. Arya for establishing the proposition that in application u/s 20 of the Arbitration Act is a suit for the purposes of Section 10 of the Civil Procedure Code. All that the learned Judges of the Supreme Court said in the case was that the procedural part of the CPC in this case Order 23 was applicable. About this there is not be the least doubt even on a bare reading of Section 41 of the Arbitration Act. I, Therefore, hold that an application u/s 20(2) of the Arbitration Act, 1940, is not a suit. That being so. Section 10 of CPC will not in terms apply and the applications made by the petitioner in the trial Court for stay of the trial Court proceedings were incompetent.

(8) I may also mention a preliminary objection which was raised by Mr. Nayyar the ground being that a revision is not competent, if Section 10 of the CPC applies, its provisions are mandatory. As has been held by the Supreme Court in *Manohar Lal Chopra, Rai Bahadur Rao Raja Seth Hiralal*, the provisions of Section 10 are clear, definite and mandatory. It has further been held that a Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances There being a prohibition if a Court docs not stay the proceedings even upon the application of the conditions prescribed "by Section 19, it would certainly be a matter touching its jurisdiction and, in my opinion a revision would be competent.

(9) In view of my findings that an application u/s 20(2) of the Arbitration Act, 1940, is not a suit, this revision is dismissed. In the circumstances of the case I leave the parties to bear their own costs. The parties through their counsel who are present in Court to-day are directed to appear in this Court on 27th March, 1967, for further proceedings,