
(1962) 11 CAL CK 0017
In the Calcutta High Court
Case No : Civil Revn. No. 1969 of 1962

Badri Narayan Lall

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-1962

Acts Referred:

Arbitration Act, 1940 — Section 34

City Civil Court Act, 1953 — Section 2(5), 5(2), 5(4)

Citation : AIR 1963 Cal 621 : 67 CWN 627 : 67 CWN 1080

Hon'ble Judges : R.S. Bachawat, J;C.N. Laik, J

Bench : Division Bench

Advocate : Kalidas Basu, for the Appellant;Bhabesh Narain Bose, for the Respondent

Judgement

Bachawat, J.—This revision case raises the question whether the City Civil Court Judge has jurisdiction to pass an order u/s 34 of the Arbitration Act, 1940, staying a suit pending before him. Badri Narayan Lall instituted a suit in the City Civil Court against the Union of India and others. The disputes in the suit arise out of a contract which contains an arbitration clause. Upon the application of the Union of India and the other defendants to the suit the learned City Civil Court Judge has passed an order staying the suit u/s 34 of the Arbitration Act, 1940. Plaintiff Badri Narayan has moved the High Court against this order u/s 115 C. P. C. and has obtained a rule.

2. On behalf of the plaintiff it is contended that the jurisdiction of the City Civil Court Judge to pass an order u/s 34 of the Arbitration Act, 1940, staying the suit is taken away by Section 5(4) of the City Civil Court Act, 1953, read with item 11 of the first schedule and Section 2 (5) of the Act. In my opinion this contention is unsound and should be rejected.

3. Sections 5, 5 and item 11 of the first schedule to the City Civil Court Act, 1953 are as follows :-

Section 2 (5). ""Proceeding" includes any proceeding arising out of a suit of a civil nature (not being a proceeding on appeal, reference revision or any application to the High Court) and any other proceeding whatsoever of a civil nature in the exercise of original jurisdiction not arising out of a suit."

Section 5. "Jurisdiction -- (i) The local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta.

"(2). Subject to the provisions of Sub-sections (3) and (4), and of Section 9 the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding rupees ten thousand in value."

"(3). The City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try any proceeding under --

(i) the Guardians and Wards Act, 1890 (VIII of 1890), and

(ii) Part X of the Indian Succession Act, 1925 (XXXIX of 1925), in respect of succession certificates.

"(4). The City Civil Court shall not have jurisdiction to try suits and proceedings of the description specified in the First Schedule.

"(5). All suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Cause Court or any other Court, tribunal or authority, as the case may be, as here to before." Item II of the first schedule:

"Suits and proceedings under the Arbitration Act, 1940 (X of 1940), other than suits and proceedings under Chapter IV of that Act."

4. Now the application for stay of the pending suit u/s 34 of the Arbitration Act, 1940 is a proceeding in that suit. The City Civil Court is competent to try the suit and all proceedings in it. The ancillary proceeding in the suit for its stay u/s 34 of the Arbitration Act is not covered by the expression "suits and proceedings under the Arbitration Act, 1940" in item No. 11 of the first schedule of the City Civil Court Act, 1953 read with Sections 2 (5) and 5 (2) of the Act and the City Civil Court is not debarred from trying the application.

5. Only the City Civil Court Judge before whom the suit is pending is competent to entertain the application for its stay u/s 34 of the Arbitration Act, 1940. No other judicial authority is competent to entertain the application. Section 5 (4) of the City Civil Court Act, 1953, read with the first schedule to the Act does not take away the jurisdiction of the City Civil Court Judge to entertain an application u/s 34 of the Arbitration Act, 1940, which can be made to him only and which no other judicial authority is competent to entertain and try.

6. There is no ground for interference with the impugned order. The rule is discharged There will be no order as to costs.

Laik, J.

7. The short question involved in this revision case which is of first impression, is, as to whether by virtue of Sub-section 4 of Section 5 of the City Civil Court Act of 1953 (hereinafter called the Act) read with Entry 11 of the First Schedule of the said Act, the City Civil Court has jurisdiction to stay a suit, pending before it, on an application made under the provisions of Section 34 of the Arbitration Act, 1940.

8. The said suit pending in the City Civil Court, was for a declaration that a letter of the defendants (opposite parties herein) purporting to forfeit the security and the earnest money of the plaintiff, deposited with the Railway defendants, was illegal and without jurisdiction and also for a declaration that the plaintiff was entitled to a certain sum for his handling work done for the Railway and lastly in the alternative, the plaintiff claims a sum of Rs. 2667.71 nP. To this, the defendants filed the above application u/s 34 of the Arbitration Act for stay of the suit on the ground that the agreement on which the suit was founded, contained an arbitration clause. The said objection was however given effect to by the learned Judge, City Civil Court, staying the suit by his order which is challenged by the plaintiff before us and against which the above Rule was issued.

9. Section 34 of the present Arbitration Act (1940) is virtually a re-enactment of Section 19 of the Indian Arbitration Act of 1899 (with slight alteration) and of Paragraph 18 of the Second Schedule of the Code of Civil Procedure. The corresponding section of the English Arbitration Act of 1950 is Section 4 (1) of the said Act, which again is based on Section 11 of the (English) Company Law Procedure Act of 1854. It would be of no use to discuss the cases remotely touching on the point on the English Acts, but a few decisions of our Court which have some bearing on this question might be profitably referred to. In the case of *Basanti Cotton Mills v. Dhingra Brothers* reported in ILR (1950) 1 Cal 546 : (AIR 1949 Cal 684), *Das Gupta, J.*, (as his Lordship then was) in interpreting Section 40 of the Arbitration Act 1940 and in discussing the question as to whether the Small Cause Court, Calcutta, before which the suit was pending, has jurisdiction over an arbitration proceeding or over any application arising thereout, held that the stage at which the application for stay was made and the stay order was passed, was not "any part of the arbitration proceeding". The reasoning that weighed with his Lordship was that "exercising jurisdiction to pass stay order is not exercising jurisdiction over arbitration proceedings", and his Lordship therefore concluded "that the Small Causes Court had jurisdiction to pass the stay order in the application u/s 34 of the Arbitration Act."

10. In the case of *Chhoteylal Shamlal v. Coochbehar Oil Mills Ltd.*, reported in ILR (1954) 1 Cal 418 my learned brother, *Bachawat, J.*, in dealing with a question under Sections 31(4) and 34 of the Arbitration Act 1940, held at page 420:

"In my judgment an application for stay made to a judicial authority u/s 34 of the Act is not an application under the Act in a reference in a Court competent to

entertain it as contemplated by Section 31(4) of the Act. An application for stay of a legal proceeding to the judicial authority before whom it is pending is always an application under the Act to a judicial authority competent to entertain it."

11. In the case of Kamal Brothers and Others Vs. Hansraj Kapur, , where the question, as in the instant case, was pointedly raised, P. C. Mallick, J., observed that there may be something in favour of the argument that the application for stay u/s 34 is "a proceeding under the Arbitration Act" but his Lordship did not decide the point and proceeded "on the footing that the City Civil Court had no power to grant a stay u/s 34 of the Arbitration Act".

12. In the case of National Company Ltd. v. Biseswarilal and Co., reported in 66 Cal WN 1078 where the same question was again raised, Ray, J., did not express any view but observed that "the question as to whether the City Civil Court has or has no jurisdiction u/s 34 of the Arbitration Act was not free from difficulty".

13. In a suit filed in the City Civil Court for declaration that a mortgage decree was void, the question arose as to whether such a suit or proceeding came under the mischief of item 7 being. "suits and proceedings relating to or arising out of mortgages of or charges or lien on Immovable property", of the First Schedule of the Act i. e., whether the City Civil Court has jurisdiction to try such a suit, their Lordships, Banerjee and Niyogi, JJ., after interpreting the phrases-"relating to" or "arising out of held in the case of Nitai Charan Bagchi v. Suiesh Chandra Paul, reported in 66 Cal WN 767 that such a suit fell within the mischief of Item No. 7 and that the City Civil Court was right in returning the plaint for presentation to the proper Court, on the ground that the said phrases are of great comprehensiveness and the suits which either directly or indirectly arise out of mortgages, would come within the mischief of Item 7 of the First Schedule.

14. The provision of the whole of Section 5 and the said Item 11 have been quoted by my learned brother, Bachawat, J., in his judgment. It would be interesting to note that in the First Schedule of the Act, there are 17 entries which, can roughly be divided into four classes, viz.. Suits and proceedings "triable by"" (See Entries 1 and 14 to 17). Next class is Suits and proceedings "relating to" and/or "arising out of" (See Entries 2 to 5, 7, 9 and 10 (ii)). The third division is Suits and proceedings "under" (See Entries 10 (i), 11 and 13). The last classification is Suits and proceedings "for" (See Entries 6, 8 and 12). We find the expression "under" in Sections 5 (3), 6 and 8 (2) (b) of the Act and the word "triable by" in Section 5 (5) of the Act also.

15. It would not serve any useful purpose by referring to the several provisions of the English Acts and the decisions thereon, viz.. Bankruptcy Act, 1883 and 1914; Finance (No. 2) Act,, 1915, Income Tax Act, 1918, Rent Act, 1920 Agricultural Holdings Act, 1923; Workmen's Compensation Act, 1925 and also to the provisions in our Acts, viz., the Income Tax Act, Workmen's Compensation Act, etc., for appreciation of the meaning of the phrase "arising out of. It would

not equally be useful to refer to the other English Acts, viz.. Lands Clauses Consolidation-Act, 1845; Employer's and Workmen Act, 1875-and Workmen's Compensation Act, 1897; Disused Burial Grounds Act, 1884; Bankruptcy Act, 1890; Midwives Act, 1902 and 1951; Electricity Supply Act, 1919, Increase of Rent and Mortgage-Interest (Restrictions) Act, 1920, and the decisions thereon for appreciation of the meaning of the phrase "under" but the phrases "under" or "arising out of or "consisting" or "with regard to" or "relating to" or "in relation to" or "in respect of, used in the contract or agreement in the matter of arbitration have been interpreted in several decisions of the Supreme Court. See A.M. Mair and Co. Vs. Gordhandass Sagarmull, , Ruby General Insurance Co. Ltd. Vs. Pearey Lal Kumar and Another, , Gaya Electric Supply Co. Ltd. Vs. The State of Bihar, , Anderson Wright Ltd. Vs. Moran and Company, , Shiva Jute Baling Limited Vs. Hindley and Company Limited, and Dhanrajamal Gobindram Vs. Shamji Kalidas and Co., . The leading decision of the House of Lords in Heyman v. Darwins, reported in 1942 AC 356 dealing with the interpretation of some of the said terms was also approved in some of the above decisions of the Supreme Court. There are observations that some of the terms are sufficiently wide and that the terms "in respect of "with regard to", etc., are similar terms.

16. In my view the legislature intentionally employed the phrase "under" in Item 11 of the First Schedule of the Act in contradistinction to the other terms, viz... "relating to", or "arising out of used in the other entries and in the sections of the Act. In my judgment the application u/s 34 of the Arbitration Act is neither a suit nor a proceeding under the Arbitration Act of 1940. The observations no doubt appear in the Supreme Court decisions, but they were made in a different context. The cases also do not decide contrary to the above proposition, sought to be argued on behalf of the petitioner in the instant case. I am not also unmindful that though there is some difference between the language in Section 40 of the Arbitration Act, 1940 and in the language in Section 5 (4) read with Item 11 of the" First Schedule of the City Civil Court Act but the principles enunciated by his Lordship in the case of Basanti Cotton Mills AIR 1949 Cal 684 (supra) are in my view applicable to the instant case. The said view also finds support if we take into consideration and compare the classes of suits and proceedings under the Guardians and Wards Act (Act VIII of 1890), the Indian Lunacy Act (Act IV of 1912), the Indian Companies Act (Act VII of 1913) and the Succession Act (Act XXXIX of 1925). There is another reason. The City Civil Court admittedly is the only forum to entertain such a suit as in the instant "case. If that be so it is well settled that the application u/s 34 of the Arbitration Act filed in the said suit should be entertained, dealt with and decided by the said Court. The present application u/s 34 in the pending suit before the City Civil Court, in my view, is not such a suit or proceeding under the Arbitration Act of 1940 to attract the mischief of Section 5 (4) and Item II of the First Schedule of the City Civil Court Act.

17. For the reasons aforesaid I also agree that the Rule should be discharged without costs.