

(1961) 01 AHC CK 0005
In the Allahabad High Court
Case No : F.A.F.O. No"s. 56 and 120 of 1960

Bala Prasad

APPELLANT

Vs

Jagannath Prasad Sharma Vakil and Others

RESPONDENT

Date of Decision : 30-01-1961

Acts Referred:

Court Fees Act, 1870 — Article 18, 18(1), 19

Citation : AIR 1962 All 75 : (1961) 31 AWR 544

Hon'ble Judges : V.G. Oak, J

Bench : Single Bench

Advocate : S.B.L. Gaur, for the Appellant; Swami Dayal and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, J.—These two connected appeals under the Court Fees Act have arisen out of a proceeding under the Indian Arbitration Act, 1940.

2. On 1-10-1959 Sri Jagannath Prasad Sharma filed an application in the Court of the Civil Judge, Agra u/s 14 of the Indian Arbitration Act (hereinafter referred to as the Act). According to this application, there were certain differences among the three opposite parties. The matter was referred to Sri Jagannath Prasad Sharma as arbitrator. He gave his award on 20-6-1959. Opposite Party No. 1 (The Central Finance and Housing Company Limited) requested the arbitrator to file his award. The arbitrator filed the award accordingly for necessary action by the Court. The case was registered; and notices were issued as laid down in Section 14 of the Act.

3. Opposite Party No. 1 supported the application by the arbitrator, and requested the Court to pass a decree in terms of the award. Nand Kumar Misra and Bala Prasad, opposite parties Nos. 2 and 3, filed objections. On each of the two objections the Munsarim of the Court wrote down a report to the effect that, the objector must pay Rs. 200 towards court fee on the objection. On 13-1-1960

the Court passed orders on these objections to the effect that the objectors must pay up court fee as reported by the office. The objectors raised an objection to the demand for court fee. The Court, therefore passed another order on 19-1-1960 deciding that the Munsarim's report was correct, and the objectors must pay up court fee accordingly. F. A. F. O. No. 120 of 1900 is by Nand Kumar Misra. It is directed against the Courts order dated 13-1-1960. F. A. F. O. No. 56 of 1960 is directed against the subsequent order dated 19-1-1960. The two appeals raise the same question of law.

4. Mr. S. B. L. Gaur appearing for the two appellants relies upon Section 19(3) of the Court Fees Act, and urges that no court-fee is payable, on the two objections. Section 19 Court Fees Act provides for exemption of certain documents. Section 19 Court Fees Act runs thus :

"Nothing contained in this Act shall render the following documents chargeable with any fee.

(i)

(ii)

(iii) Written statement not being one mentioned in Article 2-A, Schedule II,"

On the other hand, the learned Standing Counsel--relies upon. Article 18 (1) of Schedule II, Court Fees Act. Article 18 (1) of Schedule II, Court Fees Act deals with an application u/s 14 or Section 20 of the Arbitration Act, 1940, or an application to set aside an award under the said Act. The learned Standing Counsel contended that the objections under consideration are applications for setting aside an award under the Arbitration Act.

5. In order to decide whether the objections in question are in the nature of applications for setting aside an award under the Arbitration Act, it is necessary to examine the two objections. The objection by Bala Prasad purports to be one u/s 30 of the Arbitration Act. In paragraph 1 of the objection it was stated:

"That the Central Finance and Housing Company Limited obtained the signatures of this opposite party on blank forms and papers. This opposite party never agreed! to appoint anybody as arbitrator. This opposite party did not even know Sri Jagannath Prasad, the alleged arbitrator..."

The title of the objection by Nand Kumar Misra was "Reply to the award." Paragraph 1 of this objection runs thus :

""That the objector did not appoint Sri Jagannath Prasad as arbitrator. In fact the objector did not know him"

It will be noticed that each of the two objectors denied having appointed Sri Jagannath Prasad as arbitrator. Each objector contended that he did not know the alleged arbitrator at all.

6. Section 14 of the Indian Arbitration Act provides for filing of awards. Notices to

parties are to be given under Sub-section (2) of Section 14 of the Act. Section 30 of the Act deals with grounds for setting aside an award. Ground No. (c) mentioned in Section 30 is:

"That an award has been improperly procured or is otherwise invalid."

Under Section 30 of the Act it is open to an objector to urge before the Court that, he never nominated the alleged arbitrator as arbitrator in his case. Ch. II of the Act provides for arbitration without intervention of a Court. The case of opposite party No. 1 is that, the impugned award was an award in pursuance of arbitration without intervention of a Court under Ch. II of the Act. According to Opposite Parties Nos. 2 and 3, there was no such reference to arbitration.

7. Article 18(1) of Sch. II, Court Fees Act contains three parts. The first part deals with applications u/s 14. The second part deals with applications u/s 20 of the Arbitration Act. Part three of Article 18 (1) of Schedule II, Court Fees Act deals with "an application to set aside an award under the said Act." We are now in a position to decide whether the objections under consideration are "applications to set aside an award under the said Act."

8. The words "under the: said Act" are important. Part three of Article 18 (1) does not deal with every possible award. It must be an award under the said Act (Arbitration Act, 1940). Mr. Swami Dayal appearing for opposite party No. 1 contended that, the expression "under the said Act" governs the word "application," and not the word "award." I do not agree. The expression "under the said Act" immediately follows the word "award". I, therefore, think that the expression "under the said Act" governs the preceding noun "award," and does not govern the remote word "application."

9. Part three of Article 18 (1) will apply in a case, where the objector concedes that the award was given under the Arbitration Act, and yet contends that there is some defect in the award. That is not the position in the present case. The objector's contention is that, there was never any award as contemplated by the Arbitration Act, 1940. There was never any reference to arbitration, and consequently no award under the Act. At this stage the Court is not in a position to decide whether the stand taken by opposite party No. 1 or that taken by opposite parties Nos. 2 and 3 is correct. At this stage the Court has to assume that the stand taken by the two objectors may be correct. On that view, the two objections cannot be treated as applications for setting aside an award under the Arbitration Act. The present case will not, therefore, fall under Article 18 (1) of Schedule II, Court Fees Act. The objections are in the nature of written statements. The case falls under Clause (iii) of Section 19, Court Fees Act. The objectors are exempted from payment of court-fee. Since the question of law involved in these appeals was of some difficulty, parties may be directed to bear their own costs.

10. The two connected appeals are allowed. The two orders of the learned Civil Judge dated 13-1-1980 and 19-1-1960 are set aside. I hold that no court-fee is

payable on the two objections filed by the appellants before the learned Civil Judge. In each appeal parties shall bear their Own. costs to this Court.