

(1988) 02 DEL CK 0001

In the Delhi High Court

Case No : Interim Application No. 5678 and 6404 of 1985 and Suit No. 1484A of 1985

Balaji Laminating Works

APPELLANT

Vs

J.R. Malik and Another

RESPONDENT

Date of Decision : 09-02-1988

Acts Referred:

Citation : (1988) 1 ARBLR 125 : (1988) 34 DLT 248

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Advocate : Rama Kant Bhagaria, B.I. Singh, Shankar Ghosh and A.K. Sheel, for the Appellant;

Judgement

Mahesh Chandra, J.

(1) By this order

(2) The facts giving rise to this order are M/s. Balaji Laminating Works had filed this suit u/s 14 of Indian Arbitration Act with a request that Shri J.R. Malik, arbitrator in the case should be ordered to file his award in the court and in pursuance thereof the award was received in court and notice of filing of the award was accepted by the learned counsel for the plaintiff and on 6th September, 1985 notice was ordered to be issued to defendant No. 2 which was served on 13th September, 1985. The plaintiff filed objections in the form of I.A. No. 5678 of 1985 u/s 29 of the Indian Arbitration Act requesting that interest be awarded on the amount given in the award @ 18 per cent per annum till the payment of the entire decretal amount. The defendant No. 2 also filed his objections under Sections 30 and 33 of the Arbitration Act against the award which are I.A. No. 6404 of 1985. The following issues were framed on the objections of defendant No. 2 : Issues : "1. Whether this court has jurisdiction to pass a decree on the basis of the award ? 2. Whether the award dated 17th July, 1985 made by Mr. J.R. Malik, respondent No. 1 is liable to be set aside for any of the reasons mentioned in the objection petition ? 3. Relief." In as much as it is

an arbitration matter it was ordered that the objections can be decided on affidavits and accordingly the parties were directed to file their affidavits. Thereafter I.A. No. 3063 of 1986 was filed by defendant No 2 under Order 14, Rule 2 CPC . requesting therein that Issue No. 1 with regard to jurisdiction of the court should be treated as preliminary. This application was disposed of vide my orders dated 11th November, 1986 with the observations that "keeping in view the totality of circumstances, it would be appropriate that the entire matter is heard and if the court would come to the conclusion that this court has no jurisdiction it would automatically stay its hands from proceeding further in the matter" and accordingly arguments were heard but after hearing arguments on the question of jurisdiction no further arguments were thought necessary to be heard. I have gone through the file and after giving my considered thought to the matter before me, I have come to the following findings on Issue No. 1. 250

(3) The contention of the learned counsel for defendant No. 2 on this issue is that according to Section 31(4) of the Arbitration Act "notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force where in any reference any application under this Act has been made in a court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other court", and consequently this! court has no jurisdiction to entertain this case in so far as on or about 26th July, 1985 defendant No. 2 had made an application in the District Courts at Dhanbad u/s 14(2) of the Arbitration Act for an order directing the arbitrator to file the award in the said court and notice of the said application was issued by the said court to the arbitrator and Therefore only the Dhanbad Court has jurisdiction in the matter and it is not open to this court to entertain the suit u/s 14, of the Arbitration Act filed on 16th August, 1985 by the plaintiff in the instant matter.

(4) From the perusal of para 15 of the reply to these objections filed by the plaintiff I find that it has not been disputed by the plaintiff that defendant No. 2 had in fact filed suit u/s 14 of the Arbitration Act in the Dhanbad Court as alleged. What is rather contended by the plaintiff is that the provisions of Section 31(4) of the Arbitration Act do not apply to the present case in as much as the arbitrator had filed the award suo moto in this court and also because Dhanbad Court has no jurisdiction in the matter.

(5) From perusal of para 4 of the reply I find that it has been admitted therein by the plaintiffs that Food Corporation of India, defendant No. 2 certainly has an office at Sindri but it has been contended in para 5 of the reply that "the Sindri Branch of the petitioner-corporation works under the supervision and direction and control of the Headquarters office at New Delhi". It has further been contended in para 7 of the reply that "the alleged Sindri Unit is only a Branch/ Subordinate office of the petitioner-corporation working at Delhi. It has no independent administrative, financial or other executive status".

(6) Let us first consider the factual question of filing of the alleged suit by the F.C.I, defendant No. 2 in Dhanbad Court. In order to prove its contention the defendant No. 2 has filed an affidavit dated 31st March, 1986 of one Shri Rajender Prasad, Estate Officer of defendant No. 2 at Sindri Unit which is a duly sworn affidavit and it has been categorically stated in para 6(c) of the said affidavit as under : "On or about July 26, 1985 the petitioner duly made an application in the District Court at Dhanbad u/s 14(2) of the Arbitration Act for an order directing the arbitrator to file the award in the said court. On such application notice was duly issued by the said court to the arbitrator". A counter-affidavit of the above mentioned Rajender Prasad was also filed by the F.C.I, wherein statements of fact made in the affidavit dated 5th May, 1986 of Radhey Shyam on behalf of the plaintiff were countered. Annexure "A" has been filed in support of affidavit of the said Shri Rajender Prasad which is copy of the purchase order and this shows that purchase order had been entered into by Fertilizer Corporation of India Ltd. Sindri Unit,, 251 Sindri P.O. Distt: Dhanbad, Bihar. Annexures "B" to "F" filed by F.C.I, go to show that the entire correspondence from defendant No. 2 has emanated from Sindri Unit office. Similarly Annexure "G" is copy of the application purported to have been filed by defendant No. 2 u/s 14 of the Arbitration Act for directions to the arbitrator to file the award in Dhanbad court and Annexure "H" is copy of various orders passed by Dhanbad Court in the said application. A perusal thereof shows that application had been filed on 26th July, 1985 in Dhanbad Court. The said application was formally admitted on 14th August, 1985 by the Dhanbad Court. Thereafter notice was ordered to be issued to the Arbitrator. Incidentally it may be mentioned here that defendant No. 2 has also filed a photocopy of the certified copy of the order sheet of Dhanbad Court on record along with an affidavit dated 16th January, 1986 of said Rajender Prasad. Nothing has been placed on record by the plaintiff to belly this evidence of defendant No. 2 on this aspect of the matter. In these circumstances, I have come to the conclusion that certainly defendant No. 2 had on 26th July, 1985 filed before Dhanbad Court an application u/s 14 of the Arbitration Act in the matter in dispute before this court and the said application had been pending since then on the date of filing of the present suit by the plaintiff on 16th August, 1985. Let us consider it from another angle. The said application of defendant No. 2 was admitted on 14th August, 1985 by Dhanbad Courts while the present suit was filed by the plaintiff on 16th August, 1985. Thus the application filed by defendant No. 2 in Dhanbad Courts was pending on the date when this present suit was filed by the plaintiff in this court. Howsoever, we may consider, the fact remains that the application filed by defendant No. 2 in Dhanbad Court is earlier in date to the suit filed by the present plaintiff. That being the position provisions of Section 31(4) of the Arbitration Act would come into play and it would follow that this court would have no jurisdiction to entertain the present suit. Section 31 of the Arbitration Act reads as under : "31. Jurisdiction-(1) Subject to the provisions of this Act, an award may be filed in any court having jurisdiction in the matter to which the reference relates. (2) Notwithstanding anything contained in any other law for

the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the court in which the award under the agreement has been, or may be, filed and by no other court. (3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the court where the award has been or may be filed and to no other court. (4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force wherein any reference any application under this Act has been made in a court competent to entertain it, that court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other court". 252 A perusal of Section 31 reproduced above shows that sub-section (4) controls sub-sections (1) to (3). Mere fact that sub-section (4) figures in the end of Section 31 would not undermine its overriding effect over other sub-sections. Sub-section (4) opens ominously with the words "Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force ; which words give an overriding effect to the provisions of sub-section over not only on sub-sections (1), (2) and (3) but also on other provisions of this Arbitration Act which would imply that principal section is sub-section 4 and other sub-sections are to be read subject to provisions of sub-section (4). Thus it would follow that where any application has been made under Arbitration Act to a competent court, all other applications would be made before that court and even the award would have to be filed in that court alone and in no other court ; subject of course, that the court to which first application has been made is competent to entertain it. No distinction can be made in a case where award is filed by the arbitrator suo moto or award was being filed on application of the parties (See : Ferro Alloys Corporation Ltd. Vs. A.K. Ghosh and Bros.,) Learned counsel for the plaintiff has not been able to draw my attention to any ruling wherein some other view has been taken. He has referred to Kumbha Mawji Vs. Union of India (UOI), and Union of India (UOI) Vs. Surjeet Singh Atwal, but these rulings also do not lay down any contrary principle of law.

(7) Reverting to case in hand, even assuming for the sake of argument that both Dhanbad Courts and Delhi courts have concurrent jurisdiction in the matter in dispute in as much as defendant No. 2 has its head office at Delhi, even then in accordance with the provisions of Section 31 of the Arbitration Act the court which was first seized of the matter would have jurisdiction to entertain all subsequent matters arising in the arbitration proceedings. In these circumstances only Dhanbad court has jurisdiction and not the Delhi courts. Once a court is seized of the jurisdiction in an arbitration matter all subsequent proceedings are to take place in that court in accordance with Section 31(4) of the Arbitration Act. The Dhanbad Court was already seized of the matter when the present suit was filed on 16th August, 1985 by the plaintiff. In view thereof

also it would follow that this court has no jurisdiction to entertain the present suit. Mere fact that the arbitrator has suo mote filed the award in this court would not in any manner stop the operation of Section 31(4) of the Arbitration Act which is categorical in its language.

(8) It cannot be accepted that Dhanbad court had no jurisdiction to entertain petition u/s 14 of the Arbitration Act filed by defendant No. 2. The plaintiff has not disputed that Sindri is situated within the jurisdiction of Dhanbad courts. It is not disputed that that contract was executed between the Sindri office and the plaintiff. Supplies were also admittedly made at Sindri. All correspondence and purchase order has emanated from Sindri Office of defendant No. 2. These facts go to show that Dhanbad court had jurisdiction in the matter.

(9) Thus from whichever angle I may consider the matter before me, I conclude that defendant No. 2 had filed its application u/s 14 of the Arbitration Act in Dhanbad courts before filing of this suit and Therefore the Delhi Courts have no jurisdiction to entertain the present suit and filing of the award by the arbitrator suo moto would not give jurisdiction to this court. In view of the findings above. Issue No. I is decided in favor of defendant No. 2 and against the plaintiff. 253

(10) In view of my findings on Issue No. 1, I hold that this court has no jurisdiction to entertain the present suit No. 1484-A of 1985 much less to adjudicate upon I.A. Nos. 5678 and 6404 of 1985. The present suit and I.As. are filed. It would be open to the plaintiff to take proper steps for further proceedings in the matter before the Dhanbad courts. No. order as to costs.