
(1994) 04 CAL CK 0032

In the Calcutta High Court

Case No : Appeal No. 166A of 1986, Award Case No. 535 of 1985 and Matter No. 1665 of 1985

B.C. Saha

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Arbitration Act, 1940 — Section 20, 30, 33
Partnership Act, 1932 — Section 19(2)

Citation : (1994) 1 CALLT 419

Hon'ble Judges : Anandamoy Bhattacharjee, C.J; Nisith Kumar Batabyal, J

Bench : Division Bench

Advocate : Ambar Majumdar, for the Appellant; A.K. Pal, for the Respondent

Final Decision : Allowed

Judgement

Nisith Kumar Batabyal, J.—Being aggrieved by and dissatisfied with the judgment and order passed on 8th April, 1986 by a learned Single Judge of this Court in Award Case No. 535 of 1985 and Matter No. 1565 of 1985, the appellant has preferred this appeal.

2. Pursuant to an invitation of Tender for construction of reservoir for Darjeeling Water Supply Improvement Scheme, Messrs. B.C. Saha submitted a Tender which was accepted by the State Government and the parties entered into an agreement which contained an arbitration clause. Messrs. B.C. Saha made an application u/s 20 of the Arbitration Act, 1940 which was registered as Special Suit No. 55 of 1983 when dispute and differences arose between the parties for referring the disputes to the Arbitrator named in the Arbitration Clause. There was an order for filing the Arbitration Agreement in due course and the point of dispute was confined to the fact whether the Superintending Engineer had sanctioned a sum of Rs. 15,15,295.91p. on account of claim for carriage of goods by head-load. The learned Arbitrator heard the parties and made an interim Award and awarded a sum of Rs. 6,55,455/- including the interest payable to the

claimant at the rate of Rs. 10% per annum upto the date of making of the Award. The State of West Bengal challenged this interim Award under Sections 30 & 33 of the Arbitration Act. It was contended on behalf of the State was that the Arbitrator had no jurisdiction to take an interim Award. The second contention on behalf of the State was that the Arbitrator had no jurisdiction to entertain a revised claim and the Award was beyond the scope of the order of reference. The first contention was negated by the learned Court and the second contention was upheld.

3. Against this judgment and order an appeal has been taken to this court.

4. The first point which was argued by the learned Lawyer of the State Respondent was that when the parties entered into an agreement as per the Tender, the Partner who signed on behalf of the firm, Messrs. B.C. Saha had no authority under the terms of the Partnership Deed to refer a dispute to the arbitration clause in the agreement. It is not disputed that in the original Partnership Deed there is no provision for referring any dispute to arbitration. In the ratification Partnership Deed executed on 20-9-1986 the following clause was introduced by the first time :

"20. That all disputes and differences and questions whatsoever which shall either during the continuance of the partnership or otherwise arise between the partners or their respective representatives or between any partner and the representatives of the other partners touching these presents or constructions or applications thereof or any clause or thing herein contained any account, valuation or division of assets, debts or omission of any partner or as to any other matter in any well relating to the partnership business of the affairs or the rights, duties or liabilities of any partner under these presents shall be referred to the arbitration of a single arbitrator if the partners may agree upon one, otherwise to three arbitrators, one to be appointed by each partner and the arbitration shall be governed by the provisions of the Indian Arbitration Act or any other enactment relating thereto for the time being in force".

5. It appears from a plain reading of the above paragraph that there was no provision for submitting a dispute between a third party and the Partnership Firm to arbitration. Upon the death of Shri B.C. Saha, one of the partners on 27th of February, 1993, the firm was not dissolved and the heirs having the option of joining as heirs of the deceased partner joined the firm with the surviving partners and executed another Deed of Partnership on 8th day of March, 1993. In that Deed also there is no provision for submitting a dispute between the Partnership Firm and a third party to arbitration. The learned State Advocate relying upon Section 19(2)(a) of the Indian Partnership Act has submitted that the reference to arbitration on the basis of the arbitration clause of the agreement is without jurisdiction. This contention cannot be upheld for the reasons stated below.

6. Sub-section (2) of Section 19 of the Indian Partnership Act imposes certain

restrictions upon the partners" implied authority. These are statutory restrictions. Hence these are binding upon all partners dealing with the Partnership Firm. Decisions have been handed down from the case of Ram Bharose v. Kallu Mal ILR (1899) 135 that one partner cannot bind without special authority the firm by a submission to arbitration. The power to refer disputes, even though they relate to dealings with the firm, cannot be said to be an act done for carrying on its business in the ordinary way. The general proposition as stated in the said decision is subject to what is discussed below.

7. But there may be circumstances in which all the partners can be bound by a reference by one of the partners. In Sanganer Dal and Flour Mill Vs. F.C.I. and others, , it has been held that where a contract was entered into by one of the partners of the firm with the F.C.I, for supply of dal, the contract would be binding on the other partners of the firm when validity of the contract or authority of the partner to enter into contract was not denied by the other partners nor any objection was raised as to signing of tender by the partner on behalf of the firm nor any objection was raised as to appropriation by F.C.I, of security deposit made by the firm showing that they have ratified the contract and consequently reference u/s 20 of the Arbitration Act to the arbitrator by the Court on the basis of an arbitration clause in such contract would not be without jurisdiction.

8. In the facts and circumstances of the case it appears that dispute was first raised by Messrs. B.C. Saha in December, 1982 and the proceeding before the Arbitrator went on and on for a long time (the Arbitrator held about 83 sittings in all) and during this long period of time no objection was raised on behalf of the firm about legal infirmity of the reference to arbitration. It is obvious that by their conduct the partners did ratify the submissions to arbitration as contained in the arbitration clause of the agreement entered into between the firm by one of the partners thereof. Therefore, the first contention of the respondent-State fails.

9. The second point urged by the learned State Advocate about the maintainability of the appeal is that after the death of Shri B.C. Saha a newly constituted firm, Messrs. B.C. Saha cannot represent the firm which entered into contract with the State in 1976. There is no substance in this contention as it appears that in paragraph 19 of the Deed of Ratification of Partnership made on 20-9-1986, it has been stated as follows :-

"19. That the RETIREMENT OR DEATH of a Partner shall not dissolve the firm. On the death of a Partner his heirs shall have the option of joining the Partnership in respect of the interest of the deceased partner or retire shall be valued and the surviving partner or remaining partners shall take over his share in proportion to his interest in the Firm and shall pay the heirs of the deceased partner or the retire partner the value redeably."

10. It appears from the page 3 of the Deed of Partnership dated 8th March, 1993

that the heirs of the deceased partner, Shri P.C. Saha have expressed their willingness to join the Partnership business and the surviving partners have accordingly agreed to include the third set of partners into the business. Therefore, the present appeal is quite maintainable.

11. Regarding the calculation of interest etc. as adverted to in the judgment under appeal, it has been submitted by the learned Advocate for the appellant that there is no error apparent on the face of the record. That the amount of the Award is quite high "does not per se vitiate the Award. The State of Orissa Vs. Dandasi Sahu, it has been laid down that the general Rule is that if the Arbitrator commits a mistake which is not apparent on the face of the record, the parties aggrieved have got no remedy. In the case at hand, there is no error apparent on the face of the record.

12. In this view of the matter, it is held that there is no reason to interfere with the Award given by the learned Arbitrator. The learned Court below had no justification for setting aside the Award. The appeal is accordingly allowed and the judgment and order passed by the learned Court below are set aside.

A.M. Bhattacharjee, C.J.

13. I agree.