
(1999) 09 SC CK 0137

In the Supreme Court Of India

Case No : Civil Appeal No. 1800 Of 1992

Brij Mohan (Dead) by Lrs. and Others

APPELLANT

Vs

Nathulal

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Citation : (2003) 10 SCALE 10e : (2000) 9 SCC 714

Hon'ble Judges : S. Rajendra Babu, J;R. C. Lahoti, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of the order made in a revision petition arising out of proceedings before the Sixth Additional District Judge, Indore, in Miscellaneous Case No. 2 of 1986. It is stated that one Ram Lal died on 23/8/1981. The parties to the proceedings appointed two arbitrators to decide disputes arising between them as regards the distribution of the property left by Ram Lal. It is stated that the parties were not aware that any will had been executed by the deceased Ram Lal. On discovering that such will had been executed, some of the parties initiated proceedings for grant of probate and in those proceedings an application had been filed for staying of the proceedings under Section 34 of the Arbitration Act inasmuch as the arbitration proceeding has already commenced. The District Court passed an order staying those proceedings when the matter was carried in appeal to the High Court and the High Court set aside that order. In the meanwhile one of the arbitrators died. An application was filed under Section 8 of the Arbitration Act for appointment of a new arbitrator. The Additional District Judge by order dated 24/11/1987 directed the appointment of an arbitrator. A point was raised that inasmuch as proceedings under Section 276 of the Indian Succession Act for grant of probate are pending and if at the same time arbitration proceedings are also going on and that there will be clash between the proceedings. The High Court observed that when there is an agreement between the parties for resolving dispute by arbitration and that only arbitrators

are to be appointed that question will be decided and, therefore, there will be no clash between those proceedings and the proceedings pending before the court under Section 276 of the Indian Succession Act. On that basis the High Court directed the parties to submit the names of the arbitrator so that the appointment of arbitrators may be done and the revision petition was accordingly rejected. In the course of the order however, an observation was made as follows:

"ONCE the arbitrators are appointed and the parties submit to their jurisdiction, the question of the will can also be decided."

2. This observation, in our opinion, was wholly unnecessary and uncalled for in the proceedings arising between the parties as rightly observed by the High Court the only question was appointment of arbitrator in relation to the arbitration proceedings. Therefore, the other questions need not have been considered nor stated. In the circumstances, we find that the High Court was justified in having made the order it did subject to the condition of ignoring the observation we have noticed earlier. This appeal stands dismissed accordingly. No order as to costs.