

(1996) 10 MP CK 0041
In the Madhya Pradesh High Court
Case No : C.R. No. 354 of 1995 (I)

Central Board of Karmchari Provident Fund

APPELLANT

Vs

M/s Jog Khajanchi

RESPONDENT

Date of Decision : 16-10-1996

Acts Referred:

Arbitration Act, 1940 — Section 20, 23, 8
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 1 MPJR 204

Hon'ble Judges : S.B. Sakrikar, J

Bench : Single Bench

Advocate : A.H. Khan, for the Appellant; G.M. Chafekar with Shri N.K. Dave, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sakrikar, J.

The applicants/opponents have directed this revision u/s 115 of the CPC (for short, "the Code") against the order dated 18th Feb. 95, rendered by VI Additional District Judge, Indore, in Misc. Judicial Case No. 6A/89, thereby dismissing the application filed on behalf of the applicants u/s 23 of the Arbitration Act, (for short, "the Act").

The facts of the case lie in a narrow compass. That Non-applicants No. 1 to 3 were given the contract by the applicants for the construction of the office building of the office of the Commissioner, Regional Provident Fund, Indore and also for the construction of the staff quarters. The office building could not be completed because there were cracks in the building and the same was considered to be dangerous to human life. Consequently, the construction work was stopped at the instance of the applicants. The dispute was raised by the non-applicants with regard to the payment of bills for the work executed, before the settled Architects under Clause 35 of the Tender Agreement, (for short, "the agreement"), but the matter was not settled by them and final certificate was

not issued. Thereafter, Non-applicants No. 1 to 3 moved an application u/s 8/20 of the Act for referring the dispute to the Arbitrator through intervention of the Court. The Additional District Judge, Indore by its order dated 24th Sept. 1991 passed in Arbitration Case No. 6A/89 allowed the application thereby directions were given for the appointment of the Arbitrator for the settlement of the dispute arose between the parties in connection with the contract. Aggrieved by the order of the Additional District Judge, the applicants filed civil revision before this Court registered as C.R. No. 371/91. The revision petition was disposed of by this Court vide order dated 13.11.1992 with certain modifications with regard to the appointment of the arbitrator. Thereafter, in compliance with the directions of this Court given on 13.11.92 an arbitrator was appointed.

On 1st Dec. 1994, an application under Sec. 23 of the Act, was filed on behalf of the applicants and thereby prayed to determine the points of reference which are to be considered for the decision to the Arbitrator. The application was resisted by the non-applicants. After hearing the parties, the Additional District Judge passed the impugned order holding that the order of this Court passed on 24.9.91 is clear on the dispute referred to the Arbitrator and on the points, which the Arbitrator is required to decide and dismissed the application. Aggrieved by the impugned order, the applicants have filed this revision.

In have heard Shri A.H. Khan learned counsel for the applicants and Shri G.M. Chafekar learned Sr. counsel with Shri N.K. Dave for the non-applicants.

Shri Khan learned counsel for the applicants contended that having appointed the arbitrator, it was necessary for the Court below to have determined the point of reference pertaining to the dispute which he is required to decide. The counsel submitted that in the order dated 24.9.91, the Court has not determined the points of reference which are to be decided by the Arbitrator in view of the provisions of Sec. 23 of the Act. The counsel submitted that the Court below has committed an error in exercise of its jurisdiction by dismissing the application tiled on behalf of the applicants u/s 23 of the Act. Learned counsel placed reliance on the decision of Allahabad High Court as reported in Mohammad Aijas Ali Khan and Another Vs. Basant Rai and Others, .

In appugnation, Shri G.M. Chafekar, learned counsel for the NAs submitted that written claim was submitted on behalf of the NAs before the settled Architects as per clause 35 of the agreement. The claim was not settled and no written decision was given on the claim submitted on behalf of the applicants. Therefore, Additional District Judge, on the application filed on behalf of the NA u/s 8/20 of the Act, ordered for the appointment of the arbitrator for the settlement of dispute arose between the parties, in terms of clause 35 of the agreement. The counsel also submitted that when the arbitrator is appointed through intervention of the Court in terms of the contract agreement then the arbitrator gets jurisdiction to decide all the disputes relating to the contracts arose between the parties. Clause 35 of the agreement is very clear, that on being dissatisfied with the decision of Architect on any matter questioned or with the dispute of any

kind, shall be decided by the Arbitrator appointed under the terms of the aforesaid clause. The counsel submitted that as the Court has appointed Arbitrator under clause 35 of the agreement, parties are free to submit any dispute arising out of the contract for the decision of the Arbitrator. The counsel also submitted that in the present case, the order of appointment of the Arbitrator for referring the dispute is passed u/s 20 of the Act with the intervention of Court, where no suit is pending. As such, the application filed u/s 23 of the Act is prima facie not maintainable. The counsel relied on the decision of Punjab & Haryana High Court reported in Kundan Lal and Another Vs. Mehtab Ram and Another, .

On careful consideration of the submission made before me, and on perusal of the impugned order and record, it is found that in the present case, the application for appointment of the arbitrator for referring the dispute arose between the parties to the agreement, was filed u/s 8/20 of the Act, when no suit was pending before the Court. In such circumstances, if Court is satisfied that the dispute is existing between the parties which is required to be referred to the Arbitrator under the terms of the agreement and the Court appoints the Arbitrator, then the Arbitrator so appointed gets the jurisdiction to decide all disputes between the parties to the agreement and in such a situation, it is necessary, for the Court to determine the points of reference, which are to be referred to the Arbitrator for the decision. In view of the above, the impugned order cannot be considered to be illegal and perverse, and requires no interference of this Court in exercise of revisional jurisdiction.

The contention of the learned counsel for the Non-applicants with regard to the maintainability of the application filed on behalf of the applicants under Sec. 23 of the Act appears to be acceptable. The order of appointment of the Arbitrator in the present case is passed u/s 20 of Chapter III of the Act, which contemplates "the arbitration with intervention of Court, where no suit is pending." whereas Section 23 is covered under Chapter IV of the Act which contemplates, "arbitration in a pending suit before the Court." In case of Kundanlal (Supra) the High Court, while interpreting the scope of Section 20 and 23 of the Act has held as under:

It is not disputed in the present case that the matter was referred to arbitration u/s 20 which is a part of Chapter III. The Section does not provide that the Court while referring a case to the Arbitrator should specify the matter in difference to the Arbitrator in suits Section 23 is applicable. It provides that the Court shall refer to the Arbitrator the matter in difference which he is required to determine. No such provision has been made in Section 20 of the Act. It is well settled that the provisions of Section 23 cannot be imported in arbitration proceedings referred to u/s 20.

In view of the foregoing discussions, I am of the view that the Court below has not committed any illegality or any material irregularity in exercise of its jurisdiction in passing the impugned order dismissing the application filed on

behalf of the applicants, u/s 23 of the Act and as such no interference is called for in the impugned order.

Consequently, this revision petition is without substance and merit. It is accordingly, dismissed without any orders as to costs.