
(1986) 06 OHC CK 0016
In the Orissa High Court
Case No : Civil Revision No. 667 of 1982

Desein (New Delhi) Private Limited and Another	APPELLANT
Vs	
Nilapu Yogeswar Rao alias Nilapu Jogeswar Rao and Another	RESPONDENT

Date of Decision : 18-06-1986

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1986) 2 OLR 122

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : Y.S.R. Murty and G.K. Sharma, for the Appellant; C.A. Rao, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—In this application u/s 115 of the Code of Civil Procedure, the petitioners challenge the order dated 5-7-1982 of the Subordinate Judge, Parlakhemundi, in Title Suit No. 4 of 1981 passed on their application u/s 34 of the Arbitration Act (for short, "the Act").

After discussing the facts Ms Lordship observed :

4. The trial Court on hearing the learned counsel for both the parties and on consideration of the contentions raised on behalf of the contesting parties came to hold that. Clause If of the agreement provides in clear words that any dispute or difference between the parties arising out of the aforesaid agreement will be referred to the named Arbitrator who is the Executive Director or any other senior member of the Company whose decision thereon shall be final and that from the photostat copy of the reply dated 10-4-1981 given by the Personnel Officer of defendant No. 1-Company to the plaintiff at his Carabandha address, it is apparent that he had categorically mentioned that in terms of the agreement, dated 7-7-1980, the Company agrees to refer the dispute contained in the legal notice for decision of Mr. M. W. Goklay and a copy of the said letter was also

forwarded to the Arbitrator. The Court, on the materials before it further held that the defendant-Company at all material points of time, i. e., prior to the suit, at the time of filing of the suit and at the time of filing the application u/s 34 of the Act, was ready and willing to refer the matter to the arbitrator, Mr. M. W. Goklay. On these findings the Court allowed the application u/s 34 of the Act and directed that further proceeding in the suit be stayed till award is submitted by the Arbitrator and further directed the parties to file their statements of claims etc., before the said arbitrator.

Perusal of the impugned order shows that the Court did not consider the alternative submission relating to want of territorial jurisdiction of the Court and maintainability of the suit while disposing of the application u/s 34 of the Act.

5. The learned counsel for the petitioners at the commencement of his argument made it clear that his clients are not aggrieved by the order of the trial Court allowing the application u/s 34 of the Act and directing stay of the suit. According to him, the petitioners' grievance is that the objection relating to maintainability and lack of territorial jurisdiction of the trial Court to entertain the suit ought to have been decided by the Court while passing the order on the application u/s 34 of the Act.

6. On giving my anxious consideration to the matter, I am unable to accept the contention of the learned counsel for the petitioners. Firstly, the impugned order does not show that the contentions relating to maintainability of the suit and lack of territorial jurisdiction of the trial Court were raised by the petitioners at the time of hearing of the application u/s 34 of the Act, though, as noticed earlier, these points were taken in the said application. Secondly, that was not the appropriate stage for considering the question relating to the territorial jurisdiction of the Court.

Section 34 of the Act provides that where any party to an arbitration agreement or any person claiming under him commences any legal proceeding against any other, party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any. party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings; apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings.

From the provisions of the section referred to above it is manifest that the scope for consideration by the trial Court while considering an application under Sec: 34 of the Act is rather limited. All that is required is that the Court is to be satisfied that the application for stay has been filed by the defendant before filing

his written statement or taking any other steps in the proceedings; whether there is sufficient reason why the matter should not be referred to arbitrator in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do d\\ things necessary for the proper conduct of the arbitration. If these conditions are satisfied then the Court may make an order staying the proceedings.

7. An application for stay of proceeding u/s 34 of the Act is to be filed before the Court before which the proceeding is pending. That Court may or may not be the Court having jurisdiction to decide the questions forming the subject-matter of the reference, if the same had been the subject-matter of a suit. Still, the application must be made to the Court and to no other. An application to the Court before Which the suit is pending for stay of the suit u/s 34 is in no way a recognition that, that Court has jurisdiction to try the suit, nor can appeal from an order of the Court u/s 34 of the Act have any effect, (vide *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*,).

In view of the clear exposition of law by the Supreme Court, the apprehension by the learned counsel for the petitioners that in case the impugned order is not set aside it would be construed as waiver of the objection raised by the defendants-petitioners regarding maintainability of the suit and lack of territorial jurisdiction of the trial Court to entertain the suit is without any basis.

8. In view of the aforesaid discussions, there is no scope for interfering with the order dated 5. 7-1982 passed by the trial Court. Accordingly, the revision petition is dismissed, but in the circumstances, without any order for costs.