
(2007) 11 AP CK 0082
In the Andhra Pradesh High Court
Case No : C.M.A. No. 3244 of 2002

Divisional Manager, Railway Electrification and Others	APPELLANT
Vs	
Srinivasa Engg. Works	RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Arbitration Act, 1940 — Section 20, 22, 26, 30, 39
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2008) 3 ALD 284 : (2008) 2 ALT 99

Hon'ble Judges : D. Appa Rao, J; B. Prakash Rao, J

Bench : Division Bench

Advocate : R.S. Murthy, for the Appellant; T. Ravi Kumar, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—This appeal is at the instance of the railway authorities, u/s 39 of the Arbitration Act, 1940 seeking to assail the judgment and decree in O.S. 259 of 1994, dated 13-8-2002, on the file of Principal Senior Civil Judge, Vijayawada.

2. Heard Sri R.S. Murthy, learned Standing Counsel for the appellants and Sri T. Ravikumar, learned Counsel for the respondent.

The brief facts leading to this appeal are that in the suit filed u/s 26 r/w Sections 20, 22 and 47 of Arbitration Act 10 of 1940 (for short the Act), the respondent plaintiff, having regard to the disputes that arose between the parties, sought direction for filing the arbitration agreement and to appoint an arbitrator on the dispute in respect of claims with interest at 24% p.a., and refer the matter for arbitration.

3. Though there have been several checkered events earlier between the parties including similar exercise of arbitral proceedings leading to passing of an award already, we refrain from dealing with the same, as they are not required to be considered at this stage. Be that as it may, the present claim is with regard to

the claim as to the interest on the amount already awarded in an earlier round. Therefore, the respondent plaintiff sought for appointment of an arbitrator.

4. The appellants herein contested the claim inter alia on various grounds including that the very relief as sought for is neither maintainable nor sustainable, on the facts and circumstances, especially having regard to the earlier round of arbitral proceedings, wherein the amounts were determined and awarded and were paid by the appellants and received by the respondent herein. Therefore, further the question of awarding any interest as claimed does not arise and any such claim should be barred under the principle of res judicata and estoppel. On this and other contentions and the respective pleadings, the court below framed the following issues:

1. Whether the defendants can be directed to appoint arbitrator in respect of the claim of interest as prayed for?

2. Whether the suit is bad for nonjoinder and mis-joinder of cause of action?

3. To what relief?

5. During the course of trial, the proprietor of the plaintiff firm examined himself as P.W. 1 and marked Exs. A-1 to A-6. On behalf of defendants one Mr. Gandhi, the Superintendent, Railway Electrification, Visakhapatnam was examined as D.W.1 and no documents were marked.

6. After considering the evidence, both oral and documentary, the court below, having totally lost sight of the scope of the relief as sought for and the provisions of the Act especially Section 20 of the Act, has gone into merits of the case and proceedings as if these proceedings were initiated assailing the earlier award on the ground of not awarding interest and held that there is no necessity to appoint an arbitrator afresh, that the respondent is entitled to interest at 12% per annum on the amounts, which have been awarded earlier in O.S. 156/1988. Aggrieved by the said judgment, the defendants filed this present appeal.

7. Sri R.S. Murthy, the learned Standing Counsel appearing for the appellants strenuously contended that the relief sought for and ultimately the relief granted are quite distinct, and apart from that, the decree goes far beyond the scope and jurisdiction of the Court, as provided under the Act. Therefore, the same is liable to be set aside.

8. Sri T. Ravikumar, Learned Counsel appearing on behalf of the respondent sought to sustain the findings of the court below and submitted that on the facts and circumstances, the respondent would be entitled to interest on the amount earlier awarded in O.S. 156 of 1988, and the court below rightly awarded the same, and therefore, the order of the court below does not warrant any interference of this Court.

9. On this and other contentions made across the bar, the only point that arises for consideration is whether in an arbitration application purported to have been

filed u/s 20 of the Act, the court below can go into the merits of the claim and grant any relief in favour of the plaintiff?

10. As stated supra, there is no dispute with regard to the checkered events leading to the present appeal. Though several contentions were raised by both the counsel, since the question involved is very narrow, we refrain from going into all those contentions. Admittedly there has been an agreement between the parties in respect of certain contract, and having regard to certain disputes claims have been made and arbitral proceedings were initiated earlier resulting a decree in O.S. 156 of 1988 awarding certain amounts, and the said amounts were paid by the appellants and received by the plaintiff. The present dispute is with regard to the appointment of an arbitrator in respect of the claim for interest on the amounts, which have already been awarded by the arbitrators in an earlier round of arbitral proceedings. The present application is filed praying for appointment of an arbitrator and refer the dispute for arbitration. Instead of considering such a request and whether there exist any warrant for appointment of arbitrator on the claim as now sought to be made, and whether such request would be barred by principle of res judicata under Order II Rule 2 of the C.P.C. the Court below had curiously granted the main claim ordering interest. The court below unfortunately having lost sight of the scope of the application by usurping the powers conferred under the statute and took upon itself the arbitral powers. The entire exercise on the part of the court below is a tell tale story of the total lacunae of application of mind with regard to the provisions of the Act and total failure on the understanding and awareness of the law on the subject. The suit was filed for appointment of an arbitrator with regard to claim on interest on the amounts already awarded earlier by the arbitrator. Necessarily, such a request has to be considered by taking into consideration objections, if any, on the part of the appellants in regard to either maintainability or any bar either in law or otherwise, but not to make any touch or reference on any aspect touching the merits of the claim. Section 20 of the Arbitration Act 10 of 1940 reads thus:

20. Application to file in Court arbitration agreement:

1. Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they are or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

2. The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the appellant as plaintiff and the other parties as defendants.

a. On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

b. Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

c. Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

11. This provision clearly contemplates the procedure in regard to seeking appointment of arbitrator in regard of any claim or disputes arising between the parties. On such appointment, the arbitrator has to go into merits of the disputed claims and objections. Under the scheme of the Act, and the specific arbitral agreement, the Court is banned in entertaining the dispute on merits. Therefore, it cannot be said by the Court that there is no need to appoint arbitrator and then uphold the claim itself.

12. Even a bare reading of Section 20 of the Act which apparently lost sight of by the Court below, amply makes clear that the entire exercise as done on the claim in no way fits within the parameters as contemplated therein. Such approach cannot be countenanced on any ground. The Courts acting under any such applications under the provisions of the Arbitration Act must be careful and cautious and should not in any circumstances assume omni powers. Admittedly, this application is not the one arising u/s 30 of the Arbitration Act, 1940 assailing the award. Therefore, there is no discretion left with the Court beyond its limitations. On the face of it, the very finding as arrived at by the Court below on merits apart from being unsustainable are totally in utter disregard and beyond the scope and jurisdiction as contemplated u/s 20 of the Act.

13. Appeal is accordingly allowed setting aside the judgment and decree dated 13-8-2002 in O.S. No. 259 of 1994, on the file of Principal Senior Civil Judge, Vijayawada and the matter is remitted back to the court below for fresh adjudication of the application in accordance with law, after giving notice and opportunity of hearing to both the parties No costs.