
(1959) 02 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 98 of 1954

Ganeshi Lal etc.

APPELLANT

Vs

Firm Banwari Lal and Co.

RESPONDENT

Date of Decision : 03-02-1959

Acts Referred:

Arbitration Act, 1940 — Section 25

Citation : AIR 1959 P&H 593

Hon'ble Judges : G.D. Khosla, Acting C.J.; S.S. Dulat, J

Bench : Division Bench

Advocate : Bhagwat Dial and B.L. Saluja, for the Appellant; Bhagirath Dass, for the Respondent

Final Decision : Allowed

Judgement

Khosla Ag. C.J.

1. This appeal arises out of a matter in arbitration with the intervention of the Court in a pending suit. The facts briefly are that the plaintiff brought a suit for the recovery of Rs. 8,685-6-0. On 13-8-1953 parties agreed to refer the matter to arbitration and reference was made by the Court to two arbitrators, Panna Lal and Ishar Das, who were directed to file their award by 28-10-1953 (the date 23-8-1953 given in the judgment of the learned Single Judge is wrong). It was also agreed that in case of difference of opinion between the arbitrators, Nagar Mal would act as the umpire.

2. The arbitrators failed to put in their award by the date fixed, namely, 28-10-1953, but proceedings were taken before them on 16-11-1953. On that date it was agreed between the parties that the evidence in the case would be produced later in the day and, therefore, the proceedings were adjourned till 8 p.m. At that time Ishar Das arbitrator who had been appointed by the plaintiff did not turn up, nor did the plaintiff come. Panna Lal arbitrator and the defendants appeared. On a telephonic enquiry Ishar Das said that his wife was ill

and that he would not be able to deal with the arbitration matter until 25-11-1953 which was the extended date fixed for the filing of the award. Panna Lal accordingly sent an application to the Court asking for an extension of the date; but on the same date Ishar Das sent an award to the Court whereby he held that the plaintiff was entitled to a sum of Rs. 8,000/-. There was also an application by Ishar Das in which the allegation was that he and Panna Lal had not been able to agree in the matter of arbitration.

3. The Court held an enquiry into this matter and came to the conclusion that Ishar Das had been guilty of misconduct and that the award which he had filed was not a genuine award because he did not even know of its contents. He thereupon superseded the reference and proceeded to enquire into the case himself. The concluding portion of his order sets out the reasons for superseding the reference and may be quoted here --

"Taking all the circumstances into consideration in this case I am inclined to hold that this is a fit case in which arbitration be superseded. The suit was instituted on 30-10-1952, considerable time has elapsed and still it is pending. One of the arbitrators has been found guilty of misconduct and if another arbitrator is appointed by the plaintiff in his place u/s 8 of the Act, then he and Shri Panna Lal arbitrators will have to sit together. Shri Panna Lal resides at Delhi and I do not think that the said two arbitrators are likely to dispose of the matter in difference before them in a speedy manner. Again, if there is difference of opinion between the arbitrators, which is likely to be, then the matter shall have to be referred to the umpire. I am, therefore, inclined to hold that in the interest of justice and in the speedy disposal of this old case it is necessary that no more arbitrator be appointed as provided u/s 8 and the arbitration be superseded."

4. In an earlier paragraph of the judgment the learned Judge adverts to the provisions of Sections 8, 10 11 and 12 and he appears to act u/s 25 of the Arbitration Act in superseding the arbitration.

5. The matter was brought up in appeal to this Court and Bishan Narain J. took the view that the arbitrators had disagreed and that therefore, in terms of paragraph 4, Schedule I of the Arbitration Act, the matter should have been referred for the decision of the umpire. He, therefore, allowed the appeal and remanded the case with a direction that the arbitration be proceeded with in the light of the observations made by him and Nagar Mal be called upon to act as umpire in the dispute. The defendants have filed this appeal under clause 10 of the Letters Patent against this decision.

6. It is clear that in this case there was no disagreement between the arbitrators. Ishar Das did, indeed, allege that he and the other arbitrator had disagreed, but the finding of the Court clearly is that Ishar Das was guilty of misconduct. The record of the arbitration proceedings shows that the arbitrators met on a few dates on which nothing very much was done, because the files and documents were not available. On the 16th, when they met in the afternoon, they agreed to

adjourn the proceedings till 8 p.m. When the time arrived, Ishar Das did not present himself and a few days later he sent an award which he had drawn up himself without any reference to the other arbitrator.

This cannot be said to be a case of disagreement particularly as Panna Lal was not aware of any disagreement at all and he made an application to the Court asking for extension of time beyond 25-11-1953. In this view of the matter it cannot be said that the arbitrators disagreed and that, therefore, the matter had to be referred to the umpire. The learned Single Judge has also applied the provisions of paragraph 4 of Schedule I because the time fixed for making the award had expired and, therefore, the umpire "shall forthwith enter on the reference in lieu of the arbitrators".

7. I am extremely doubtful if the provisions of Schedule I can be brought into force where the arbitration is through the intervention of the Court in a pending suit, out even if that were so, Section 25 makes it quite clear that in the present case conditions which should obtain for superseding the arbitration did exist. Section 11(2) provides -

"The Court may remove an arbitrator or umpire who has misconducted himself or the proceedings."

In this case the finding of the trial Court was definite and unequivocal that Ishar Das arbitrator had misconducted himself. The trial Court considered the possibility of appointing a substitute in his place but chose not to do so in the circumstances of the case. Section 25 clearly provides that

"the Court may, instead of filling up the vacancies or making the appointments, make an order superseding the arbitration and proceed with the suit".

Therefore, the Court, in this case acted entirely according to the provisions of Section 25 and was right in doing so, because the conditions in which an arbitration can be superseded did obtain. The learned Single Judge appears to have been influenced by the fact that wherever there is any disagreement between arbitrators (and in this case Ishar Das did allege such a disagreement) or where the arbitrators cannot make an award within the appointed time, the Court would be wrong in superseding the arbitration and must of necessity refer the dispute to the decision of an umpire. With great respect to the learned Judge, he appears to have taken an erroneous view of arbitration law in this matter.

Where arbitration is made through the intervention of Court, the Court retains its hold on the proceedings and is obliged to control them, and if it finds that the arbitrators are not conducting themselves in a legal and proper manner, or are delaying the proceedings, or have disagreed among themselves, or if any of the arbitrators is found guilty of misconduct, then the Court is at perfect liberty to supersede the arbitration instead of appointing new arbitrators or referring the matter to an umpire. In the present case very good reasons existed for

superseding the arbitration and these reasons are clearly set out by the learned trial Judge in the paragraph which I have quoted above.

8. Section 25 gives a very wide discretion to the trial Court in the matter of dealing with arbitration and if this discretion is exercised with due care and circumspection, the High Court will not lightly interfere with it. It seems to me that in the present case the reasons for superseding the arbitration were very good and cogent and that not only the trial Court exercised the discretion which was vested in it by law but followed, in my view, the only course open to it in the circumstances. In such a case it will be wrong to interfere with the order superseding the award and the judgment of the learned Single Judge appears to be wholly erroneous. I would, therefore, allow this appeal and restore the order of the trial Court and direct that the suit be proceeded with in all speed and disposed of according to law. Parties are directed to appear before the trial Court on 16-2-1959. The file to be sent back to the trial Court immediately.

Dulat, J.

9. I agree.