

(1951) 04 PAT CK 0018

In the Patna High Court

Case No : Supreme Court Appeal No. 34 of 1951

Gaya Electric Supply Co., Ltd.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-04-1951

Acts Referred:

Arbitration Act, 1940 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 109(a)
Constitution of India, 1950 — Article 133

Citation : AIR 1951 Patna 619

Hon'ble Judges : Lakshmikanta Jha, C.J.; Chatterji, J

Bench : Division Bench

Advocate : Sultan Ahmad and M.K. Mukherji and S. Sarwar Ali, for the Appellant; Bindeshwari Prasad Sinha, for the Respondent

Judgement

Lakshmikanta Jha, C.J.—This is an application by the pltf. for leave to appeal to the S. C. from an order of a Bench of this Ct. dated 30-3-1951, directing the suit instituted by the petnr. to be stayed under S. 34, Arbitration Act. The relevant facts are these:

2. The petnr. (hereafter referred to as the pltf.) is a Company known as the Gaya Electric Supply Company Limited, incorporated under the Companies Act having its registered office at Gaya. The Company held a licence, called the "Gaya Electric Licence", granted by the Province of Bihar for the supply of electric energy within the limits of the town of Gaya. On 23-6-1949, the Govt., for certain reasons, revoked the licence by a notfn. with effect from 9-7-1949. Thereupon the petnr., on 4-7-1949, instituted Title Suit No. 58 of 1949 for a declaration that the order revoking the licence was "mala fide" & "ultra vires". This suit, however, was compromised & the Province of Bihar agreed to acquire the undertaking on certain terms & conditions & an agreement was executed by & between the parties on 28-10-1949. There was an arbitration clause in the agreement which provided that in case of any difference or dispute between the parties over the payment of balance which may be found due after valuation,

such dispute shall be submitted to the sole arbitration of a single arbitrator who should be a high Govt, officer of the Provincial Govt, of rank equal to or higher than a Divisional Commissioner & his award shall be final & binding on both parties.

3. In pursuance of the agreement the pltf. withdrew the suit on 25-10-1949, & the Govt, made payment of rupees five lakhs to the pltf. on account & took possession of the undertaking on 28-10-1949. It appears that the parties did not agree as to the valuation & thereupon the pltf. instituted Title Suit No. 83 of 1950 for recovery of possession of the undertaking & for certain other reliefs. The case of the pltf. in short, was that the Govt, committed breach of the agreement in that it failed to make any valuation of the undertaking within three months of taking over of the undertaking as mentioned in the agreement & failed to pay the balance of the compensation within this period, although the time mentioned in the agreement was of the essence of the contract.

4. On 9-10-1950, the State of Bihar filed an application before the learned subordinate Judge of Gaya under S. 34, Arbitration Act, in order to have the matter in dispute referred to arbitration in accordance with the terms of the agreement & prayed for stay of further proceedings in the suit. The learned subordinate Judge refused to stay the suit & rejected the application of the State of Bihar by his order dated 18-12-1950. The State of Bihar thereupon preferred an appeal to this Ct. which was heard by Ramaswami & Rai, JJ., who by their order dated 30-3-1951, set aside the order of the Ct. below & directed the suit to be stayed. The pltf. has, therefore, filed the present application for leave to appeal to the Supreme Court.

5. The judgment of this Ct. is one of reversal & the amount or value of the subject-matter of the dispute in the Ct. of first instance & still in dispute on appeal was & is more than Rs.20,000/-. Therefore, under Art. 133 of the Constitution leave can be granted if the order in question be held to be a final order.

6. The contention of Dr. Sultan Ahmad, for the petnr., is that the order is final & leave should be granted as a matter of course, whereas the learned "Advocate General contends, on behalf of the State of Bihar, that the application is not maintainable because the order is interlocutory as the rights of the parties have not been finally determined.

7. In our opinion the order in question is an interlocutory order & the application is not maintainable. The expression "final order" has been interpreted by the English Cts., the Judicial Committee & the Courts of India, & its meaning is now well settled on authority. Brett, L. J. in "Standard Discount Co. v. La Grange", (1878) 3 CPD 67 at p. 71, observed:

No order, judgment, or other proceeding can be final which does not at once affect the status of the parties, for whichever side the decision may be given; so that if it is given for the pltf. it is conclusive against the deft., & if it is given for

the debt, it is conclusive against the plaintiff.

In "*Salaman v. Warner*", (1891) 1 QB 734, Lord Esher, M. R. while interpreting the expression "final order" observed:

If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision if given in one way, will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then I think it is not final, but interlocutory.

Fry, L. J. in the same case remarked:

If I conceive that an order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely, I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined.

Lopes, L. J. also in the same case said:

I think that a judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties.

The point came up for consideration before the Judicial Committee in "*Ramchand Manjimal v. Govardhandas Vishandas Ratanchand*", (47 IA 124 at p. 127). In that case the trial Ct. granted a stay under S. 19, Arbitration Act of 1899, which substantially corresponds with S. 34, Arbitration Act of 1940, but on appeal the Ct. of the Judicial Commissioner of Sind reversed the order & refused a stay of proceedings. The Judicial Committee held that the order of the appellate Ct. was an interlocutory one. Viscount Cave, in delivering the judgment of the Board, observed, on the authority of the decisions of the Cts. in England, that "an order is final if it finally disposes of the rights of the parties". Explaining this case in "*Abdul Rahman v. D. K. Cassim & Sons*", (60 I A 76), Sir George Lowndes said:

The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it under S. 109 (a) of the Code.

In "*Hori Ram v. Emperor*", (1939 PCR 159), Sulaiman, J. took the view that in cases in which the decision of the point in dispute either way did not result in finally disposing of the matter before the Ct. the decision did not amount to a final order. A similar view was taken by Kania, C. J. in "*S. Kuppuswami Rao v. The King*", (1947 FCR 180), & he held: "It must be an order which finally determines the points in dispute & brings the case to an end" Applying the tests laid down in the cases noticed above, we are of opinion that the effect of the order under appeal is not finally to dispose of the rights of the parties even though it decides a cardinal point in the case. The suit is still alive because the order does not terminate the suit; a further order is necessary in order to

determine the rights of the parties with respect to the matter in dispute which may terminate the suit one way or the other. Moreover, the case of the pltf. is that the time was of the essence of the contract, & that the arbitration clause is not binding because the Govt, failed to make any valuation of the undertaking within the period mentioned in the agreement. This is a point on which the subordinate Judge has to record his finding. Therefore, apart from any other consideration, if this point is still to be decided by the learned subordinate Judge, the suit must be held to be a live suit. Dr. Sultan Ahmad has strenuously contended that in view of the finding of this Ct., there is nothing left in the suit, & the learned subordinate Judge is bound to dismiss it. Even assuming that the contention of Dr. Sultan Ahmad is right, the order is still an interlocutory order. For, if an order granting a stay of proceedings is interlocutory, it cannot be said to be final if a stay is granted, because an order is final only when, whichever way it goes, it finally determines the rights of the parties. The rights of the parties in the case before us have not been finally determined in relation to the suit. Therefore, judged from any point of view, the order in question cannot be said to be final. Leave must therefore be refused. The application is accordingly rejected: hearing fee five gold mohurs.

Chatterji, J.

8. I agree.