

(1990) 06 GAU CK 0009
In the Gauhati High Court
Case No : Civil Revision No. 46 of 1990

Gouranga Chandra Paul

APPELLANT

Vs

Bijoy Krishna Paul and Others

RESPONDENT

Date of Decision : 07-06-1990

Acts Referred:

Arbitration Act, 1940 — Section 30, 34

Citation : AIR 1991 Guw 77

Hon'ble Judges : J.M. Srivastava, J

Bench : Single Bench

Advocate : N.M. Lahiri, G.N. Sahewalla and A.K. Goswami, for the Appellant;
Party in person, for the Respondent

Final Decision : Partly Allowed

Judgement

J.M. Srivastava, J.—This is defendant's revision against the orders dated 21-12-89, 11-1-90 and 16-2-90 passed by the learned Assistant District Judge-I, Silchar.

2. Briefly, the relevant facts for appreciation of the question raised, are that the opposite party No.-1 had filed Money Suit No. 4/81 in the Court of Assistant District Judge No. 1, Silchar for rendition of accounts, etc. against the present petitioner, who was also a defendant with others. The petitioner appeared and submitted that in the agreement between the parties, there was an arbitration Clause and that the disputes had to be referred by the parties for arbitration, and that the proceeding in Money Suit No. 4/81 had to be stayed.

By order dated 23-2-81 the learned trial court had accepted the submission for the present petitioner and had stayed further proceedings which order, it appears, was later vacated. However, the parties had made reference to the arbitrators. Meanwhile, the petitioner had filed petition for appointment of receiver and for attachment before judgment on which some orders had been made against which petitions were filed in this court. The learned trial court at

one stage had by order dated 31-1-87 refused stay of the proceedings, prayed for, by the defendant No. 3 the present petitioner. There was an appeal which was Misc. Appeal No. 2/87 in which the learned District Judge, Silchar by order dated 10-4-87 ordered stay of further proceedings in Money Suit No. 4/81 for such period the court below found necessary for the purpose of arbitration. The prayer for appointment of receiver and attachment before judgment was however to be considered by the court below after hearing the parties. Against this order there was a revision in this court which was Civil Revision No. 219/87 and in its Misc. Case No. 194/87", this court on 17-7-87 directed that "pending hearing of the show cause, all further proceedings in Money Suit No. 4/81 are stayed and also the order passed by the learned District Judge dated 10-4-87 is stayed". This court by order dated 16-11-89 decided the Civil Revision Nos. 195 and 219 of 1987 with the direction as below :

"1. The learned trial court shall take up afresh the question of appointment of receiver and the prayer for attachment before judgment. In doing so it shall also be considered by the learned trial court whether these orders could be passed against M/s. Paul's Metal Industries whose owner is said to be one Smt. Sipra Paul. This would however be done after hearing Smt. Sipra Paul.

2. The learned trial court shall also consider the effect of passing of the award by the arbitrator. In the result of the present suit. While doing so it shall also be considered whether the arbitrator could have made the award in September 1987 after the order of stay was passed by this court on 17-7-1989."

3. The learned trial court thereafter considered the matter and by the impugned order dated 11-1-90 has held that in view of the aforesaid order of stay dated 17-7-87 of this court, the arbitrators had no jurisdiction to make the award dated 7-9-87 and consequently the arbitrators had acted without jurisdiction and the award submitted could not stand in the eye of law. The learned trial court has fixed another date for consideration of the prayer for appointment of receiver and attachment before the judgment.

4. Aggrieved, the petitioner has come to this Court and Sri N. M. Lahiri, learned counsel appearing on his behalf, has submitted that the order of stay dated 17-7-87 was in respect of the proceedings in Money Suit No. 4/81 and had nothing to do with the proceedings before the arbitrator which had been seized of the matter on reference by the parties in pursuance of an arbitration Clause in the agreement between the parties, and in so far as the Money Suit No. 4/81 was concerned for that reason its proceedings were required to be stayed in pursuance of the provisions of Section 34 of the Arbitration Act. In short the stay order dated 17-7-87 could not have and in fact did not have any effect on the jurisdiction of the arbitrator and consequently the view taken by the trial Court that the award having been made on 7-9-87 could not stand in the eye of law, was erroneous.

5. I have heard the opposite party No. 1 in person, who has submitted that the

proceedings in Money Suit No. 4/81 could not remain stayed and that the proceedings before the arbitrator and the Money Suit No. 4/81 had proceeded simultaneously and hence it could not be said that the order dated 17-7-87 for stay of the proceedings in Money Suit No. 4/81 did not have any effect on the jurisdiction of the arbitrators.

6. I have considered the submissions for the parties.

7. Section 34 of the Arbitration Act, 1940 provides :

"Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings 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 reasons why the matter should not be referred in accordance with the arbitration agreement and 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 pass an order staying the proceedings."

The provisions of Section 34 said above are for stay of a legal proceeding. Where the matter has to be decided by arbitration in terms of agreement between the parties the proceedings in the suit are to be stayed in pursuance of the above provision.

8. The arbitrators had been seized with the dispute between the parties on reference by the parties in pursuance of the arbitration Clause in the agreement, and not at the instance of the Court in the suit. The proceedings in Money Suit No. 4/81 could not be construed to mean and include the proceedings before the arbitrator. Accordingly, when by order dated 10-4-87, the learned District Judge had stayed the proceedings in Money Suit No. 4/81 and in revision against that order this Court had made the order dated 17-7-87 in Civil Revision No. 213/87, the stay order could only be in relation to and affect the proceedings in Money Suit No. 4/81 but could not have any effect on the proceedings before the arbitrators. Consequently, it should not be said that by the said order dated 17-7-87 the arbitrators had been ousted of their jurisdiction and the award made on 7-9-87 could not stand in the eye of law. The view taken by the learned Court below in its impugned order dated 11-1-90 is clearly erroneous and cannot be sustained. The matter has to be remitted to the trial Court as directed by this Court in its order dated 16-11-89 for consideration of the question as to what effect the award dated 7-9-87 has on the suit, i.e. Money Suit No. 4/81.

9. For the aforesaid reasons, this petition is partly allowed. The impugned order dated 11-1-90 in so far as it relates to the award dated 7-8-87 is set aside. The learned trial Court shall consider the effect of the award on Money Suit No. 4/81, as directed by this Court in order dated 16-11-89. The order of stay dated

21-2-90 is vacated. The learned trial Court shall go into the other questions, as directed by this Court in its order dated 16-11-89 after having determined the effect of the award on the Money Suit No. 4/81.

10. Parties shall bear their own costs.