
(1982) 03 PAT CK 0005
In the Patna High Court
Case No : Civil Revision No. 392 of 1982 (R)

H.S. Grover

APPELLANT

Vs

N.I.F.F.T. and Others

RESPONDENT

Date of Decision : 03-03-1982

Acts Referred:

Arbitration Act, 1940 — Section 2, 21, 33, 41, 9
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1983) 31 BLJR 210

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—Petitioner (Opposite-party No. 1 in the court below) has filed this application challenging the legality of that part of the order dated 18-9-1980 by which the Court below has held that it has pecuniary jurisdiction to entertain the application filed on behalf of opposite-party No. 1 (Petition in the Court below) u/s 33 of the Arbitration Act, 1940 (the Act).

2. The petitioner and opposite-party No. 1 entered into an agreement by which the petitioner agreed to construct school building in the campus of opposite-party No. 1. The terms and conditions were incorporated in the agreement. The value of the agreement and the work order issued thereto Rs. 2,09,630.80 (Two lack nine thousand six hundred thirty and paise eighty). The dispute arose between the parties with regard to the execution of the agreement. The petitioner made a claim of Rs. 80,273,00 (Rupees Eighty thousand two hundred seventy-three) and in terms of the agreement requested the opposite-party to refer the dispute to arbitration. There was an arbitration clause in the agreement in terms of which the parties agreed to settle all disputes through the arbitration of two arbitrators one to be nominated by each of the parties. The petitioner appointed his arbitrator and requested opposite-party No. 1 to nominate its arbitrator, opposite-party No. 1 failed to nominate its arbitrator the petitioner in

terms of Section 9 of the Act appointed opposite-party No. 2 as its arbitrator. Opposite-party No. 2 gave notice to the parties to submit their statements of claims.

3. According to opposite-party No. 1 as there has been breach of the terms of the agreement, it terminated the agreement and got the work done through another agency. It took the stand that as the agreement did not subsist the arbitration clause also did not survive. It, therefore, refused to appoint its arbitrator and to take part in the arbitration proceeding. As opposite-party No. 2 gave notices to the parties, opposite-party No. 1 filed the application in question in the court below, in which it was prayed that it be determined that the arbitration clause in the agreement did not exist and perished when the opposite-party No. 1 abandoned and left the work incomplete and when the agreement was terminated by opposite-party No. 1. It further prayed that it be determined that the appointment of opposite-party No. 2 as the sole arbitrator was void in law. Prayer was also made for permanent injunction restraining the petitioner and opposite-party No. 2 from proceeding with the arbitration proceedings. The application filed on behalf of opposite-party No. 2 was valued at Rs. 4,000 (Four thousand) for the purpose of jurisdiction and was filed in the court of Munsif, Ranchi. An application was also filed u/s 41 of the Act read with Order XXXIX, Rule 2 and Section 151 of the CPC (the Code) for temporary injunction. The petitioner filed various objections, one of which was that the court of Munsif, Ranchi, had no jurisdiction to entertain the application filed on behalf of opposite-party No. 1. He prayed for deciding the question of jurisdiction as the preliminary issue. The court below by the impugned order held that it had jurisdiction to entertain the application and also allowed the prayer of opposite-party No. 1 for temporary injunction. In this application we are not concerned with the second part of the order. The only point to be decided in this case is with regard to that part of the order of the court below by which it held that it had jurisdiction to entertain the application filed by opposite party No. 1.

4. Section 33 of the Act provides that any party to an arbitration agreement or any person claiming under him may file an application in the court challenging the existence or validity of an arbitration agreement or an award or to have effect of either determined. The court has been defined in the Act to mean "a Civil 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, but does not except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court". With reference to the definition, we shall have to decide whether in the facts and circumstances of this case the Court of Munsif had jurisdiction to entertain the application filed on behalf of opposite-party No. 1, The crucial words are "the subject-matter of the reference if the same had been the subject-matter of a suit". It was contended on behalf of opposite-party No. 1 that since the reliefs prayed were declaratory in nature, it was entitled to put its own value for the purpose of jurisdiction. Reliance was placed in Municipal Board Vs. Eastern U.P. Electric Supply Co. Ltd. and Others, . It appears from that case that

a bench, of the Allahabad High Court held that as the relief prayed was a declaratory one, the opposite-party in that case was entitled to put its own valuation thereon for the purpose of court-fee and jurisdiction. There is no discussion in the judgment as to how the bench came to this conclusion. No authority has been cited in that case in support of the proposition of law laid down by the bench. With respect, if I may say so, I regret, I cannot accept the proposition so laid down in the Allahabad case (supra) as correct.

5. It was next contended on behalf of opposite-party No. 1 that even if it is held that the relief prayed for was consequential in nature and not for a simple declaration, the opposite-party No. 1 was entitled to put its own valuation and once it so did it became final. Reliance was placed in Smt. Prem Kishori Devi Vs. State of Bihar, . In that case the suit was filed for declarant and for permanent injunction valuing the suit at Rs. 5,350 (Rupees Five thousand three hundred fifty) for the purpose of jurisdiction and Court-fee. The trial Court raised the valuation of the suit to Rs. 2,40,000 (two lac forty thousand). This was challenged by the plaintiff. Relying in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, . it was held that for the purpose of computation of court-fee in suits which Section 7 of the Court-fees Act is applicable depend upon the valuation that the plaintiff makes in respect of his claim and if such option is exercised by the plaintiff then in that case the court has no jurisdiction to interfere with such valuation given in the plaint. In opinion, this case has no application to the case in question. The application filed u/s 33 of the Act is not suit and Section 7 of the Court-fees Act has no application inasmuch as the person who files an application u/s 33 of the Act is not required to pay ad valorem court-fee on the valuation stated in the application. Such cases are registered as Miscellaneous cases and the Court-fee payable is for a petition. We shall have to decide this application, therefore, with reference to the definition of court which has been noticed above.

6. The word "reference" has been defined in Section 2(e) of the Act to mean "a reference to an arbitration." Therefore, the subject-matter of the reference to arbitration if the same had been the subject-matter a suit will determine the Court having jurisdiction to entertain the application. The question, therefore, is what was the subject-matter of reference to arbitration. The subject-matter was the claim of the petitioner which he sought to recover from opposite-party No. 1. It is admitted that the petitioner made a claim of Rs. 80,273.00 (Rupees Eighty thousand two hundred seventy-three) from opposite-party No. 1. By notice dated 16-5-1980 which is Annexure "4" to the application filed u/s 33 of the Act the petitioner also appointed opposite-party No. 2 as its arbitrator and requested opposite-party No. 1 to appoint its arbitrator. Opposite-party No. 1 was also informed by Annexure "4" that if it failed to appoint its arbitrator within 15 clear days after the service of notice opposite-party No. 2 would act as the sole arbitrator. By Annexure "5" to the application u/s 33 of the Act opposite-party No. 1 refuted the claim of the petitioner on various grounds and also stated that as the agreement had been terminated the arbitration clause perished and

ceased to be operative. By Annexure "7" to the application u/s 33 of the Act dated 5-7-1980 opposite-party No. 2 informed the parties that it had entered into the reference and directed the parties to submit their statement. According to the show cause filed on behalf of the petitioner in the court below the reference was for Rs. 80,000 (Eighty thousand). This fact was not denied by opposite-party No. 1. The court which shall have the jurisdiction to decide the question forming the subject-matter of the reference to arbitration was the court who was competent to entertain the suit valued at Rs. 80,000 (Eighty thousand). That being the position the Court of Munsif, Ranchi, had no jurisdiction to entertain the application filed on behalf of opposite-party No. 1.

7. In the result, this application is allowed and it is held that the Munsif, Ranchi, had no jurisdiction to entertain the application filed on behalf of opposite-party No. 1 u/s 33 of the Act. The court below is directed to return the application to opposite-party No. 1 subject to the provisions of Rule 10-A, Order VII of the Code, There will be no order as to costs.