

(1987) 12 CAL CK 0003
In the Calcutta High Court

In Re : Messrs. Hindusthan Advertising Corporation

Date of Decision : 23-12-1987

Acts Referred:

Arbitration Act, 1940 — Section 20, 39

Citation : 92 CWN 943

Hon'ble Judges : S.K. Mukherjee, J

Bench : Single Bench

Advocate : K.N. De, for the Appellant; B.C. Dutta and Barin Banerjee, for the Respondent

Judgement

S.K. Mukherjee, J.—This application is directed against Order No. 45 dated 19th June, 1987 passed by the learned Chief Judge, City Civil Court, Calcutta in Title Suit No. 236 of 1985. The plaintiff is the petitioner before this Court. The relevant facts are that the plaintiff on the basis of an agreement dated 10th of August, 1966 erected steel-poles and kiosks on different roadsides belonging to the defendants for displaying advertisements on behalf of its customers on payment of an agreed amount of charge to the defendants. The opposite parties/defendants removed a number of steel-poles and kiosks without notice to the petitioner/plaintiff giving rise to certain dispute which the plaintiff wanted to refer to arbitration on the basis of clause 20 of the agreement. The defendants/opposite parties having failed to make any of such reference in compliance with the notice served by the plaintiff dated 10th of June, 1985, the plaintiffs filed an application u/s 20 of the Arbitration Act, inter alia, praying for filing of the said agreement. The said application gave rise to the aforesaid Title Suit. In the said application the plaintiffs made out a case of having suffered losses to the tune of Rs. 3,89,280/-. The defendants/opposite parties raised an objection as to the pecuniary jurisdiction of the trial court to entertain the application filed on behalf of the plaintiff whereupon two issues were framed by the learned trial Judge regarding the valuation of the suit and pecuniary jurisdiction of the valuation of the suit and pecuniary jurisdiction of the court. By the impugned order the learned trial Judge accepted the objection raised on behalf of the defendants/opposite parties and found that the subject matter of dispute was valued at Rs.

3,89,280/- and as such beyond the pecuniary jurisdiction of that court and upon such finding directed the plaint to be returned for presentation to the proper court.

2. In the present Revisional application Mr. Dutta, appearing on behalf of the defendants/opposite parties has raised a preliminary objection about the maintainability of the Revisional application. According to Mr. Dutta the impugned order amounts to refusal to file an arbitration agreement within the meaning of clause 4 sub-section (1) of Section 39 of the Arbitration Act and as such is appealable. Mr. Dey, appearing in support of the application, has, however, tried to contend that the refusal being not on merit cannot be said to attract the aforesaid statutory provision for appeal and the Revisional application is maintainable.

3. Apart from the technical question, the Counsel have made their submissions on the merits of the findings, as embodied in the impugned order relating to the valuation of the suit.

4. In my view, the Revisional application must fail on the ground of maintainability and such being the position, I am not called upon to express any opinion on the merits of the respective contentions of the parties about the valuation of the suit. Sub-section (4) of Section 20 which provides for filing of an arbitration agreement has two parts - in the first part the court performs a judicial function by bestowing consideration on the justification of filing an arbitration agreement and in doing so it may have to consider also any objection as to the existence and validity of the agreement itself; the second part- is more or less a ministerial act of reference to arbitrator or arbitrators appointed by the parties. An appeal lies in terms of clause 4 of Section 39 sub-section (1) of the Arbitration Act from an order passed in discharge of such judicial function. A careful reading of sub-section CO of Section 20 shows that the said provision indicates that the court has a wide discretion either to file the agreement or not to file the agreement depending upon the sufficiency of the cause shown in respect of either. The language of the said sub-section does not leave any scope for confining the direction for filing or refusal to any particular ground but is general in its terms. In other words, on whatever ground the refusal or a direction for filing is made the same is made in exercise of the court's power under sub-section (4) of Section 20 of the Arbitration Act. Applying the said principles to the facts of the instant case even refusal by the learned Judge to allow the plaintiffs' application for filing arbitration agreement on the ground of the valuation being the pecuniary jurisdiction of the trial court constitutes invocation of such power. That being the position, the impugned order is an appealable order within the meaning of clause 4 of sub-section (1) of Section 39 of the aforesaid Act. Such determination finds support from the decisions in the cases of *Dhanrajamal Gobindram Vs. Shamji Kalidas and Co.*, and *Abdul Kadir Shamsuddin Bubere Vs. Madhav Prabhakar Oak*, . In view of the aforesaid, the Revisional application fails and is dismissed. There will be, however, no order as

to costs.

I make it clear, however, that I have not entered into the merits of the contentions regarding the valuation of the suit as raised by the parties and the same remain open. Prayer for stay of application is made and is refused.