
(1971) 11 DEL CK 0022

In the Delhi High Court

Case No : Civil Revision Appeal No. 471 of 1969

Kanchhid Lal Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-11-1971

Acts Referred:

Citation : (1972) ILR Delhi 863 : (1972) RLR 9

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : H.R. Dhawan and B. Kirpal, for the Appellant;

Judgement

D.K. Kapur, J.

(1) The petitioner Kanchhid Lal Sharma filed an application u/s 14 of the Arbitration Act, 1940 on 24th July. 1967 for a direction by the court to the arbitrator to file an award. The arbitrator filed the award and the court on 8th January. 1968 called upon the petitioner to file process fees and adjourned the case to 16th February, 1968. No process fees was deposited and no one appeared on 16th February, 1968 and, hence the application was dismissed although the award was on the record of the court. Later on, the petitioner moved an application u/s 17 of the Act to have the award made a rule of the court. The application was opposed by the Union of India and it was also submitted that the petitioner had not pursued the application u/s 14. According to the trial court, process fees had to be filed by the petitioner and, hence the application u/s 14 had been rightly dismissed for non-prosecution and, it was held that the present application did not lie because it was not an application under Order 9. Rule 4 of the Code of Civil Procedure. Aggrieved by this order. the petitioner has come to this Court in revision u/s 115 of the Code.

(2) On a consideration of the provisions of law applicable to the peculiar circumstances of the case, there seems to have been an irregular exercise of jurisdiction by the court below for reasons shall presently state. The order

dismissing the application u/s 14 of the Arbitration Act, 1940 seems to have been passed without jurisdiction and accordingly I am of the view that the application u/s 14 is still pending. I shall now State my reasons for this conclusion.

(3) u/s 14 of the Arbitration Act, 1940 there are three methods for getting the award filed in the court. A party to the arbitration may apply to the arbitrator or umpire calling upon them to file the award in court, or any of the parties may make an application to the court for a direction to the arbitrator calling upon him to file the award in court, or a party may himself file the award in court. In all these cases, either by a request made to the arbitrators or through a direction of the court to the arbitrators, or by the parties own action, the award is filed in court. The provisions of Section 14(2) of the Act may be referred to for this purpose. The said provision runs as follows :-

"the arbitrators or umpire shall at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them. to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award."

In the present case. the arbitrator was not requested by the parties or any of them to file the award in court, nor, did a party file the award in court. But. one of the parties i.e., the petitioner sought a direction of the court. The court made this direction and the award was filed in the court. Thereafter, it was for the court to issue a notice to the parties that the award had been filed. This notice is a very important step in the proceedings because the service of this notice starts the limitation period for filing of objections to the award. If no notice is issued by the court, no objections can be filed and. hence the court cannot proceed u/s 17 to give judgment in terms of the award or to set aside the award.

(4) The trial court seems to have dismissed the application u/s 14 without giving a notice to the parties on the assumption that the person applying to the court for a direction to the arbitrator was bound to deposit process fees before such a notice could be issued. The court below has relied on the rules framed by the High Court u/s 44 of the Act which are to be found in Chapter 4-B. Volume I of the Rules and Orders of the High Court. The rules relied upon by the court below are rules 5 and 8. Rule 5 runs as follows :-

"5. Registering petitions and award.-Application u/s 14 of the Act shall be numbered and registered as regular suits. Other applications under the Act shall be numbered and registered as miscellaneous applications requiring judicial enquiry."

Rule 8 runs as follows :-

"8. Court fees and process fees.-(a) The Court fees and process fees chargeable

for all petitions shall be in accordance with the Court Fees Act and the rules for the levy of process fees in force for the time being. (b) The petitioner or the plaintiff shall deposit the necessary process fees for notice to the other party concerned within three days of the presentation of his petition or within such further time as the Court may permit. (c) The party who has requested the arbitrator or umpire to cause an award to be filed shall, within three days after the filing of the award, or within such further time as the Court may permit, deposit the process fees for notice to the other parties concerned."

According to Rule 5, applications u/s 14 are to be numbered and registered as regular suits. This rule does not show that notices have to be issued on payment of process fees. According to Rules 8(a) and (b) the same process fees has to be charged as in other proceedings. The process fees has to be filed by the petitioner or the plaintiff within three days of the presentation of his petition. The present petitioner filed the application u/s 14 of the Arbitration Act, 1940. He had to file process fees within three days of the presentation of his petition under Rule 8(h). A notice must thereafter have been issued to the Arbitrator to file the award in court. Rule 8(c) provides that a person who has requested the arbitrator or umpire to cause the award to be filed shall within three days of the filing of the award deposit the process fees for notice to the other parties concerned. This rule does not cover the petitioner in the present case because he did not request the arbitrator to file the award in the court. It is, Therefore, clear that no part of Rule 8 was applicable to the present case which is a case in which the arbitrator has himself filed the award on the direction of the court. In connection with the court's duty to issue notices, there is a specific rule in the aforesaid rules framed under the Act. That Rule is Rule 11. It runs as follows :-

"11. Notice of filing award.-When the award has been filed in Court, the Court shall forthwith issue notice of such filing to the parties interested in the award."

It is clearly stated that the Court shall forthwith issue notice to the parties interested in the award. This Rule has not been complied with by the court below though it is an imperative rule. The court, Therefore, could not dismiss the application u/s 14 on the ground that no process fees had been filed and, hence I must hold that the order dated 16th February, 1968 dismissing the application was passed without jurisdiction and is an order which is non-existent in law. That being so, I must deem the application u/s 14 to be still pending. This further means that the court has till to issue the notices required by Section 14(2) of the Act and Rule 11 of the Rules framed under the Act. The said Section and the rule are both in positive terms. The court is bound to issue the notices and having failed to do so, no party can be penalised because of the court's neglect.

(5) 1. Therefore, accept this Revision Petition and hold that the application u/s 14 of the Act is still pending and the court is bound to issue notices forthwith to the parties concerned so that they may file their objections, if any. The case is, Therefore, remanded back to the court below for issuing such a notice and, thereafter the court will proceed to decide the application in accordance with law.

There will be no costs in this Revision. S.K.F.