

(1959) 03 MP CK 0022

In the Madhya Pradesh High Court

Case No : Second Appeal No. 67 of 1956

Kanhyaalal Vishweshwarlal Mahajan

APPELLANT

Vs

Ramchandra Shankarrao Holkar

RESPONDENT

Date of Decision : 31-03-1959

Acts Referred:

Arbitration Act, 1940 — Section 32

Civil Procedure Code, 1908 (CPC) — Section 38

Citation : AIR 1959 MP 415 : (1959) 4 MPLJ 1048

Hon'ble Judges : V.R. Newaskar, J

Bench : Single Bench

Advocate : V.P. Trivedi, for the Appellant; R.S. Machalpurkar, for the Respondent

Final Decision : Allowed

Judgement

V.R. Newaskar, J.

The facts giving rise to this second appeal lie within a narrow compass.

The estate of the respondent Ramchandra Holkar consisting of a forest coup was under the management of Court of Wards in the year 1943. The appellant Kanhaiyalal took the forest coup for exploitation from the Court of Wards on the basis of a contract. Disputes arose regarding the alleged acts of trespass and unauthorised ousting of the trees outside the limits of the area allotted to the appellant. The appellant denied the alleged cutting outside the limits of the area covered by his contract. The dispute was referred to arbitration of the then Divisional Forest Officer Mr. Tiwari. He gave his award whereby the respondent was awarded Rs. 3000/- for the unauthorised cutting found and estimated by him. The appellant Kanhaiyalal did not accept the award. Thereupon the respondent filed the suit on the basis of the award and also upon the original cause of action claiming Rs. 3315/-. The suit was contested by the defendant.

But the Court granted a decree on 8-1-1948 limiting it to the amount awarded by the arbitrator overruling the appellant's objections regarding the existence and

validity of the award. No appeal was preferred by the appellant against that decree and it therefore outwardly became final and conclusive. The respondent Ramchandra thereupon filed an execution petition for the enforcement of that decree. The appellant again challenged the validity of the decree on 24-2-1949 on the ground that the Court granting the decree had no jurisdiction to do it. This objection was overruled by the executing Court. It held that the plaintiff's suit was not barred u/s 32 of the Arbitration Act.

On appeal by the appellant the appellate Court held that it would not be in the mouth of the appellant to say that the decree was without jurisdiction it having been passed in face of the existence of the award when he himself had disputed at the trial that any such award existed.

Secondly he held that the legal position had not crystallised at the time the suit was filed and Madras High Court in a case reported in *Rashid Jamshed Sons and Co. Vs. Moolchand Jothajee, Rashid Tamshed Sons and Co. v. Moolchand Totnajee*, had held that such a suit was competent. It could not therefore be said that the decree was void ab initio even if it had been granted on an erroneous view of law.

It was lastly held that it was questionable whether the executing Court could go behind the decree.

It therefore confirmed the decision of the Trial Court.

The judgment-debtor Kanhiyalal now has come up in Second appeal.

Mr. Vishnu Prasad Trivedi the learned counsel for the appellant contended that the decree in the present case ought to be considered as a nullity because the plaint itself contains an allegation as to the existence of the award. After the award is made no cause of action independent of the award survives to form the basis of a suit. Reliance in this connection is sought to be placed upon the observation in Halsbury's Laws of England, Volume II p. 45 and decisions reported in AIR 1937 Rang 459, *Maung Po It v. Ma Bu Li*; 1LR 33 Gal 881, *Bhajahari Saha Banikya V. Behary Lal Basak*, in support of his contention.

It was further contended that Section 32 of the Arbitration Act, 1940, which applied to the present case barred the present suit as similar provision existed under the Indore Arbitration Act, which was in force at the time of the filing of the suit. Reliance in this connection was sought to be placed upon the decision in *Narbadabai and Others Vs. Natverlal Chunilal Bhalakia and Another, Narbadabai V. Nat-verlai*; AIR 1952 Nag 65(67), *Nathulal v. Beharilal*. It was further contended that as the decree was passed in a suit which was incompetent by law the decree was without jurisdiction and could be assailed even at the stage of execution although the defendant might have contested the suit and lost.

Reference in this connection was made by the learned Counsel to the decision in *Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, Yeruva Chinnapa Reddi Vs. Rai Bahadur P.V. Srinivasa Rao Garu*, Official

Receiver, Chinnapa Reddi V. Srinivasa Rao.

On the other hand it was contended on behalf of the respondent that there exists some conflict amongst various High Courts as to whether a suit to enforce an award is barred u/s 32 of the Arbitration Act or not so.

In face of this conflict it has to be said that the question of incompetency of suit was debatable. The suit was decreed. At the stage of execution this question as to the incompetency of suit ought not to be allowed to be raised. Reliance in this connection was placed upon the decisions in AIR 1954 MP 89, Jalan Singh v. Fida Hussain, Madh BLR 1952 Civil 202 Joseph Mary v. Joseph Alban, and also upon observations in Yeruva Chinnapa Reddi Vs. Rai Bahadur P.V. Srinivasa Rao Garu, Official Receiver,

First question to be considered is whether a suit to enforce an award was competent or not?

The Arbitration Act is an Act to consolidate and amend the law relating to arbitration. It is a law dealing with a special branch of it and should be treated as a complete code in itself on the subject dealt with therein. So that on a point specifically dealt with by it we cannot travel beyond the language used. The main object of the Act was to expedite and simplify arbitration proceedings and to bring about finality. Specific procedure is provided for obtaining an enforceable judgment and decree on the basis of an award after hearing all objections as to its incompleteness or invalidity.

An award could be assailed and set aside only on specified grounds as provided in Section 30 of the Arbitration Act and after the enforceable judgment and decree is passed the same can be subjected to an appeal only within a narrow compass as laid down in Section 17 of the Arbitration Act. Section 31 of the Arbitration Act deals with the topic of jurisdiction. Sub-section (1) of the section provides that subject to the provisions of the Act an award may be filed in any Court having jurisdiction in the matter to which the reference relates. Sub-section (2) thus provides :

"Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court."

Thus this provision is an overriding one and clearly lays down that it is the Court in which the award may be filed which alone can decide all questions regarding the validity, effect or existence of an award and no other court can do it.

Then Section 32 of the Arbitration Act provides:

"Notwithstanding any law for the time being in force, no suit shall lie on any

ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be set aside, amended, modified or in any way affected otherwise than as provided in this Act."

This again emphasises the overriding character of the provision and specifically and unmistakably bars a suit on any ground whatever for a decision upon the existence, effect or validity of award.

Therefore, if a suit is sought to be filed by a person who is a party to an award for a decision either as to the existence of the award or its effect then such a suit is totally prohibited. A court proceeding to hear such a suit will be acting without jurisdiction since as a Court of general jurisdiction its jurisdiction to hear a cause of this nature is curtailed. The question then is what is meant by the term "suit for decision upon the effect of an award" as used in this section. Do the words include a suit to enforce the award? This question has been specifically considered by the Nagpur High Court in AIR 1952 Nag 65. There the Division Bench consisting of Hidayatullah and R. Kaushalendra Rao JJ. observed as follows:

"There can be no doubt that the Legislature intended to make only one Court as the venue for all matters connected with an arbitration agreement or award and also to make "applications" (not "suits") as the vehicle to approach that Court. The intention was to make it explicit that no suit of any kind whatsoever would lie in this behalf."

In that case the suit was filed by a party to an award for enforcing the terms of the award after the period of limitation for applying for filing the award had expired. It was held that such a suit was incompetent.

In *Narbadabai and Others Vs. Natverlal Chunilal Bhalakia and Another*, Chagla C. J. and Dixit J. held that the expression "effect of the award" is wide enough to cover a suit to enforce an award. It was observed that although a party may not in terms ask for a decision of the Court to give effect to the award, the fact that he asks the Court to enforce the award must result in the Court giving decision upon its effect and therefore such a suit is not maintainable.

In view of the aforesaid decisions, the former of which is binding upon me, it ought to be held that a suit of this nature was incompetent as the provisions of Indore Arbitration Act which was in force when the suit was filed, are practically identical with those of Indian Arbitration Act, 1940,

This takes me to the second question. Assuming that such a suit were incompetent, when a suit was filed and decreed can the executing Court go behind the decree and question the validity of the decree? Answer to this question will depend upon the circumstance whether the Court which passed the decree had or had no jurisdiction to pass the same. In this connection a distinction has to be drawn between cases where there is total lack of jurisdiction

and those where the Court assumed jurisdiction in an irregular manner. In the former case the decree having been passed by a Court having no jurisdiction to pass it, the same would be a nullity and the executing Court, when its attention is called to this lack of jurisdiction, can refuse to execute it. But in the latter case the irregular assumption of jurisdiction by a Court not lacking inherent jurisdiction can be questioned only in the course of the same proceeding or before an Appellate Court if an appeal be competent, but not in execution.

The Supreme Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, observed as follows:

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings."

In a decision reported in *Rabindra Nath Chakravarthi Vs. Jnanendra, Mohan Bhaduri and Others*, *Rabindra Nath v. Jnanendra Mohan* facts were that an award was filed in the Court under the Arbitration Act, 1899, and a decree was passed accordingly. During the execution proceedings an objection was taken to the validity of the decree on the ground that it had been passed without jurisdiction.

Their Lordships Mukerji and Guha JJ., while considering the question of executability of the decree, passed in this manner, observed:

"Similarly once a cause is converted into a matter under the Arbitration Act, the inherent jurisdiction which the Court of general jurisdiction possessed over it is curtailed and the Court retains only a limited jurisdiction only for the purposes of supervision and control over the proceedings of the arbitration, e.g., of appointing an arbitrator, umpire or third arbitrator; of enlarging the time for an award; of remitting the award or of setting it aside, and so on; and it is this limited jurisdiction only that it exercises so long as the matter remains as one under the said Act. It has no jurisdiction to treat the cause as a suit pending before it, as one which it can pass a judgment or make a decree. In this view it may not unreasonably be held that the decree under execution was not the result of a mere irregular or illegal exercise of the Court's jurisdiction in the shape of the adoption of a wrong procedure, but was one made in excess of the inherent jurisdiction of the Court. The executing Court, in our judgment was competent to treat the decree as a nullity and in doing so was well within the spirit of the Full Bench decision in *Gora Chand Halder and Another Vs. Prafulla Kumar Roy and Others*, referred to above."

This case was taken to the Privy Council who observed:

"The Act does not contain any provision for making a decree on an award such as is contained in Schedule 2, Para 21 of the Code of Civil Procedure. Such a decree, if made is one without jurisdiction and therefore a nullity. Their Lordships agree with the view taken by the Courts in India that the decree of 14th

February 1919, was passed without jurisdiction, and was therefore incapable of execution as such (vide AIR 1933 61 (Privy Council) Jna-nendri Mohan v. Rabindra Nath)."

The actual decision in that case turned upon another consideration namely that the objection to the executability of the decree in that case was more of form than of substance since the award itself apart from the decree was executable as a decree would be by reason of the provisions of the Arbitration Act (1899).

The aforesaid decision therefore is a clear authority for the view that where the Court is not authorised to pass a decree based on an award the decree would become a nullity and could be assailed in execution in spite of its existence where the objection to the validity of the decree is one of substance and not of form.

In the present case the objection is one of substance since the suit in which such a decree is passed is, on the view taken by this Court, incompetent. The observations of the Supreme Court, as quoted above, though made in the different context, can propedy be applied in this case and it * ought to be held that the decree passed for enforcing the award is a nullity and that the objection as to the validity of the decree can be raised in execution proceedings.

Since both the questions which are principally involved in this case have been answered on the strength of the decision of this Court and those of the Privy Council and the Supreme Court, it is not considered necessary to deal with other cases cited at the bar pertaining to them.

The result is that the appeal is allowed and the execution petition is held incompetent and is dismissed with costs.