

(1959) 11 AP CK 0017

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 701, 826, 1203 and 1204 of 1958

Kasiraju Lakshmikanta Rao

APPELLANT

Vs

Dendukuri Venkateswarlu and Another

RESPONDENT

Date of Decision : 12-11-1959

Acts Referred:

Andhra Pradesh Court Fees and Suits Valuation Act, 1956 — Article 11(m)
Arbitration Act, 1940 — Section 30, 33, 44
Arbitration Rules, 1940 — Rule 1, 2

Citation : AIR 1960 AP 576

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : J.V. Suryanarayana Rao, for the Appellant; P. Ramachandra Reddy and D. Venkata Reddy, for the Respondent

Judgement

Satyanarayana Raju, J.—This Revision Petition is directed against an order of the District Court, Guntur, and raises the question as to whether it is necessary, under the provisions of the Arbitration Act, to file a separate petition to set aside an award, and if so, is it chargeable to Court-fee.

2. THE material facts are these : The petitioner (hereinafter referred to as "the plaintiff") filed O. Section 78 of 1957 on the file of the Court of the Subordinate Judge, Guntur, for a decree directing rendition of accounts by the 1st respondent (hereinafter referred to as "the defendant". Stated generally, the case between the parties had reference to the rendering of accounts and settlement of sums due thereon in connection with the alleged entrustment of certain monies by the plaintiff to the defendant Pending suit, the dispute between the parties was referred to arbitration.

The arbitrators made their award on 13-10-1957, and it was filed in the Court of the Subordinate Judge, Guntur on the following day. Thereupon the Court gave notice of the filing of the award to the parties. On 11-11-1957, both the plaintiff and the defendant preferred objections to the award. Besides filing objections,

the defendant filed a petition with a Court-fee of Re. 1/- on the same day, u/s 33 of the Arbitration Act, to set aside the award on various grounds. On the following day, the Court returned the petition for payment of deficit Court-fee granting a day's time for compliance. The petition was represented on 13-11-1957 with a further Court-fee stamp of Rs. 4/-. The Court again returned the petition on the 15th, for payment of the balance of the Court-fee of Rs. 195/- to make up Rs. 200/- which is the fee prescribed under Article 11 (m) Schedule II of the Andhra Court Fees and Suits Valuation Act, 1956.

There being no substantial petition to set aside the award, the Subordinate Judge refused to consider the objections which alone were before him, and on 26-11-1957, passed a decree in terms of the award. Two days later i.e. on 28-11-1957, the defendant represented the unnumbered Original Petition with the deficit Court-fee. On the same day he filed two applications, I.A. No. 2562 (a) of 1957 under Sections 149 and 151, Civil Procedure Code, for excusing the delay in the representation of the petition for setting aside the award; and I.A. 2562 (b) of 1957 under Sections 148, 149 and 151, Civil Procedure Code, for extension of time for payment of deficit Court-fee. Both these applications were, however, dismissed on 9-4-1958.

3. Against the judgment of the Subordinate Judge refusing to consider the objections, the defendant filed an appeal in the District Court, Guntur. On 18-4-1958, the learned District Judge allowed the appeal and remanded the same to the trial Court for deciding the same after considering, the objections filed by the parties. This order is the subject-matter of C. R. P. No. 701 of 1958. The defendant has filed C. R. P. 826 of 1958 against the decree passed by the Subordinate Judge in terms of the award. C. R. P. Nos. 1203 of 1958 and 1204 of 1958 arise out of the orders dismissing I. A. Nos. 2562(a) and 2562(b) of 1957, respectively.

4. Now, Article 158, Limitation Act, as amended by Arbitration Act, 1940, provides a period of thirty days from the date of service of the notice of filing of the award for an application to set aside an award or to get the award remitted for reconsideration. It is not clear from the record as to when the defendant was served with notice of the award; but the parties are agreed that the period provided by Article 158 expired on 14-11-1958.

5. From the foregoing narration of facts, it is clear that within the period of thirty days allowed under the Limitation Act, the defendant filed his objections to the award and also filed a petition for setting aside the award but the said petition did not bear the prescribed court-fee. The objections filed by the defendant to the award were before the Court and if the law does not require the filing of a substantive petition for setting aside an award, the Court would be bound to consider the objections and either confirm, or set aside the award, or remit it for reconsideration.

This was indeed the submission made on behalf of the defendant and it found

favour with the learned District Judge. If the law, however, requires a substantive petition and the payment of the prescribed court-fee, then admittedly there was no valid petition for setting aside the award, because the petition filed by the defendant initially, though presented within the time prescribed, was insufficiently stamped and was represented only on 28-11-1957, i.e., two days after the decree was passed.

6. A reference may now be made to the relevant provisions of the Arbitration Act. Section 14 provides that when the arbitrators or umpire have made their award, they shall sign it and shall give notice in writing to the parties of the making and signing thereof. Section 15 empowers the Court in certain cases to modify or correct an award. Then Section 16 empowers the Court to remit the award or any matter referred to arbitration to the arbitrators for reconsideration. Section 17, prescribes:

"Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award."

Section 30 sets out the grounds on which the Court can set aside the award. Section 31(1) provides for the filing of the award in any Court, having jurisdiction in the matter to which the reference relates, and then proceeds by Sub-section (2) to state:

"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."

The next of the provisions, Section 32, 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."

Finally Section 33 reads:

"Any party to an arbitration, agreement or any person claiming under him desiring to challenge the existence Or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the Court and the Court shall decide the question on affidavits.

Provided that where the Court deems it just and expedient it may set down the application for hearing on other evidence also, and it may pass each orders for discovery and particulars as it may do in a suit."

7. From a reading of the above provisions, it is clear that the Legislature meant to fix a definite time limit within which the existence or validity of an award could be challenged after it is filed in Court and to provide an expeditious method of getting an award translated into a decree and made enforceable as such.

8. Here, it is necessary to refer to the material provision made in the Andhra Court-fees and Suits Valuation Act, 1956. Article 11 (m) of Schedule II reads:

"Application to set aside an award under the Arbitration Act, 1940-- xx xx

(ii) When presented to the Subordinate Judge's Court..... (in this case it was made before the Court)....

* * * * * (2) if such value exceeds Rs. 10,000/- but does not exceed Rs. 25,000/- Two hundred rupees."

9. In the pre-existing Court-fees Act there was no provision for payment of court-fee on applications filed under the Arbitration Act; but this situation was remedied by the Andhra Legislature by inserting a specific provision prescribing a scale of fees for such applications.

10. Mr. J. V. Suryanarayana Rao, learned counsel for the defendant, has contended that the objections filed by the defendant were in substance an application for setting aside the award and were almost so in form, and the District Court was right in directing the Subordinate Judge to consider those objections. In Gadiraju Bangarayya and Another Vs. Gottemukkula Ramabhadriraju, Division Bench of the Madras High Court took the view that the absence of a separate application was an irregularity in the form of the application which the Court should have overlooked and considered the objections before passing a decree in terms of the award.

In Ramaswami Servai and Others Vs. Muthiralayee and Others, , Mr. Justice Chandra Reddy (as he then was) held that a counter-affidavit filed in an application to pass a decree in terms of an award would serve the purpose of an application to set aside the award. It was there observed that there was no need for an application in any particular form with the court-fee stamp affixed thereon. This conclusion was reached firstly on the basis of the definition of "application" in Rule 3, Sub-rule (2) of the Civil Rules of Practice and Circular Orders, Vol. I; and secondly, because of the absence of a provision in the then Court-fees Act requiring payment of court-fee on such an application. The decision of the Bombay High Court in Gopalji Kallianji Vs. Chhaganlal Vithalji, supports this view.

It is contended by Mr. Suryanarayana Rao on the authority of a recent decision of a Full Bench of this Court in Pagadala Chengayya and Another Vs. Noothanakalva Chenga Reddy, , that an application for setting aside an award need not be an

writing and may be even oral. The Full Bench held that a counter filed by the judgment-debtor informing the Court of the satisfaction or adjustment of the decree in answer to an execution petition could be treated as an application under Order 21, Rule 2(2) C. P. C., as it constituted substantial compliance with the terms of that Rule.

11. It is, no doubt, true that Sub-rule (2) of Rule 3, Civil Rules of Practice, defines an "application" as including "execution application, execution petition, and interlocutory application, whether written or oral", and the decision of the Full Bench and the earlier Madras decisions proceeded on the basis of that definition. But in 1945, the Madras High Court has, in exercise of the powers conferred by Section 44 of the Arbitration Act, 1940, framed Rules which appear in Ch. XIV of the Civil Rules of Practice, entitled "Rules under the Arbitration Act, 1940".

Rules 1 and 2 prescribe the form of applications under the Arbitration Act. Rule 1 provides that all applications and proceedings under the Act shall be headed in the matter of the Act and of the arbitration and save as otherwise provided shall be made by petition. Rule 2 states that every petition shall be in writing, signed and verified in the same manner as a pleading under the C. P. C., specifying the name, description and place of residence of the petitioner and the respondent and shall contain a statement of the material facts and the nature of the relief prayed for and shall specify the persons liable to be affected thereby.

From a reading of these Rules, it is manifest that such applications have to be in the form of Original Petitions; and as already stated, Article 111(m) of Schedule II. Andhra Court-fees and Suits Valuation Act, makes specific provision for payment of Court-fee on all applications filed under the Arbitration Act. Rules 1 and 2 framed under the Arbitration Act require that application should be in writing. Article 11 (m) of the Court-fees Act prescribes the payment of Court-fee. On a combined reading of those provisions, it is clear that the mere filing of objections or an oral application will not satisfy the requirements of law.

This conclusion receives further support from the language of the proviso to Section 33, which provides that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and may pass such orders) for discovery and particulars as it may do in a suit. It will be seen that there is no question of an oral application being set down for hearing. Therefore, to give effect to the argument of the learned counsel for the defendant, that neither a written application nor the payment of Court-fee on such an application is a pre-requisite for setting aside the award, would have the result of rendering all the aforesaid provisions otiose. I am, therefore, unable to accede to the contention advanced on behalf of the defendant. If so, the judgment of the learned District Judge remanding the case for consideration of the objections cannot be sustained. It is accordingly set aside.

12. Civil R. P. 826 of 1958: This Revision Petition challenges the validity of the

decree-passed by the Court of the Subordinate Judge in. terms of the award. As there was no valid petition for setting aside the award before the Court, the decree passed by the trial Court must necessarily stand.

13. Civil R. P. No. 1203 and 1204 of 1958: These two Revision Petitions are directed against the orders of the Subordinate Judge dismissing the applications filed by the defendant for excusing the delay in representation and for extension of time for payment of court-fee. These applications were admittedly filed on 28-11-1957, i.e., two days after the Court passed a decree in terms of the award. The lower Court held that there was no question of those applications being granted after the award had merged in the decree.

I am in agreement with this conclusion; and in any view, those matters, namely, the condonation of the delay and the extension of time for payment of court-fee, were within the discretion of the lower Court, and I am not satisfied that the discretion had not been properly exercised. IF so, there is no ground for interference with the orders-under revision.

14. In the result, C. R. P. No. 701 of 1958 is allowed and the other Revision Petitions are dismissed. The defendant shall pay the costs of the plaintiff in all the Revision Petitions.