
(2000) 09 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 744 of 1999

Kumar Rice Mills	Vs	APPELLANT
Punjab State Civil Supplies Corporation		RESPONDENT

Date of Decision : 15-09-2000

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (2001) 1 RCR(Civil) 250

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. V.K. Jindal, for the Appellant; Mr. D.V. Sharma, for the Respondent

Judgement

R.L. Anand, J.—This is a Civil revision and has been directed against the order dated 21.10.1998 passed by the Court of District Judge, Sangrur, who, dismissed the appeal of the petitioner by affirming the order dated 15.6.1996 passed by the Additional Civil Judge, who, allowed the application of the defendant u/s 34 of the Indian Arbitration Act.

2. Kumar Rice Mills filed a suit for declaration that order dated 31.10.1995 was illegal and against the principles of natural justice and the plaintiffs also prayed for a decree for permanent injunction restraining the defendants from recovering any amount under the garb of the said order and decree for mandatory injunction was also prayed for seeking direction against the defendants for the release of the amount of Rs. 22,59,000/-.

3. This suit was instituted on 17.11.1995 and was entrusted to the Court of Additional Senior Sub Judge, Sangrur who passed the following order :-

"Present : Counsel for the plaintiff. Case received by entrustment. Officer report seen. It be registered. Defendants be summoned on process-fee registered cover for 31.1.1996 as well notice of the application under Order 39 Rules 1 and 2 C.P.C. be also issued for 23.11.1995 on payment of process- fee. Dasti process

be also issued for effecting the service of the respondent. This application will be disposed of after hearing the respondents.

Sd/- ASSJ, Sangrur 17.11.1995"

4. Thereafter on 23.11.1995 Shri K.R. Aggarwal, Ad-vocate, appeared on behalf of the defendants-respondents and filed the vakalatnama and the case was adjourned to 27.11.1995 for reply. On 27.11.1995 the lawyer was not available and reply to the application was also not filed and the case was adjourned to 1.12.1995 for filing reply. On that date also the reply was not filed and the case was adjourned to 8.12.1995 for filing reply subject to payment of Rs. 15/- as costs. On that day i.e. 8.12.1995, again reply was not filed. AdjoummenI was requested on behalf of the defendant and in the interest of justice the same was granted and the case was adjourned to 12.12.1995. On 12.12.1995, the application u/s 34 of the Indian Arbitration Act was filed but the reply to the stay application was not filed.

5. Section 34 of the Indian Arbitration Act, 1940 lays down as follows :-

"34. Power to stay legal proceedings where there is an arbitration agreement. - Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings".

6. The reading of the above would show that application u/s 34 of the Indian Arbitration Act has to be filed before filing written statement or taking any other steps in the proceedings. Now the point for determination is whether the defendant-respondents took any other steps in the proceedings or not. The record of the trial court would show that so far as written statement was concerned it could be filed on or before 31.1.1996. So far as the reply to the stay application was concerned the case was adjourned to 23.11.1995. The subsequent orders indicate that at no point of time the defendants took any other steps in the proceedings from which inference can be drawn that it had participated in the proceedings so as to submit itself before the jurisdiction of the civil court.

7. In these circumstances, I do not find any illegality or impropriety in the impugned order.

8. Dismissed.

9. Petition dismissed.