

(1980) 01 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1693 of 1979

Kundan Lal and Another

APPELLANT

Vs

Mehtab Ram and Another

RESPONDENT

Date of Decision : 11-01-1980

Acts Referred:

Arbitration Act, 1940 — Section 20, 23

Citation : AIR 1980 P&H 182 : (1980) 2 ILR (P&H) 216

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

1. This is a revision petition by Kundan Lal et cetera, petitioners, against the order of the Subordinate Judge, Second Class, Kaithal, dated April 9, 1979, setting aside the award.

2. Briefly, the facts are that the petitioners and the respondents started a business of manufacture and sale of bricks in partnership under the name and style of M/s. Cheeka Brick Kiln Indusry at Cheeka. They executed a deed of partnership on September 20, 1968. One of the terms in the deed was that in case of dispute relating to partnership business, it would be referred to arbitrator in accordance with the provisions of the Indian Arbitration Act (hereinafter referred to as the Act). Some disputes arose between the patties and the petitioners filed an application u/s 20 of the Act in the Court of the Subordinate Judge, praying that the matter be referred to the Arbitrator. He referred it to the Arbitration of Bua Ditta Brick-kiln-owner.

3. The Arbitrator made an award and filed it in the Court on November 4, 1976. The respondents raised an objection against the award that no points well framed by the Court upon which the Arbitrator was to give the award and, therefore, it was not sustainable. The objection of the respondent was upheld by the Subordinate Judge vide order dated April 9, 1979. He therefore set aside the award. The petitioners have come up in revision against the said order to this Court.

4. It is contended by the learned counsel for the petitioners that it was not necessary for the Court to frame the points while referring the matter to the Arbitrator u/s 20 of the Act. He vehemently argues that while deciding the case, the Court took into consideration Section 23 of the Act which was applicable to arbitration in suits and not to the arbitration which are with the intervention of the Court where there is no suit pending. He further argues that in the aforesaid situation, the order of the Court is without jurisdiction and liable to be set aside.

5. I have given a careful consideration to the argument of the learned counsel and find it to be of no force in it. The Act provides three types of arbitrations, first, arbitration without intervention of a Court, secondly, arbitration with intervention of a Court where there is no suit pending and thirdly, arbitration in suits. The first type of arbitration is provided in Chap. II (Sections 3 to 19), the second type in Chapter III (Section 20) and the third type in Chapter IV (Sections 21 to 25). It is not disputed in the present case that the matter was referred to arbitration u/s 20 which is a part of Chapter III. The section does not provide that the Court while referring a case to the Arbitrator should specify the matter in difference between the parties. While making a reference to the Arbitrator in suits Section 23 is applicable. It provides that the Court shall refer to the Arbitrator the matter in difference which he is required to determine. No such provision has been made in Section 20 of the Act. It is well settled that the provisions of Section 23 cannot be imported in arbitration proceedings referred to u/s 20. In the said view I am fortified by the observations of Dua, J., (as he then was) in *State of Himachal Pradesh v. Lal Roshan Lal Kuthiala* (1963) 65 PLR 318. The learned Judge held that Section 23 occurring as it does in Chap. IV of Arbitration Act, applies only to arbitration in suits and not to arbitration with the intervention of a Court where no suit is pending. Therefore in my view the Court could not set aside the award on the ground that no points were framed for determination of the Arbitrator by the Court when the matter was referred to him by it. Section 30 contains the ground for setting aside the award. The Court has, however: not decided the other objections filed by the respondents. Consequently, I accept the revision petition, set aside the impugned order and remand the case to the Subordinate Judge for deciding the other objections. The costs in the revision petition shall be the costs in the cause. The parties are directed to appear in the Subordinate Court on February 15, 1980.

6. Petition allowed.