
(1956) 11 AHC CK 0028
In the Allahabad High Court
Case No : F.A.F.O. No. 284 of 1956

L. Amarnath

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-11-1956

Acts Referred:

Arbitration Act, 1940 — Section 20
Limitation Act, 1908 — Article 181

Citation : AIR 1957 All 206 : (1957) 27 AWR 136

Hon'ble Judges : Desai, J; Beg, J

Bench : Division Bench

Advocate : Brij Lal Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Desai, J.—This is an appeal from an order of the Civil Judge Bareilly dismissing the appellant's application u/s 20 of the Arbitration Act.

2. There was a contract between the appellant and respondent No. 1 about the supply of fuel by the former to the latter for one year ending on 20-2-1952; it contained an arbitration clause for reference of a dispute arising under it to the arbitration of respondent No. 2. Some dispute arose between the parties about the quality of the fuel supplied and on 28-6-1951 respondent No. 1 informed the appellant that it had rescinded the contract.

The appellant protested against the decision, but his protests were ignored and on 12-7-1951 respondent No. 1 informed him by telegram that the decision to rescind the contract was final. On 3-11-1951 the appellant asked respondent No. 1 to refer the dispute between them to the arbitration of respondent No. 2 according to the arbitration clause of the contract but the respondent refused to do so and communicated its refusal to him on 23-11-1951.

After remaining quiet for some time he filed, the application u/s 20 of the Arbitration Act, in the court below on 3-8-1954. The trial court held that the

cause of action for filing the application accrued to the appellant on 12-7-1951, that the period of limitation for the application, as provided in Article 181 of the Limitation Act, was three years from the date and that since the application was made more than three years from that date it was barred by time.

3. The decision of the learned Civil Judge is correct. Article 181 is contained in the 3rd division of the 1st Schedule of the Limitation Act and provides for the limitation of three years to be computed from the date on which the right to apply accrues, for an application for which no period of limitation is prescribed elsewhere in the schedule.

It is conceded that the schedule does not contain any other provision prescribing a period of limitation for an application u/s 20 of the Arbitration Act; but it was contended that the schedule applies to an application made under the CPC and not to an application made under any other Code or Act such as the Arbitration Act.

This was the decision of this Court in--" Shiam Lal J. Dewan Vs. Official Liquidators of the U.P. Oil Mills Co., Ltd. . The reason given for the decision was that all other articles in the 3rd division of the schedule refer to applications made under the CPC and therefore Article 181 should be interpreted to refer to an application made under the CPC and not to an application made under any other Code or Act.

That case was decided when there was no Arbitration Act and provisions relating to arbitration were part of the CPC itself. The Arbitration Act was enacted in 1940 and subsequently two articles, namely, 158 and 178 have been added in the third division of the schedule; these relate to applications made under the Arbitration Act, 1940.

It can, therefore, no longer be contended that the third division is restricted to applications to be made under the CPC and that consequently Article 181 cannot apply to an application made under any other Code or Act. On the contrary the opposite view is to be taken and Article 181, which is a residuary article, must be held to apply to applications not only under the CPC but also under the Arbitration Act, for which no provision is made elsewhere in the third division.

We are fortified in our view by two decisions, one of the Punjab High Court reported in-- Union of India (UOI) Vs. Firm Kiroo Mal Nawal Kishore and Another, , and the other of the Calcutta High Court reported in--" Shah and Co. Vs. Ishar Singh Kirpal Singh and Co., . We hold that an application u/s 20 of the Arbitration Act must, be made within three years of the date on which the right to make it accrues.

4. This at once takes us to the next question, which is when did the right to make the application accrue to the appellant? According to the learned Civil Judge it accrued on 12-7-1951 when respondent No. 1 informed the appellant of its decision to rescind the contract, while according to him it accrued on

23-11-1951 when respondent No. 1 informed him of its refusal to submit the dispute to arbitration.

We are satisfied that neither of them is right and that it accrued still earlier. It is laid down in Section 20 of the Arbitration Act that

"Where any persons have entered into an arbitration agreement with respect to the subject matter of the agreement, or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chap. II may apply to a court that the agreement be filed in court."

The parties had entered into an arbitration agreement with respect to the subject-matter of the contract which was supply of fuel by one to the other during the period of one year ending on 20-2-1952. A difference arose between them in respect of this supply at the latest on 28-6-1951 when respondent No. 1 rescinded the contract, forfeited the security furnished by the appellant and informed him that it would receive the supplies from, elsewhere in future.

The appellant became entitled to proceedings u/s 20 on receipt of this information from respondent No. 1; so, that is the date on which the cause of action accrued to him. What he did subsequently was simply to ask respondent No. 1 to refer the dispute or the difference that had already arisen with the arbitration of respondent No. 2 in accordance with the arbitration agreement and what happened on 23-11-1951 was only this that respondent No. 1 refused the dispute to arbitration.

The dispute must have arisen before the appellant suggested arbitration; otherwise there was nothing to be referred to arbitration. To say that the cause of action accrued for the first time on 23-11-1951 would be to confound the accrual of cause of action with the refusal to grant relief for the cause of action already accrued. On the dispute having arisen on 28-6-51 (if not earlier) the appellant became entitled either to apply to the court having jurisdiction that the agreement be filed in court or to proceed under Chap. II in order to refer the dispute to the arbitrator.

If respondent No. 1 agreed to refer the dispute to arbitration, it and the appellant could do so under Chap. II without intervention of any court. Respondent No. 1 however refused to refer the dispute to arbitration and the appellant filed the application u/s 20. But his right to file the application u/s 20 was not at all dependent upon respondent No. 1's refusal to refer the dispute to arbitration; it was a right accruing to him simultaneously with the right to refer the dispute to arbitration under Chap. II.

If the right to refer the dispute to arbitration under Chap. I accrued to him on 28-6-1951, so did the right to apply to a court that the arbitration agreement be filed in court. It is not the law that no application can be made to a court u/s 20 unless the other party has refused to refer the dispute to arbitration as provided

in Chap. II; a demand to refer the dispute to arbitration and the other party's refusal to do so are not ingredients of the cause of action for the right to apply to a Court that the agreement be filed and the appellant cannot contend that the cause of action accrued to him only when respondent No. 1 refused to refer the dispute to arbitration.

The respondent's refusal is nothing more than a refusal to grant the relief asked for by the appellant. It would be self-contradiction to say that the cause of action accrues when the other party refuses to grant the relief for the cause of action (already accrued). The cause of action did not accrue even on 23-11-1951 as held by the learned Civil Judge; on that date respondent No. 1 simply refused to revoke the rescission of the contract, i.e., it refused to give the appellant any relief against the cause of action.

5. Sri Brijlal Gupta contended that a difference arose between the parties on 23-11-1951; on that date the respondent No. 1 refused to refer the matter to arbitration, Some difference certainly arose on that date also but it was only on the question whether the previous difference that had arisen over the rescission of the contract should be referred to arbitration or not.

The appellant seeks relief against the previous-difference and not against the latter difference, Moreover, it is the previous difference that is governed by the arbitration because it arose with reference to the subject matter of the contract & not the latter difference which arose only with reference to the question whether the matter should be referred to arbitration or not. There can be no reference to arbitration about the second difference and that is also not the object of the appellant behind this application u/s 20. He does not want the learned Civil Judge to refer the question whether the earlier difference should be referred to arbitration or not to an arbitrator; what he wants is that the difference itself be referred to arbitration.

6. We agree with the learned Civil Judge that the application u/s 20 of the Arbitration Act is time barred. We therefore dismiss the appeal under Order 41, Rule 11, C. P. C.