

(1965) 09 CAL CK 0006
In the Calcutta High Court
Case No : A.F.O.O. No. 277 of 1963

Lahoriram Prashar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 08-09-1965

Acts Referred:

Arbitration Act, 1940 — Section 17
Constitution of India, 1950 — Article 226
Defence of India Act, 1939 — Section 19
Partnership Act, 1932 — Section 42

Citation : AIR 1967 Cal 444

Hon'ble Judges : H.K. Bose, C.J.;B.C. Mitra, J

Bench : Division Bench

Advocate : P.K. Sen Gupta, A.P. Chatterjee and Hemesh Chandra Sen, for the Appellant;Ranjit Kumar Banerjee, P.K. Banerjee, (for Nos. 1 and No. 5), Ranendra Nath Dutt, Archana Sen Gupta, (for No. 4) and Nani Coomar Chakrabarty and Chittatosh Mukherjee, (for Nos. 2 and 3), for the Respondent

Final Decision : Dismissed

Judgement

Mitra, J.—This appeal is directed against an order of Banerjee, J., dated March 26, 1963, rejecting the appellant's application for a rule nisi under Article 226 of the Constitution.

2. The appellant claims to be the sole proprietor of a firm known as Unity Production, (hereinafter referred to as the firm). It is alleged that this firm was a partnership firm of which the appellant and one Ramesawar Sharma were the partners. This firm was carrying on business as film producers at 20. Baburam Ghose Road, Tollygunge, Calcutta. The firm was a tenant under one Kanahayalal Kauodia, since deceased, in respect of a studio at the said premises at a monthly rent of Rs. 12,500/-. In May, 1943, the said premises No. 20, Baburam Ghose Road were requisitioned under Rule 75(a) of the Defence of India Rules. Possession was taken of the said premises on August 11, 1943, from the said firm. This requisition was made for and on behalf of the Government of India.

Claim for compensation was made both by the said firm and the said Kanahayalal Kanodia. The firm made a claim for compensation and loss of business in the sum of Rs. 11,54,622/5/6 per year before the Land Acquisition Collector and the said Kanahayalal Kanodia, since deceased, also filed a separate claim against the Government of West Bengal for compensation. The Collector held that Rs. 1000/- per month would be reasonable compensation for the requeteition of the premises and awarded the sum in favour of the firm, and he further held that the said Kanahayalal Kanodia was not entitled to any part of the sum although he claimed compensation at the rate of Rs. 12,500/- per month.

3. Against the said order of the Collector awarding compensation both the firm and the said Kanahayalal Kanodia obtained orders for a reference to an arbitrator appointed u/s 19 of the Defence of India Act, 1939. Reference on behalf of the firm was numbered as Case No. 113 of 1944 and that on behalf of Kanahayalal Kanodia was numbered as Case No. 21 of 1945.

4. On February 18, 1948, the arbitrator disposed of both the references by one award by which he held as follows:--

"Kanodia only purchased from the Receiver the film corporation's assets. He had no leasehold interest in the premises at the material time. That being so, Unity Production had no such interest either. . . . I hold that Kanodia and Unity Production are not entitled to the amounts for compensation claimed by them in these cases, viz., Rs. 12,500/- per month, which Kanodia said he was receiving from Unity Production and the several lakhs of rupees which Unity Production demands for loss of business profits and for incidental expenses. I reject these claims. The Collector's offer of Rs. 1000 per month as rent of the premises remains unaffected by this decision. Whoever is entitled to that may draw it without prejudice."

5. The firm did not prefer any appeal against the award and therefore this award in so far it governed the reference by the firm (Case No. 113 of 1944) became final. But the heirs and legal representatives of Kanodia who had died meanwhile, appealed against the award in so far it related to Case No. 21 of 1945. This appeal came up for hearing before Ramaprosad Mukherjee and Renupada Mukherjee, JJ. This appeal was allowed and the award in Case No. 21 of 1945 was set aside and the case was remitted to the arbitrator for trial of the remaining issues and for determining the compensation payable to the appellant-claimant. The firm, however, received a sum of about Rs. 44,000/- in terms of the order of the Collector as upheld by the award, for monthly compensation. After the said order for remission of the reference by the Division Bench of this Court, the reference was taken up by several arbitrators and the appellant applied for permission to proceed with his claim alleging that the award in his case had been set aside by the Division Bench. It was contended on his behalf that the Reference Case No. 113 of 1944 should be heard along with the Reference Case No. 21 of 1945. This prayer, however, was rejected by two arbitrators who took up the reference for disposal one after another. Against this

order of rejection the appellant obtained a rule nisi in an application under Article 226 of the Constitution, which however was ultimately discharged by Sinha, J. Against this order of discharge the appellant preferred an appeal being F. M. A. 11 of 1962 and this appeal was disposed of by a Bench presided over by my lord the Chief Justice and it was held that the appellant's contention that although he did not prefer any appeal from the arbitrator's decision, he should still be entitled to the benefit of the order of remand, could not be upheld. It was argued on behalf of the appellant that he was entitled to take part in the reference on the basis of the order of remand having regard to the terms of Order 1 Rule 10 of the Code of Civil Procedure. On this contention it was held that it was a question primarily for the decision of the arbitrator, and the Division Bench did not feel justified in expressing any opinion on that question in the appeal. This decision was followed by an application by the appellant before the arbitrator for being added as a party to the reference, under Order 1 Rule 10 of the Code of Civil Procedure. This application, however, was also rejected by the arbitrator and being aggrieved by the order, the appellant again moved this Court under Article 226 of the Constitution, for quashing of the order, and obtained a rule nisi which was discharged by a judgment and order made by Banerjee, J., dated February 28, 1963. Thereafter the appellant unsuccessfully tried to induce the Government of West Bengal to make a fresh reference with regard to his alleged claims. Having failed in such attempts the appellant moved another application under Article 226 of the Constitution for a rule nisi which was rejected by Banerjee, J., as hereinbefore mentioned and this appeal is directed against this order rejecting the application for a rule nisi. The only question in this appeal is whether in the facts mentioned above, the appellant made out a case for the issue of a rule nisi. The appellant's prayer is for a writ of mandamus directing the respondent No. 1 to refer the claim of the appellant in Requisition Case No. 30 of 1943-44 and the Reference Case No. 113 of 1944 to an arbitrator for decision, in accordance with law and also a writ or direction for determination of the issues arising in the said Case No. 113 of 1944 by an arbitrator.

6. Mr. P. K. Sengupta, learned advocate for the appellant, submitted that his client's claim had revived upon the award being set aside as hereinbefore mentioned, and he could claim a fresh reference, as the Division Bench of this Court had set aside the award and remitted the case to the arbitrator u/s 19 of the Defence of India Act. He argued that as soon as the award was set aside the appellant's claim revived. He further submitted that appellant was in possession of the premises, which was requisitioned and therefore he had a valid claim to the compensation which was to be awarded. He relied upon the observations of the Division Bench in the appeal preferred by Kanodia against the award in the decision which is reported in *Santi Devi and Another Vs. Province of West Bengal*, , to the following effect:--

"A person in possession is a person interested, and his rights as are affected by the requisition have to be considered for determining compensation if any, is payable."

Relying upon these observations, learned advocate for the appellant argued that his client's claim to compensation should be adjudicated upon by an arbitrator. He submitted that a prima facie case had been made out by him for the issue of a rule nisi, as his client was entitled to claim that there should be a reference on the question of his claim for compensation. The award having been set aside, Mr. Sengupta argued, the question should be gone into in a fresh reference.

7. Mr. Ranjit Banerjee., learned advocate for the respondent No. 1, argued that the trial Court was justified in rejecting the application for a rule nisi as the appellant had no locus standi to maintain the application. He argued that the claim to compensation if any, was the claim of a firm known as Unity Production, which stood dissolved on the death of a partner, unless there was something in the partnership agreement whereby one partner could claim to have become the sole proprietor of the assets and claims of the firm. There is nothing in the petition to show that the appellant became the sole proprietor of Unity Production. From the petition, Mr. Banerjee argued, it was clear that the claim for compensation, if any, was that of the firm, but the petition has been made by the appellant as the sole proprietor of the firm. One partner of a dissolved partnership does not become a sole proprietor of the assets and the claims of the partnership firm, unless there was an agreement to that effect. In our opinion, this contention of Mr. Banerjee is well founded. The petition has been moved by the appellant as the sole proprietor of the partnership firm. But in paragraph 1 of the petition it is stated that Unity Production was a partnership firm of which the appellant and Ramesawar Sharma were the partners. In paragraph 7 of the petition it is stated that Rameshwar Sharma died on August 11, 1949, and thereupon the appellant became the sole proprietor of the said firm on and from that date. There is nothing in the petition to show that there was an agreement between the partners that on the death of either of them the surviving partner would become the proprietor of the firm. In our opinion, on the materials in the petition, the appellant is not entitled to maintain a writ petition on behalf of the firm which stood dissolved on the death of one partner. This conclusion would have been enough to dispose of this appeal, but since several other contentions were raised on behalf of the respondents, I shall proceed to deal with them.

8. Mr. Banerjee next argued that the Land Acquisition Collector had made an order for payment of compensation at the rate of Rs. 1000/- per month and by the award made by R. S. Tribedi, the Arbitrator, on February 18, 1948, the order of the Collector for payment of compensation at Rs. 1000/- per month was upheld. In terms of the Collector's order, as upheld by the said award, the appellant or the firm had received nearly Rs. 44,000/- as compensation. Mr. Banerjee argued that the appellant could not claim a fresh reference on the same matter, firstly because he had accepted the award and the order of the Collector and had acted upon it, and had taken full benefit of the award. That being so, it was not open to the appellant to demand a fresh reference on the question of compensation as he had accepted the award, under--which compensation was payable to him. There is good deal of force in this contention of the learned

advocate for the respondent No. 1. An award has been made on the claim for compensation. That award was a composite award in Case No. 113 of 1944 and Case No. 21 of 1945. The claimant in Case No. 113 of 1944 was the said firm Unity Production. It is true that a Division Bench of this Court had set aside the award, but the setting aside of the award was confined to the Case No. 21 of 1945 and the remission of the case to the arbitrator was confined only to determination of compensation payable to the appellant in Case No, 21 of 1945, i. e., Kanahayalal Kanodia. The award in so far as it related to the claim of Unity Production in Case No. 113 of 1944 became final. In our view, therefore, there is no scope for a fresh reference or a fresh award on a claim which has been determined by an award which has become final.

9. It was next contended by Mr. Banerjee that the respondent No. 1 had become functus officio. Once a reference was made u/s 19 of the Defence of India Act, it was argued, unless the reference was revoked or the award set aside, the respondent No. 1 had no jurisdiction to make a fresh reference. The award so far as it related to Case No. 113 of 1944 had become final and therefore there could not be a fresh reference as claimed by the appellant. In our opinion this contention also on behalf of the respondent No. 1 is well, founded. There is no scope for a fresh reference, when, on a reference already made, an arbitrator has entered upon the reference and made an award which has become final.

10. Mr. R. N. Dutt, learned counsel for the respondent No. 4, submitted that the appeal should be dismissed on another ground, namely, that there was suppression of material facts, namely, that the appellant or the firm Unity Production had received a sum of about Rs. 44,000/-, as compensation. He argued that there was no mention in the petition that this sum had been received as compensation.

11. Mr. Dutt next argued that the appellant was guilty of laches, because for considerable length of time after the Division Bench had disposed of the appeal against the award on July 16, 1953, nothing was done on behalf of the firm to press its claim for compensation. Having regard to our conclusions mentioned earlier in this judgment it is not necessary for us to deal with this contention raised by Mr. Dutt,

Mr. Noni Kumar Chakravarty, learned advocate for the respondents Nos. 2 and 3 argued that the appellant or the firm had taken full advantage and benefit of the award. He argued that the appellant did not choose to challenge the award, which therefore, had become final and binding. There remained nothing to be done with regard to the award which had been accepted and acted upon by the appellant. It was further argued that if the appellant was aggrieved by the award he should have preferred an appeal against the same, as was done by Kanodia, and should have obtained an order setting aside the award in Case No. 113 of 1944. The appellant, however, remained silent with regard to the award obviously because he obtained the benefit under the same. In our opinion the appellant's claim for a fresh reference for determination of the claim for

compensation is entirely misconceived. A claim for compensation was made on behalf of the firm, of which the appellant claims to be the proprietor. An order of reference was obtained and the case being Case No. 113 of 1944 was dealt with by the arbitrator who made an award which has now become final and binding on the parties to that Reference. The appellant had taken full benefit and advantage of the award and yet he now claims that a fresh reference should be made to adjudicate upon his claim for compensation. Such a claim, in our view, cannot be sustained. The trial Court was justified in rejecting the application for a rule nisi.

12. For the reasons mentioned above this appeal is dismissed with costs, hearing fee being assessed at six gold mohurs to be divided equally between the three sets of appearing respondents.

Bose, C.J.

13. I agree.