
(2000) 05 MP CK 0019
In the Madhya Pradesh High Court
Case No : Civil Revision No. 1773/99

Mahesh Kumar Jagatramka	Vs	APPELLANT
Suresh Kumar Jagatramka and others		RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:

Arbitration Act, 1940 — Section 34
Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 2, Order 7 Rule 11, 10, 115

Citation : (2001) 2 MPHT 116

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Shri Alok Aradhe, for the Appellant; Dr. N.K. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—Invoking the revisional jurisdiction of this Court u/s 115 of the CPC (in short "the CPC") the defendant No. 4/petitioner has called in question the legal validity of the order dated 4-5-1999 passed by the learned District Judge, Raigarh in M.J.C. No. 10/97 by which the consideration of the applications preferred by the applicant u/s 34 of the Arbitration Act read with Section 10 of the CPC and another application filed under Order 7 Rule 11 (d) of the CPC have been deferred for adjudication.

2. The facts which require narration for disposal of this Civil Revision are that the non-applicant No. 1 as plaintiff instituted the suit for partition and separate possession. The claim in the said suit is based on the allegation that the suit properties detailed in Annexure 1-A and Annexure 1-B to the plaint are Joint Hindu Family properties and the plaintiff is a member of the said Joint Hindu Family. The plaintiff has sought for declaration for 1/6th share in the said property. Along with the plaint the plaintiff filed an application under Order 33 Rule 1 of the CPC to sue as an indigent person. The defendant No. 4 entered

appearance and filed various applications. An application u/s 34 of the Arbitration Act read with Section 10 of the CPC was filed contending, inter alia, that an arbitration proceeding forming the subject-matter of Civil Suit No. 4-A/89 in respect of major portion of the suit property is pending before the Court of First Additional District Judge, Raigarh wherein the plaintiff is also a party and contesting in the matter. It was also mentioned in the application that an award had already been passed on 14-4-1957 in respect of major portion of the suit property by the sole arbitrator. The Court was also apprised that the said award is pending to be made a rule of the Court. With these averments prayer was made for stay of the proceedings before the Court below.

3. The non-applicant No. 1/plaintiff resisted the prayer and contended that the application filed by the defendant No. 4 was misconceived and not tenable in the eye of law as no suit had been registered. The learned Trial Judge by the impugned order held that the application under Order 33 Rule 2 of the CPC had been registered and there has been no institution of the suit and hence, the provision of Section 34 of the Arbitration Act is not applicable. It was also opined by the learned Judge that the effect of the commencement of the Arbitration and Conciliation Act, 1996 shall be considered only after the proceeding is registered as a suit. Similar view was also expressed with regard to the provision of Section 10 of the CPC.

4. Assailing the aforesaid order, Mr. Alok Aradhe, learned counsel for the petitioner has contended that the learned Trial Judge has erred in law by expressing the opinion that the applications filed by the petitioner were not to be considered as the suit had not yet been registered. It is also submitted by him that the learned Trial Judge has fallen into error in holding that the effect of commencement of Arbitration and Conciliation Act, 1996 could be considered after registration of the suit, though the Arbitration Act, 1940 is applicable to the present case, inasmuch as an award had already been passed by the learned sole arbitrator in respect of a major portion of the properties and the matter was pending for being made a rule of Court before the Additional District Judge, Raigarh.

5. I may hasten to add here, in this Civil Revision Mr. Aradhe has confined his prayer to Section 34 of the Arbitration Act, 1940 and hence, I refrain myself with regard to the other petitions filed before the learned Trial Judge.

6. Dr. N.K. Shukla, learned counsel for the respondents, combatting the aforesaid submissions of Mr. Aradhe has canvassed as the suit has not yet been registered and, therefore, the proceedings u/s 34 of the Arbitration Act, 1940 would not apply.

7. To appreciate the rival submissions raised at the Bar, it is apposite to refer to Section 34 of the Arbitration Act, 1940. It reads as under:--

"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 claimed 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 taken 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."

On a bare reading of Section 34 of the CPC it is quite clear that it deals with legal proceedings. In the case of K.K. Mathai Vs. Mater Dai School, Tilak Lane, New Delhi and others AIR 1977 242 (Delhi), it has been held as under:--

"The plaint of the suit may not have been registered as a suit, yet the legal proceedings have commenced by the institution of a suit in forma pauperis. Filing of a reply by the respondents alleging that the applicant is possessed of sufficient means to pay the requisite Court-fee on the plaint of the suit, is a stage in the advancement of the suit and amounts to taking steps in the proceedings. The respondents have taken the steps in the legal proceedings and thus debarred themselves from invoking the stay of the legal proceedings."

8. I concur with the aforesaid view and hold that an application to sue as an indigent person amounts to a legal proceeding in the ambit and sweep of Section 34 of the Arbitration Act and hence, the learned Trial Judge should not have deferred the matter. The learned Trial Judge should have also considered the effect and impact of Arbitration and Conciliation Act, 1996 to the present case. A final decision in this regard shall be taken by the Trial Court within a period of three months from today.

9. With the aforesaid direction the Civil Revision stands disposed of.

10. Civil Revision allowed.