

(1990) 09 MAD CK 0007
In the Madras High Court

Meru Engineers (P) Ltd. and Others	APPELLANT
Vs	
The Electric Control Equipment Company and Others	RESPONDENT

Date of Decision : 07-09-1990

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1991) 2 MLJ 257

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This petition is to review my order dated 13.7.1990 dismissing the appeal. Learned Counsel for the Petitioners submits that

my order suffers from an error apparent on the face of the record as I had failed to take note of the relevant position of law with regard to matters

arising u/s 34 of the Arbitration Act. In support of this contention, learned Counsel for the petitioners submits that the Supreme Court in Anderson

Wright Ltd. Vs. Moran and Company, , has laid down the 4 tests to be considered by Courts in an application u/s 34 of the Indian Arbitration

Act. The four tests are follows:

(1) The proceeding must have been commenced by a party to an arbitration agreement against any other party to the agreement;

(2) The legal proceeding which is sought to be stayed must be in respect of a matter agreed to be referred;

(3) The applicant for stay must be a party to the legal proceeding and he must have taken no step in the proceeding after appearance. It is also

necessary that he should satisfy the court not only that he is but also was at the commencement of the proceedings ready and willing to do every

thing necessary for the proper conduct of the arbitration; and

(4) The court must be satisfied that there is no sufficient reason why the matter should not be referred to an arbitration in accordance with the arbitration agreement.

2. It is seen that even if the first three tests are satisfied the last test is to see whether there is no sufficient reason why the matter should not be referred to an arbitration in accordance with the agreement. Hence the Court is entitled to find out whether there is any sufficient reason for rejecting the application u/s 34 of the Arbitration Act.

3. Learned Counsel for the petitioners refers to the Judgment in Rachappa Gurudappa Bijapur Vs. Gurudiddappa Nurandappa and Others, In the above case also the same four tests are reiterated by the Supreme Court.

4. My attention is drawn to the latest judgment of the Supreme Court in Sadhu Singh Chuman v. Food Corporation of India AIR 1990 S.C. 893.

There the Supreme Court had occasion to define what is meant by "a step in the proceeding" while holding that the expression "a step in the

proceeding" is not every step taken by the defendant in the suit, but the step should be one to abandon the right to have the suit stayed, and it

should be a step in aid of the progress of the suit, the Supreme Court observed in that case that the right to have the dispute settled by arbitration

has been conferred by agreement of parties and that right should not be deprived of by technical pleas. In that case, the question was whether an

application filed by the defendant for direction to the plaintiff to produce the original agreement and other documents so that he can file a written

statement was a step in the proceeding. Holding that by filing such a petition, the defendant had not abandoned his right to have the suit stayed u/s

34 of the Arbitration Act, the Supreme Court reversed the judgment of the High Court. The Judgment of the Supreme Court does not as such

apply to the facts of the present case.

5. In Abdul Kadir Shamsuddin Bubere Vs. Madhav Prabhakar Oak, , the Supreme Court recognised that serious allegations of fraud if to be tried

in a suit, would be sufficient reason for rejecting an application u/s 34 of the Arbitration Act. In that case the Supreme Court held that the

allegations of fraud made the rein by the plaintiff were not serious allegations. Dealing with that aspect of the matter, the Supreme Court observed

thus:

(17) there is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open Court, that would be a sufficient cause for the court not to order an arbitration agreement to be filed and not to make the reference. But it is not every allegation imputing some kind of dishonesty, particularly in matters of accounts, which would be enough to dispose a court to take the matter out of the forum which the parties themselves have chosen.

The allegations in that case were that the accounts were not correct and certain items were exaggerated and the Supreme Court held that they were not serious allegations sufficient to negative the relief u/s 34 of the Arbitration Act. Learned Counsel for the petitioners contends that the judgment is an authority for the proposition that if a party against whom allegations of fraud are made, is moving the court for referring the matter to arbitration, then the fact that the allegations have been made against him, should not be a reason for rejecting an application u/s 34 of the Arbitration Act. In other words, learned Counsel for the petitioners contends that in this case it is only the plaintiff who has made allegations of fraud against the defendant and the Plaintiff cannot get out of the agreement between the parties to refer the matter to arbitration. In my opinion the judgment of the Supreme Court is not an authority for that proposition. The Supreme Court had only to consider that whether the allegations made in that case were serious enough to take the matter out of the arbitration agreement. The Judgment of the Supreme Court must be understood only in the context of the facts and it cannot be taken as a proposition of law, that the Supreme Court held that whenever allegations of fraud are made by the Plaintiff, then he cannot resist an application u/s 34 of the Arbitration Act. The question which is to be considered by the Court u/s 34 of the Arbitration Act is whether there is sufficient reason for rejecting the application. If there are serious allegations of fraud which can be effectively tried only by a court of law and not by an arbitrator, it is certainly a sufficient reason for rejecting the application. It does not matter whether the allegations are made by the plaintiff or by the defendant.

6. Learned Counsel for the petitioners refers to the Judgment of the Calcutta

High Court in Raymon Engineering Works Ltd. Vs. Union of India

(UOI), . It was held in that case that Plaintiff alleging fraud against the defendant who desires to have the dispute tried by the Arbitrators cannot

resist an application for stay u/s 34 of the Arbitration Act. Excepting stating in one sentence that the charge of fraud is levelled against the petitioner

the rein who desires to have the disputes tried by the arbitrators, no reason has been given by the Calcutta High Court as to how as a proposition

of law it could be stated that if fraud is alleged by the plaintiff, he cannot resist an application for stay u/s 34 of the Arbitration Act. With respect to

the learned Judge, if the judge had intended to lay down such a proposition, I do not agree with him. I am of the view that no such proposition has

been laid; but on the other hand, the learned Judge has taken the view on the facts of the case that application u/s 34 of the Arbitration Act should

be ordered.

7. Learned Counsel for the petitioners refers to R.B. Thakur v. Thakur Das AIR 1968 All. 522 wherein a division bench of the Allahabad High

Court held that the making of an order staying proceedings is a matter largely in the discretion of the court, but the discretion must be judicially

exercised. The Bench further observed that the Court should exercise its discretion in refusing to stay a suit in a sparing and cautious way as the

primary duty is cast upon the Court to act upon such an agreement for arbitration and in commercial cases there ought to be very strong grounds

for refusing a stay order.

8. Even applying the proposition of law laid down by the Bench, the Court below has taken the view that in the face of the serious allegations of

fraud contained in the plaint, the suit should not be stayed u/s 34 of the Arbitration Act. As I considered that the court below has exercised its

discretion properly in this matter, I am of the view that the case would fall under the 4th test laid down by the Supreme Court in State of Madras

Vs. C.P. Sarathy and Another, and Rachappa Gurudappa Bijapur Vs. Guruddappa Nurandappa and Others, Having found that there was

sufficient reason for refusing to stay the suit, the Court below dismissed the application u/s 34 of the Arbitration Act and I have confirmed the

same.

9. Learned Counsel for the petitioners contend that the allegations of fraud

contained in the plaint have nothing to do with the relief prayed for by the plaintiff and there would be no issue at all in the suit with regard to the alleged fraud. Learned Counsel for the petitioners submits that the plaintiff not having prayed for any damages caused to him on account of the alleged fraud, it would not form the subject of a separate issue. I do not agree. I do not want to make any observation at this stage which may prejudice the defendant ultimately while defending the suit. However, I would like to point out that the allegations which are contained in the plaint are sufficiently serious and it would warrant trial by a Court of law. One cannot presume or assume that the defendant would admit the allegations of fraud made in the plaint. On the other hand, he is challenging the allegations and he is claiming that there is no fraud at all as alleged by the plaintiff. Consequently there will be an issue with regard to the truth of the allegations of fraud. Even if no relief of damage is claimed by the plaintiff as having suffered on account of the alleged fraud, the question will be whether the plaintiff is entitled to get a decree for the amount as prayed for by him in the face of the defence which may be raised by the defendants. When considering whether the defendant's defence is a valid one, the Court may have to consider whether the allegation of fraud made against the defendant is true or not. Hence there is no substance in the contention of learned Counsel that the allegations of fraud will not form the subject of an issue in the suit.

10. Having considered the contention raised by learned Counsel for the petitioners in this review petition, I am of the view that there is no error in the order passed by me on 13.7.1990. Hence the review petition is dismissed.