
(2012) 09 AHC CK 0092
In the Allahabad High Court
Case No : Writ - C No. - 21033 of 1998

M/S Anand Construction Company	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 17, 30, 33

Citation : (2012) 10 ADJ 752

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : Prabhakanta Mishra, for the Appellant; K.N. Mishra, K.S. Tiwari, Sahab Tewari, Shri Kant, Sri Kant and V.K. Barman, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Sanjay Misra, J.—The petitioner filed a Suit No. 263 of 1981 (M/s Anand Construction Company Vs. State of U.P. & others) before the Civil Judge, Allahabad (hereinafter referred to as "Ordinary Court") praying for a decree of Rs. 1, 17,500/- with pendentelite and further interest @ 18% per annum. He impleaded the Uttar Pradesh Avas Evam Vikas Parishad and the Housing Commissioner, U.P. as defendant Nos. 2 & 3. The dispute relates to three contracts being Contract Bond No. 22/EE dated 24.02.1979, Contract Bond No. 13/EE dated 15.09.1978 and Contract Bond No. 8/EE dated 04.09.1978. Upon notice the defendant appeared and filed an application u/s 34 of the Arbitration Act, 1940 (hereinafter referred to as 1940 Act") for stay of the suit in view of the arbitration clause in the contracts. The Court stayed the proceedings of the Suit. One Sri Sahil Kumar Mukerjee (Retired Chief Engineer, U.P. PWD, Lucknow) was appointed Arbitrator for all the three contracts by the Mukhya Abhiyanta, U.P. Avas Evam Vikas Parishad, Lucknow by an order dated 23.11.1984 and such appointment was agreed to by the petitioner. The Arbitrator entered into reference in all the three disputes and gave three Awards dated 18.01.1986, 18.01.1986 and 31.01.1986. He then sent all the three Awards to the Court of

Civil Judge, Allahabad in Suit No. 263 of 1981 vide his communication dated 08.03.1986. The Court issued notices to the parties.

2. The defendants of the suit filed objections u/s 30/33 of the Act. The Ordinary Court after considering the objections rejected them and made all the three Awards Rule of Court by the judgment and order dated 04.08.1987.

3. The U.P. Awas Evam Vikas Parishad feeling aggrieved against the judgment and order dated 04.08.1987 preferred an Appeal being FAFO No. 387 of 1988 before the District Judge, Allahabad. The Appeal has been allowed by the Judgment and order dated 12.02.1998 by the VIIth Additional District Judge, Allahabad hence this writ petition has been filed there against.

The Appellate Court took the view that;

1) When the Civil Court found that the dispute has to be settled by arbitration it ought to have concluded the proceedings of the suit instead of staying the suit u/s 34 of the Act.

2) When there were three separate Awards given by the Arbitrator then three separate proceedings should have been taken by the trial court and it could not make all the three Awards Rule of Court in one suit.

3) When the trial court made the Awards Rule of Court then the court fees and other costs should have been borne by the plaintiff and not the defendant-Parishad as directed by the trial court.

4. Heard Sri Prabhakant Misra for the petitioner, Sri Srikant for the U.P. Awas Evam Vikas Parishad and Sri Rakesh Kumar (Brief Holder) on behalf of the State-respondents.

5. The submission of learned counsel are mainly centered on the following issue:-

1) Whether the three Awards should have been registered as separate cases in view of Section 14(2) of the Act by the Civil Court and could not have been adjudicated upon in Suit No. 263 of 1981 since the suit was a money suit and the court never appointed the Arbitrator.

6. Chapter II of the Arbitration Act, 1940, deals with arbitration without intervention of a Court. Section 14 therein provides that the Arbitrator shall sign and file the Award in Court and Section 17 therein contemplates judgment in terms of the Award.

Section 34 falling in Chapter V of the Arbitration Act, 1940 reads as under :-

34. 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 claiming 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 taking 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".

7. A perusal of the Section leaves no doubt that if the Court is satisfied that the dispute pending before it in a suit (legal proceedings) should be decided by arbitration in accordance with the arbitration agreement and the parties are ready and willing to do all things necessary to the proper conduct of the arbitration, it may make an order staying the proceedings before it. The effect of an order u/s 34 of the Act is of a stay of the suit.

Section 47 of 1940 Act in Chapter VII reads as quoted hereunder:-

47. Subject to the provisions of section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder:

Provided that an arbitration award otherwise obtained may with the consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any Court before which the suit is pending".

8. The proviso to Section 47 is clear that when an Award is obtained otherwise and not on a reference made by the Court it can with the consent of the parties be taken into consideration as a compromise or adjustment of a suit by any court before which the suit is pending.

9. A similar provision for stay of proceedings was available in Section 19 of the Indian Arbitration Act, 1899 (hereinafter referred to as 1899 Act) and was considered by this Court in the case of Strauss and Co. Ltd. Vs. Raghubar Dayal and Others, in a First Appeal. The facts were that the Court where a suit was pending had stayed the suit u/s 19 of the "1899 Act". The arbitrator gave his award and a decree was passed in pursuance of the award in proceedings under the 1899 Act. Thereafter one party made an application in the suit to remove the stay. The Court removed the stay and hence the suit was revived. In these circumstances it was held by the High Court as quoted hereunder:-

...In support of the learned Judge's order it is suggested that in any event, even in a case where the matter in dispute has been referred to arbitration, if a suit has been instituted, it is necessary that there should be a final decree dismissing the suit. If that were the correct view, clearly the stay would have to be removed before any final decree could be passed. We have come to the conclusion that no final decree is necessary. Without saying that there are no cases in which a stay could possibly be removed, for example, the parties by consent might decide to drop the arbitration and relegate their dispute to the courts of law; in such a case, by the consent of parties, no doubt a stay could be removed, - it is clear that where those circumstances are the same, as they were in this case, as at the

time when the stay was originally imposed, the Judge is functus officio, and cannot reverse his own order.

10. This issue was also earlier considered in *Sheobabu Vs. Udit Narain and Another*, (which has been referred to in *Strauss and Company (Supra)* where after stay of a suit the arbitration concluded with a decree of the Court. It was held that the suit could be dismissed upon a finding that the matter has been disposed of between the parties. It was further held that when there is neglect by the applicant-defendant to do all the things necessary to the proper conduct of arbitration then the agreement would become a dead letter and then the suit will proceed in the ordinary manner.

11. The understood sum up of the above two decisions would be that the arbitration award could be made Rule of Court in proceedings under the 1899 Act and a suit stayed u/s 19 of the "1899 Act" was not necessarily required to be disposed of by a final decree. This would be so only when the arbitration award has been decreed by the Court in proceedings under the 1899 Act and a finding has come that the matter has been disposed of between the parties. In such a situation there is no dispute left to be decided in the suit which was earlier stayed u/s 19 of the "1899 Act". In *Strauss and Company (Supra)* the Court held:-

The intention of the legislature was to oust the jurisdiction of the Ordinary Court, and any procedure other than that provided by the Arbitration Act, in matters which are referred to arbitration, would only create difficulty and confusion.

The Act of 1940 has enacted Section 47 therein and there was no such 12. similar or analogous provision in the "1899 Act" therefore while Section 19 of the 1899 Act and Section 34 of the 1940 Act are more or less similar and are enactments on the same subject the 1899 Act" had no similar provision as Section 47 of the "1940 Act" or even on the subject therein. Hence the decisions referred to above are binding insofar as the subject matter of Section 19 of the 1899 Act and Section 34 of the 1940 Act are concerned. Section 47 of the 1940 Act are therefore to be taken into account for finding out the fate of the suit stayed in the Ordinary Court when an arbitration award is given in pursuance of arbitration proceedings held under an arbitration agreement. Such an award would be an arbitration award otherwise obtained.

13. The facts of the case in hand indicate that there was an arbitration agreement between the parties, the suit for money decree arising out of the same contracts was stayed u/s 34 of the 1940 Act", the arbitrator gave his award. But when the awards were filed in the suit that was stayed an illegality was committed in decreeing that suit because the money suit filed before the Ordinary Court was not a proceeding under the "1940 Act". Only if the arbitration award was consented by all the parties the Ordinary Court could consider it as a compromise or adjustment of the suit. That was the only jurisdiction which could be exercised by the Ordinary Court where the Suit No.

263 of 1981 was filed. The Suit No. 263 of 1981 could not be the forum for making the arbitration award a Rule of Court. To make the arbitration award a Rule of Court the procedure prescribed under the 1940 Act" had to be followed. That is also the procedure prescribed under the Allahabad High Court Rules, 1952.

14. Therefore, the suit filed before the Ordinary Court for a money decree and which had been stayed u/s 34 of the 1940 Act" could be disposed of by taking the arbitration award as a compromise or adjustment of the suit since after the arbitration award is made Rule of Court in proceedings under the 1940 Act" there remains no dispute left to be decided in the suit that had been stayed u/s 34 of the 1940 Act". As such whereas on the one hand a suit stayed u/s 19 of the 1899 Act" did not require to be disposed of by a final decree on the other hand a suit stayed u/s 34 of the 1940 Act" could be disposed of subsequently in view of the proviso to Section 47 of the 1940 Act".

15. In view of the above position in law the ordinary court where the Suit No. 263 of 1981 was filed could not assume the jurisdiction to make the three Awards Rule of Court in the proceedings of the suit itself. The awards had to be filed u/s 14 of the 1940 Act in court and the procedure prescribed under the 1940 Act and the Rules framed under the Allahabad High Court Rules 1952 had to be complied. The appellate court was right in setting aside the judgment and decree of the Trial Court passed in Suit No, 263 of 1981 and it was also correct in giving liberty to the parties to apply for making the Awards Rule of Court in accordance with law.

16. Regarding the issue that the arbitrator could not award pendete lite interest, the law is now well settled that the arbitrator in proceedings under the 1940 Act can award pendente lite interest.

17. Since there were three separate contracts and the arbitrator has given three separate awards therefor the appellate court has rightly observed that they require to be filed and numbered separately for being made Rule of Court. That all the three contract bonds were between the same parties would not change the situation contemplated under the 1940 Act.

18. For the aforesaid reasons no error can be found in the impugned judgment and order dated 12.02.1998 passed in Appeal No. 387 of 1988 by the VIIth Additional District Judge, Allahabad.

19. This writ petition is accordingly dismissed. Parties to bear their own costs.