
(1988) 06 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 1849 of 1987

M/s Billarpur Industries Limited, Yamunanagar	APPELLANT
Vs	
Haryana State Electricity Board, Chandigarh and others	RESPONDENT

Date of Decision : 03-06-1988

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1988) 06 P&H CK 0043

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : Harbhagwan Singh, with Mr. Arun Walia, for the Appellant; Kali Ram, for the Respondent

Final Decision : Allowed

Judgement

Amrit Lal Bahri, J.—The revision petition is directed against order dated February 16, 1987, passed by the Additional District Judge, Ambala, whereby the appeal filed by the defendants was accepted and order of the trial Court declining to stay the proceedings of the suit u/s 34 of the Arbitration Act was set aside.

2. Messrs Billarpur Industries Limited, Yamunanagar, is consuming electricity by connection/Account Nos. A/411 and A/412. For the last 50 years the plaintiff-Company has been using electricity and paying for the same. Because of often breakdown in the electricity supply, they installed a generating set. The employees of the defendants-Electricity Board visited the premises of the plaintiff and reported that the plaintiff was using excess power that of the contract demand-Vide memorandum dated May 24, 1983, the plaintiff-company was asked to pay penalty of Rs. 5,80,077.70 paise. This has been challenged in the suit. On behalf of the defendants, an application u/s 34 of the Arbitration Act was filed to stay the suit and to refer the dispute to the Arbitrator as mentioned in clause 29 of the agreement entered into between the parties.

3. Shri Harbhagwan Singh, learned counsel for the petitioner has argued that the

defendants having participated in the proceedings of the suit and taken steps in the progress of the suit, were debarred from filing application u/s 34 of the Arbitration Act for staying the suit. This contention in the facts and circumstances of the present case cannot be accepted. The suit was fixed for November 21, 1983. On that date, Shri Balwant Singh, counsel for the defendants, put in appearance and the following order was passed:

Vakalatnama filed. Now to come up on 9.12.1983 for written statement and reply of the application.

On December 9, 1983, application u/s 34 of the Arbitration Act was filed. From perusal of the order reproduced above, it is apparent that no request was made by the counsel for the defendants, for adjournment of the case for filing written statement in the suit. Counsel for the petitioner has referred to the decision of the Supreme Court in *The State of Uttar Pradesh and Another Vs. Janki Saran Kailash Chandra and Another*, wherein it was held that when application for adjournment was made on behalf of the defendants, they were precluded from requesting the Court for staying the suit. On perusal of the judgment, I find that an application for adjournment was filed on behalf of defendants. The plea raised was that the counsel had no instructions to file such an application which did not weigh with the Court. The other case relied upon by the learned counsel for the petitioner is *Messrs Segat Brothers and others v Food Corporation of India* (1983) 85 P.L.R. 235. In that case also, request was made for adjournment of the suit for filing written statement on behalf of the defendant and the suit was not stayed on application u/s 34 of the Arbitration Act. The present case is distinguishable and the ratio of decision of the two cases referred to above is not applicable. There is no indication from the order of the trial Court as reproduced above that any request was made by the counsel for the defendants for adjournment of the suit for filing written statement. The court on its own passed the order adjourning the case for filing written statement. Thus, it cannot be said that adjournment was sought on the request of the counsel for the defendants. Similar was the situation in the case of *Daman Anand v. Hira Lal* AIR 1974 P&H. 232. R.N. Mittal, J. in para 5 of the judgment observed as under:

From the perusal of the aforesaid orders, it is clear that the counsel for the defendants never requested for an adjournment for filing the written statement. It was the Court who adjourned the case for filing the written statement. From the orders, dated October 21, 1970 and December 24, 1970, it cannot be assumed that the case was adjourned for filing the written statement on the request of the counsel for the defendants.

An argument was addressed that inference should be drawn from such an order that request was made on behalf of respondent for adjournment of the case for filing written statement. In para 6 of the judgment, this contention was repelled. As far as this point is concerned, the lower appellate Court was justified in coming to the conclusion that the defendants had not taken any step for progress of the suit as indicated from the order reproduced above.

4. The mere fact that the defendants approached the Court at the initial stage for staying the suit and to refer the dispute to the Arbitrator mentioned in the agreement, the Court is not bound to act accordingly. A discretion is vested in the Court to pass appropriate order taking into consideration the facts and circumstances of the case. Exhibit A-3 is the agreement containing clause 29 which is reproduced below:-

Disputes:- Excepting the cases of the pilferage of electric energy, in the event of any difference or dispute arising between the Board and the consumer in respect of any matter connected with the supply which cannot be determined by the conditions or by the form of any agreement, between the Board and the consumer and as the event of any difference or dispute arising, as to the interpretation of these conditions or of the terms of any agreement between the Board and the consumer the matter shall be determined in accordance with the provisions of the act or by reference to the Chief Engineer (Operation) H.S.E.B., or his nominee not below the rank of as Superintending Engineer.

Even in the case of usual arbitration clause that in case of all disputes between the parties, the matter would be referred to Arbitrator, it is always discretionary for the Court to stay the suit or not. It is required of the Court to opine as to whether the defendant has always been ready and willing to refer the dispute to the Arbitrator or if certain important questions are involved which could be decided by this Court such a request for staying the suit can be declined. In this respect, reference may be made to the observations made by Calcutta High Court in Steel Plant Private Ltd. Vs. Swastika Alloy Steel Ltd. and Another, wherein it has been held as under:

A principle which is well settled and supported by decisions both in England and in India is that the power conferred upon the Court to stay the legal proceedings is entirely a matter of discretion. It is further well settled that the discretion must be exercised judicially. It is difficult and inexpedient to lay down any inflexible rules which should govern the exercise of the said discretion. It is not possible to lay down any formula or test the automatic application of which will help to solve the problem of the exercise of judicial discretion. At the same time when discretion has been so exercised it will not be interfered with readily.

The question that heavy amount was involved was also one of the considerations that weighed in the Calcutta case as well as in the case before the Supreme Court in The State of Uttar Pradesh and Another Vs. Janki Saran Kailash Chandra and Another,

5. A perusal of clause 29 of the agreement, as reproduced above, indicates that not in all the matters, the dispute is to be referred for arbitration. The matter either can be determined in accordance with the provisions of the Act (Electricity Act) or by reference to the Chief Engineer (Operation) or his nominee. Thus the court is required to decide as to whether the dispute should be decided in accordance with the provisions of the Act. If that is so, then there is no necessity

of referring the matter to the arbitration. From the material produced on the file there is nothing to indicate that any step was taken to settle the dispute in accordance with the provisions of the Act. In such circumstances when penalty to the tune of Rs. 5,83,077.70 paise has been imposed on the ground that the appellant was having an extra load or was operating generator, it is not considered a fit case where straightway the matter should be referred to the Arbitrator. Complicated questions of law and fact are likely to arise, such as in the facts and circumstances of the present case penalty would be imposed under the provisions of the Act and if so whether there exists a justification for imposing such a huge penalty. This aspect was not taken into consideration by the lower appellate Court, though the trial Court exercised its discretion not to stay the proceedings of the suit. In *Anderson Wright Ltd. Vs. Moran and Company*, it was observed that the Court should satisfy that there is no sufficient reasons that the matter should not be referred to Arbitrator in accordance with the agreement. In *Union of India v. Din Dayal* AIR 1952 P&H. 368, it was held that where substantial questions of law are involved, it will be more satisfactory that the case is decided by the Court.

Union of India (UOI) Vs. Din Dayal, 6. For the reasons recorded above, this appeal is accepted with costs. The order of the lower appellate Court is set aside and that of the trial Court is restored. Counsel fee is assessed at Rs. 500/-.

7. Parties through their counsel are directed to appear in the trial Court on 18.7.1988.