

(1974) 12 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : O.M.P. No. 56 of 1973

M/s. Eastern Commercial Corporation	APPELLANT
Vs	
State of Himachal Pradesh	RESPONDENT

Date of Decision : 13-12-1974

Acts Referred:

Arbitration Act, 1940 — Section 2, 20, 28, 31, 31(1)
State of Himachal Pradesh Act, 1970 — Section 30, 30(1), 30(2), 30(3)

Citation : (1975) 4 ILR HP 92

Hon'ble Judges : R.S. Pathak, C.J.; D.B. Lal, J

Bench : Division Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Judgement

R.S. Pathak, C.J.—The Eastern Commercial Corporation, Patiala, made an application u/s 20 of the Arbitration Act, 1940, claiming that a dispute had arisen between it and the State of Himachal Pradesh in respect of its claim to money from the State, and it prayed that an arbitration agreement between the parties be filed in Court. The application was numbered C.O.P. 9 of 1969. On August 18, 1970, a learned single Judge on the Himachal Bench of the Delhi High Court allowed the application and directed that the agreement be filed in court. He also referred the dispute to the Deputy Commissioner, Sirmur, for arbitration by him. The Deputy Commissioner commenced arbitration proceedings, and they are pending.

2. The State sought to recover a sum of Rs. 44,390.10 P. said to be due as royalty from the Corporation. On this, the Corporation applied to the arbitrator for the stay of recovery during the pendency of the arbitration proceedings, and on March 29, 1973, the arbitrator made an order accordingly. The State then made an application to this Court u/s 31(3) of the Arbitration Act for an order setting aside the stay order of the arbitrator. That application is O.M.P. No. 56 of 1973. Another application has been made by the State to this Court, and that

purports to be u/s 28 of the Arbitration Act for extension of time to the arbitrator for making an award. It is O.M.P. No. 99 of 1973. Both petitions came on for hearing before one of us (D. B. Lal, J.) and the following three questions have been referred to a larger Bench for decision:

(1) In a case u/s 20 of the Act wherein the Himachal Bench of the High Court of Delhi has given a decision of making reference to specified arbitrator, and the proceedings are still pending before such arbitrator, can a subsequent application of the nature specified in Section 31 of the Act be entertained by the High Court of Himachal Pradesh ?

(2) Whether in a case of the nature specified in question No. (1) the proceedings can be stated to be pending under Sub-section (2) of Section 30 of the State of Himachal Pradesh Act, 1970, in the High Court of Delhi immediately before the "appointed day" so that a certificate is required from the Chief Justice of that High Court, before the application u/s 31(3) of the Act can be heard and decided by the High Court of Himachal Pradesh?

(3) Whether the application u/s 31(3) of the Act can be stated to seek any relief in respect of the order in this case passed by the High Court of Delhi before the "appointed day within the meaning of Sub-section(3) of Section 30 of the State of Himachal Pradesh Act, 1970, and as such the High Court of Himachal Pradesh can have jurisdiction to entertain, hear or dispose of such application, only after an order of transfer of such application is made to that Court by the Chief Justice of the High Court of Delhi ?

That is how this matter is before us.

3. At the time when the application u/s 20 of the Arbitration Act was filed, jurisdiction belonged to the Himachal Bench of the High Court of Delhi, and it was for that reason that a learned Judge of the High Court of Delhi sitting on the Himachal Bench order an order allowing the application u/s 20, ordering the arbitration agreement to be filed and directing a reference to the Deputy Commissioner for arbitration. On January 25, 1971, the State of Himachal Pradesh Act constituted the High Court of Himachal Pradesh. Section 30 of that Act deals with the jurisdiction of the High Court of Delhi and of the High Court of Himachal Pradesh in respect of matters arising within the territories of Himachal Pradesh. Section 30(1) of the Act provides that the High Court of Delhi shall on and from the appointed day" have no jurisdiction in respect of the territories comprised in the State of Himachal Pradesh. In a case where proceedings are pending in the High Court of Delhi immediately before the appointed day, the Chief Justice of that High Court is empowered by Section 30(2) to certify that having regard to the place of accrual of the cause of action and other circumstances such proceeding ought to be heard and decided by the High Court of Himachal Pradesh, and upon such certification the proceeding shall be transferred to the High Court of Himachal Pradesh.

4. It has been urged that Section 30(2) operates in the present case and as no

certificate has been issued by the Chief Justice of the High Court of Delhi, the High Court of Himachal Pradesh has no jurisdiction. The submission could have force only if the proceeding u/s 20 can be said to be pending with the High Court of Delhi. Now the expression "pending" has been defined by Clause (a) of the Explanation to Section 30 as follows":

(a) Proceedings shall be deemed to be pending in a court until that court has disposed of all issues between the parties including any issues with respect to the taxation of the costs of the proceedings and shall include appeals applications for leave to appeal to the Supreme Court, applications for review, petitions for revision and petitions for writs.

The learned Judge of the High Court of Delhi sitting on the Himachal Bench made an order allowing the application u/s 20 of the Arbitration Act, and directing the agreement to be filed in court. He also referred the dispute to the arbitration of the Deputy Commissioner, Sirmur. By that order the application u/s 20 must be considered to have been disposed of. Nothing was left to be done on that application. The proceeding instituted in the Court was over, and what remained was the arbitration proceeding before the Deputy Commissioner. Nothing remained pending in Court. It is open to the parties to invoke the jurisdiction of the Court again, for example, for extending the time to the arbitrator for making the award or for pronouncing judgment and passing a decree in terms of the award. The latter jurisdiction of the court, however, cannot be confused with the jurisdiction invoked u/s 20. I am of opinion that so far as the application u/s 20 is concerned, it cannot be said to have been pending on January 24, 1971, the date immediately preceding the "appointed day" contemplated by Section 30(2) of the State of Himachal Pradesh Act.

5. Our attention is then invited to Section 30(3) of the State of Himachal Pradesh Act which provides that notwithstanding anything contained in Sub-sections (1) and (2) of Section 30 the High Court of Delhi shall have, and the High Court of Himachal Pradesh shall not have, jurisdiction to entertain, hear or dispose of appeals, applications for leave to appeal to the Supreme Court, applications for review and other proceedings where any such proceedings seek any relief in respect of any order passed by the High Court of Delhi before the "appointed day". The application for stay of recovery proceedings made by the Corporation is not an application seeking any relief in respect of the order passed by the High Court of Delhi. The subject-matter of the order u/s 20 of the Arbitration Act did not call for any decision in respect of Rs. 44,390.10 P. concerning which a stay was sought. As the arbitrator has observed in the impugned order, there does not appear to be any dispute in regard to Rs. 44,390.10 P. Therefore, in my opinion, Section 30(3) of the State of Himachal Pradesh Act does not come into play. Hence, Section 30 of that Act need not detain us.

6. The situation then is that the application u/s 20 of the Arbitration Act has been disposed of and there is nothing pending before the Delhi High Court. What is pending is an arbitration proceeding before the Deputy Commissioner, Sirmur, as

arbitrator. Which court has jurisdiction over that arbitration proceeding falls to be determined on a consideration of Section 31 of the Arbitration Act, Section 31 provides:

31. (1) Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Courts alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

According to Section 31(3), all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings must be made to the Court where the award has been, or may be, filed and to no other Court. Now, the Court where the award should be filed is determined by Section 31(1) which provides that an award may be filed in any court having jurisdiction in the matter to which the reference relates. The expression "court" has been defined by Section 2(c) to mean:

A civil court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit....

Therefore, for the purpose of determining which is the court where an award may be filed, the test to be applied must be the same as in the case of a suit. As in a suit, it is possible in a given case that more than one court may have jurisdiction. To avoid confusion in the case of arbitration proceedings, a special rule has been enacted in Section 31(4), which provides that notwithstanding anything contained elsewhere in the Act or in any other law for the time being in force, if in a reference an application under the Act has been made in a court competent to entertain it that court alone will have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other court. Section 31(4) operates in a case where more than one court can have jurisdiction in respect of the arbitration proceedings. It has no operation where only one court

has jurisdiction. In the present case the cause of action accrued within Himachal Pradesh only. By reason of Section 31(1), the award will have to be filed in this Court, and this Court alone will have jurisdiction. Section 31(4) cannot be invoked.

7. The submission on behalf of the Corporation is that because the application u/s 20 was made in the High Court of Delhi, therefore that Court alone is entitled to entertain the present applications. That contention proceeds on the assumption that Section 31(4) applies. Inasmuch as, in my opinion, Section 31(4) does not come into play the circumstance that the application u/s 20 was made in the High Court of Delhi has no significance.

8. Now Section 31(3) refers to applications regarding the conduct of the arbitration proceedings and also to applications otherwise arising out of such proceedings. The application for stay made by the Corporation is an application otherwise arising out of the arbitration proceedings. It is an application made to the arbitrator praying that during the pendency of the arbitration proceedings the recovery of the amount due from the Corporation to the State should be stayed. Accordingly, the State is right in making an application u/s 31(3).

9. Reference may now be made to the cases cited before us on behalf of the Corporation. In *Nagarchand Goenka Vs. Surendra Nath Sarkar*, it was held by the Patna High Court that the expression "arbitration proceedings" mentioned in Section 41(6) of the Arbitration Act is initiated, according to Section 20, by the filing of an application in writing for the purpose of enforcing an arbitration agreement. The question before us is not whether an arbitration proceeding commences with the making of an application u/s 20. The question is whether a proceeding was pending in the High Court of Delhi on the date immediately preceding the "appointed day". As I have held, no such proceeding was pending in that court after the order disposing of the application u/s 20.

10. Reference has also been made to the observations of the Allahabad High Court in *Shukrullah and Anr. v. Mt. Rahmat Bibi and Ors.* AIR 1947 All 304 in support of the proposition that the court which made the reference alone had the power to hear objections to the award and to pass a decree in terms thereof. Those observations were made in the context of Section 31(4). Our attention was also invited to *Ferro Alloys Corporation Ltd. Vs. A.K. Ghosh and Bros.,* . In that case it was explicitly stated that proceedings under the Arbitration Act were being taken in two courts simultaneously and therefore Section 31(4) came into play. In the present case, as Section 31(4) cannot be invoked, neither case can be of any help to the Corporation.

11. Accordingly we answer the three questions referred as follows:

1. After the application u/s 20 of the Arbitration Act had been disposed of by the Himachal Bench of the Delhi High Court and while proceedings are still pending before the arbitrator, a subsequent application u/s 31 of the Act can be entertained by the High Court of Himachal Pradesh.

2. After the order disposing of the application u/s 20 of the Act no proceeding can be regarded as pending u/s 30(2) of the State of Himachal Pradesh Act in the High Court of Delhi, and therefore, no certificate is required from the Chief Justice of that High Court before the application u/s 31(3) of the Arbitration Act can be heard and decided by the High Court of Himachal Pradesh.

3. The application u/s 31(3) of the Arbitration Act does not seek any relief in respect of the order made u/s 20 of the Act. by the High Court of Delhi, and inasmuch as, thereforej Section 30(3) of the State of Himachal Pradesh Act does not apply the High Court of Himachal Pradesh has jurisdiction to entertain, hear and dispose o"the application without an order transferring such application to the High Court of Himachal Pradesh by the Chief Justice of the High Court of Delhi.

12. The papers of these petitions will now be placed before the learned single Judge for decision in accordance with the opinion returned by us.

D.B. Lal, J.:

13. I agree.