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(2013) 01 AHC CK 0373

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 458 of 1997

M/s. Minakshi Finance Company and Others — APPELLANT

Vs

Mohd. Shamim — RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:
Arbitration Act, 1940 — Section 34

Citation : (2013) 2 ADJ 516

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Mahesh Chandra, for the Appellant; Vinod Kumar, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—Heard Sri Mahesh Chandra, learned counsel for petitioner, learned State counsel and perused record. Matter is taken in the revised cause list.

2. None present on behalf of respondent.

3. Facts of the present case in brief axe that an agreement has been entered between petitioner-M/s. Minakshi Finance Co., Meerut City and Sri Mohd. Shamim, a copy of which is filed as Annexure 3 to the writ petition.

4. Further, in the said agreement there is a clause No. 15(b) which provides that if any dispute and difference arises between the parties and within the ambit and scope and terms of the agreement, the same may be referred to the arbitration, is quoted hereinunder:

Clause 15(b): "All disputes differences or claims arising out of and in connection with this agreement, shall be referred to the sole arbitration of Shri R.H. Ansari, Advocate, Meerut or his nominee at Meerut under the provisions of the Indian Arbitration Act of 1940 or any statutory modifications thereof, the award of the arbitrator shall be final and binding on all the parries Concerned. The arbitrator shall be bound to give his award within the provisions of this agreement. His

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terms of reference will be strictly governed by the terms of this agreement and the Arbitrator shall not question the validity of the same. The notices sent by the Arbitrator to the parties by Registered post at the addresses mentioned in the Agreement, will be considered as sufficient service on the parties, whether such notices are received by them or. not or are refused.

5. Subsequently, in the matter in question, respondent No. 1 filed a suit for permanent injunction. In the said matter, the petitioner/defendant moved an application u/s 34 of Indian Arbitration Act, 1940, registered as paper No. Ga-26 inter alia taking a plea that in view of the arbitration clause entered between the parties in the agreement which has been acted upon, so the suit filed by the plaintiff/Sri Mohd. Shamim shall be stayed. This application was allowed by the trial Court by an order dated 21.4.1995.

6. Aggrieved by the said order, Mohd. Shamim has filed an appeal (M.C.A. No. 45/95, Mohd. Shamim v. M/s Minakshi Finance Co. and others), which was allowed by means of the order dated 30.10.1996 passed by II Additional District Judge, Bahraich.

7. After hearing learned counsel for petitioner and learned State counsel and going through the record, the sole ground on which the appellate Court has allowed the appeal is that the agreement in question has been executed between the parties on the basis of Dhokha and Kapat Purvak. So the same is not binding. The said view taken by the O.P. No. 1 while passing the impugned order is totally against the ambit and scope of the provisions as provided u/s 34 of Indian Arbitration Act, 1940.

8. As the Section 34 has been enacted to avoid conflicts and scramble, it is intended to avoid conflict between the public tribunal and the private tribunal enacted to be set up by the, arbitration agreement. It is intended to. make arbitration agreements effective and prevent a party from going to Court contrary to his own agreement. Where parties have agreed to refer disputes to arbitration, the Court should as far as possible, give an opportunity for resolution of disputes through arbitration rather than by judicial adjudication. The Courts should see that the parties are held to their bargain and promote the sanctity of the contract.

9. Proceedings u/s 34 are not proceedings in the nature of a suit and the order under it is not a "judgment, decree or final order". u/s 34, the Court cannot direct that a person be made party to the arbitration proceedings. Section 34 does not give the Court power to go into the merits of the case and decide rights of the parties. The whole case can-not be prejudged at the stage of disposing of the said application.

10. In order to decide the merits of an application u/s 34, the Court should not go into the merits of the suit but it may look into besides the plaint, affidavits filed by the parties as well as the correspondence that may have passed between them (See. Gaya Electric Supply Co. Ltd. Vs. The State of Bihar,

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11. Further, for invoking Section 34 the necessary conditions are that, a party to the arbitration agreement or any person claiming under him should commence legal proceedings against a party to the agreement in respect of "any matter agreed to be referred". If this happens, the party aggrieved can at any time before filing the written statement, or taking any other legal steps apply to the authority or Court before which the proceedings are pending to stay them. When such application is made the authority or Court can at its discretion, order stay of the proceedings on being satisfied that no sufficient reasons were made out why the matter agreed should not be referred in accordance with the arbitration agreement and that the applicant was, when the proceedings were commenced ready and willing to subject himself to arbitration. (See. K.P. Ramakrishnan Vs. New India Assurance Co. Ltd., Calicut,

12. Thus, on an analysis of the Section 34 of the Indian Arbitration Act, 1940 there being an arbitration agreement between the parties which covers the disputes, the following conditions are also absolutely essential for invoking the said provision:

(i) The proceedings must be commenced by a party to an arbitration agreement against any other party to the agreement.

(ii) The legal proceedings, which is sought to be stayed must be in respect of a matter agreed to be referred:

(iii) the applicant for stay must be a party to the legal proceedings;

(iv) the applicant must have taken no steps in the proceedings after appearance;

(v) the applicant must satisfy that only the applicant was at the time when the proceedings were commenced, ready and willing to do everything necessary for the proper conduct of the arbitration; and

(vi) the Court must also be satisfied that there was no sufficient reason why the matter should not be referred to arbitration. (See. Rachappa Gurudappa Bijapur Vs. Gurudiddappa Nurandappa and Others,

13. In view of the abovesaid facts, reasoning given by the appellate authority while allowing the appeal filed by Sri Mohd. Shamim/respondent No. 1 is contrary to the provisions of Section 34 of the Arbitration Act, thus, is liable to be set aside. For the foregoing reasons, the writ petition is allowed, the impugned order dated 30.10.1996 passed by O.P. No. 2 in M.C.A. No. 45 of 1995 is set aside and order dated 21.4.1995 passed by Additional Civil Judge, Bahraich in Regular Suit No. 158/93 (Mohd. Shamim v. M/s Minakshi Finance Co. and others, on an application (Application No. Ga-26) moved by the petitioner u/s 34 is restored.

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