
(1997) 07 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : FAO (Ord) No. 167 of 1988

M/s. Subhash Chand Goel

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 2, 31(4)
Himachal Pradesh Courts (Amendment) Act, 1994 — Section 21
Himachal Pradesh Courts Act, 1976 — Section 10, 11, 21A, 23, 29

Citation : (1998) 1 ShimLC 173

Hon'ble Judges : M. Srinivasan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Rama Kant Sharma, for the Appellant; P.A. Sharma, Sr. C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—This appeal is directed against an order passed by the Sub-Judge 1st Class, Kandaghat accepting an award passed by the Arbitrator and making it a rule of Court u/s 17 of the Arbitration Act. When the appeal was taken up, learned Counsel for the Appellant raised a doubt whether this appeal could be heard by this Court or whether it should be transferred to the Court of District Judge in view of the amount involved in the proceeding. Learned Counsel drew our attention to the Notifications issued by this Court in HHC/Admn 6 (24)/74-II dated 21st February, 1995. By the Notification dated 21st of February the Court had in exercise of the powers vested u/s 29 read with Sections 10 and 11 of the H.P. Courts Act ordered that the Court of the District Judges/Additional District Judges shall have jurisdiction in all original Civil Suits value of which exceeds Rs. 2,00,000/- but does not exceed Rs. 5,00,000/-. Similarly the jurisdiction of the Senior Sub-Judges/Subordinate Judges was with reference to suits, the value of which does not exceed Rs. 2,00,000/-. With regard to the other subordinate Judges the value of the suit should not exceed Rs. 50,000/-. It is also ordered in the said notification that the Appeals from the judgment and

decree of the Subordinate Judges shall lie to the District/Additional District Judges. The amendment was to come into force with immediate effect.

2. By the latter notification the Chief Justice in exercise of the powers vested in him u/s 21-A of the Himachal Pradesh Courts Act, 1976 ordered the transfer of all the original civil suits the value of which should not exceed Rs. 5,00,000/- to the respective District Judges in the state to whose jurisdiction the original suits related to and the cause of action arose.

3. In the second paragraph of the notification it was stated that the first regular appeals against the decree or order of the subordinate Judge in which the value of the original suit did not exceed Rs. 2,00,000/- were also transferred to the respective District Judges.

4. Learned Counsel submits that in view of the said notifications this appeal which is against the order of the Arbitrator under the Arbitration Act should also go to the file of the concerned District Judge. It is also stated by him that in some other matters the Hon'ble Judges of this Court have expressed such a view and transferred the appeals to the files of concerned District Judges.

5. The relevant provision in the Himachal Pradesh Courts (Amendment) Act, 1994 (Act No. 1 of 1995) is to amend Section 10 by substituting the words "five" lacs" for the words "two lacs" - Section 10 of the Act reads as follows:

10. Save as otherwise provided by any other law for the time being in force, the Court of the District Judge shall have jurisdiction in all " original civil suits, the value of which does not exceed Rs. 2,00,000/-.

6. Section 21 of the Act is also amended by Act No. 1 of 1995. In Section 21 the words "two lacs" are substituted for the words "fifty thousand. Section 21 as it stood before the amendment provided for appeals from decrees or orders of subordinate Judges. Under Clause (a), an appeal shall lie to the District Judge where the value of the original suit in which the decree or order was made did not exceed Rs. 50,000/- and under Clause (b) to the High Court in any other case.

7. Section 21-A was introduced in the Act after Section 21. The said Section reads as follows:

21-A. Powers of the Chief Justice to transfer pending suits, appeals or proceedings to Subordinate Civil Courts. The Chief Justice of the High Court of Himachal Pradesh may transfer any suit, appeal or proceedings which is or are pending before the High Court of Himachal Pradesh immediately before the commencement of the Himachal Pradesh Courts (Amendment) Act, 1994 to such a Subordinate Civil Courts in Himachal Pradesh which would have jurisdiction to entertain such suit, appeal or proceedings, had such suit, appeal or proceedings been instituted or filed for the first time after such commencement.

8. The amendment Act does not provide anywhere that the amendments brought into force by the said Act were retrospective in operation or that they were applicable to pending proceedings. Section 21-A confers power on the Chief Justice of the High Court to transfer any suit, appeal or proceeding which were pending before the High Court immediately before the commencement of the Amendment Act of 1994. Thus, the Amendment Act does not provide for automatic transfer of any proceedings pending in this Court. If an proceeding is to be transferred to the file of the District Judge on the basis of amendments to Sections 10 and 21, an order has to be passed by the Chief Justice transferring such suit or appeal or proceeding to the concerned subordinate Civil Court. But without such an order of transfer, no proceeding can be transferred to the file of a subordinate Civil Court.

9. It is also seen from the provisions of the Himachal Pradesh Courts Act, 1976 and the Amendment Act that the jurisdiction of the High Court to deal with any matter in which the value is below that mentioned in Sections 10 and 21 of the Act has not been taken away. What has been done in Section 10 is only to fix the jurisdiction of the District Judge in original Civil Suits and in . Section 21 the jurisdiction of the District Judge with regard to appeals from decree or orders of subordinate Judges. Those sections do not deprive the High Court of its jurisdiction to deal with any matter irrespective of the value of the subject matter.

10. The State of Himachal Pradesh Act, 1970 has constituted the High Court u/s 21 thereof. u/s 23 of the Act, the High Court shall have in respect of any part of the territory comprised in the State of Himachal Pradesh, all such jurisdiction, powers and authority, as under the law in force immediately before the appointed day are exercisable in respect of that part of the said territories by the High Court of Delhi. There is no provision in the State of Himachal Pradesh Act restricting the jurisdiction of the High Court to suits of a particular value.

11. Apart from that even if a proceeding is of a lesser value and is pending before a subordinate Court it is always open to the High Court to withdraw such proceeding and dispose of the same in accordance with law in exercise of its powers.

12. Further, Sections 10 and 21 speak only of a suit and appeals but in Section 21-A reference is made to the suit appeal or proceeding. Thus, Section 21 is applicable only of appeals against decrees or order made in limits. Section 21-A no doubt speaks of the suits, appeals or other proceedings it has to be read alongwith Sections 10 and 21. As pointed out already there must be a specific order of transfer by the Chief Justice of High Court transferring the proceedings already pending before the Court to the file of a subordinate Civil Court when only the subordinate Judge will have jurisdiction to deal with such matters.

13. In such circumstances, we have no hesitation whatever to say that this Court has jurisdiction to deal with this appeal No. FAO (Ord) 167/1988, which is directed against an order passed under the provisions of Arbitration Act by the

Sub-Judge 1st Class, Kandaghat.

14. Now turning to the merits of the case, learned Counsel for the Appellant contends that Court at Kandaghat had no jurisdiction to deal with the matter. According to him, the Arbitrator was appointed by a Court at Chandigarh and any subsequent proceeding in this matter under the provisions of the Arbitration Act should be Instituted only before the Court at Chandigarh. Reliance is placed on Section 31(4) of the Arbitration Act which reads as follows:

31(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 Court 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.

15. It should noted that the said Section refers to a Court "competent to entertain". Thus, if the first application under the Act had been made in a Court competent to entertain it, then the said Court alone shall have the jurisdiction over the subsequent proceedings. But the question is whether in this case the Court at Chandigarh was competent to entertain the application for appointment of an Arbitrator. It may be that Union of India the Respondent herein did not raise any objection to the jurisdiction of the Court at Chandigarh for appointing an arbitrator but it is too well settled that consent cannot confer jurisdiction. When the Section talks of the competency of the Court, it has to be decided on the basis of the facts and circumstances of the case.

16. Section 2(c) of the Arbitration Act defines a Court as follows:

2(c) "Court" means 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, but does not, except for the purpose of arbitration proceedings u/s 21 include a Small Cause Court;

It shows that it is only a Court which will have jurisdiction to decide the questions forming the subject-matter of the reference if the same had been subject-matter of the suit.

17. On the facts of this case, it is not in dispute that the agreement was signed by the parties at Kasauli and the work under the contract had to be executed at Solan. The entire cause of action arose within the jurisdiction of the District of Solan. Thus, the Court at Chandigarh had no jurisdiction whatever to deal with the matter if it had been the subject matter of the suit. It is not known how the Court entertained the petition from the Appellant herein and appointed the arbitrator. Just because the Respondent had not objected to the appointment of Arbitrator, it would not mean that the Court at Chandigarh was competent Court within the meaning of Section 31(4) of the Act. Hence, the contention is rejected.

18. The second contention of learned Counsel is that the petition before the

Court below was not maintainable u/s 14 of the Arbitration Act. According to him the award should have been filed by the Arbitrator by the Arbitrator himself and not by a party. There is no merit in this contention. As the Arbitrator has authorised both the parties to file the award in the Court and take further proceedings. In the communication sent by the Arbitrator marked as Appendix-C to the original petition. It is seen that the Arbitrator had sent a signed copy of the award to each of the parties and added: "the parties are authorised to file the signed copy of the award in the Court on my behalf". Thus, the proceeding has been properly filed by the Respondent herein u/s 14 of the Act before the Subordinate Judge 1st Class, Kandaghat.

19. Next objection raised by the learned Counsel is that the proceedings are barred by limitation. There is no merit whatever in this contention. Nothing has been placed before us as to how the proceedings are barred by limitation. The Arbitrator's letter enclosing the award was sent on 6th of April 1985. The petition was filed in the Court on 1-5-1985. Hence, this contention also fails.

20. It is next contended that a proceeding was filed by the Appellant herein in the Court at Chandigarh under Sections 14 and 17 of the Arbitration Act, prior to the filing of this proceeding by the Respondent in the Court at Kandaghat. It is seen from the record that the proceeding filed by the Appellant had already been dismissed for default by the Court at Chandigarh. Hence, there is no bar to the present proceeding being disposed of by the Sub-Judge 1st Class, Kandaghat.

21. The last objection raised is that the award passed by the Arbitrator was only for Rs. 25,453/- but the Court has granted a decree for Rs. 27,668.85. Of course we do not have the original award before us to verify whether the amount awarded by the Arbitrator was Rs. 25,453/-, but learned Senior Central Government standing counsel has drawn our attention to a paragraph in the judgment of subordinate Judge in which it is stated clearly that the Arbitrator passed an award, to the tune of Rs. 25,453/- in favour of the Respondent herein. Learned Counsel states that the figure mentioned in that paragraph is correct and the figures mentioned in other paragraphs are not correct. Hence, we proceed on the statement made by learned Senior Central Govt, standing counsel and hold that the Subordinate Judge should have passed a decree only for Rs. 25,453/- which was the amount for which the Arbitrator passed the award. Hence the decree passed by the subordinate Judge is modified by substituting the figure Rs. 25,453/- in the place of figure as Rs. 27,668.83. The remaining part of the decree will stand un-dis- turbed.

22. Except for the above modifications, the appeal is dismissed. There will be no order as to costs.