

(1996) 07 DEL CK 0030

In the Delhi High Court

Case No : IA No. 1985 of 1992 in Suit No. 127 of 1992

M/s. Usha Rectifier Corpn. (India) Ltd.

APPELLANT

Vs

Bank of America and others

RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Citation : (1996) 07 DEL CK 0030

Hon'ble Judges : A.K. Srivastava, J

Bench : Single Bench

Judgement

A.K. Srivastava, J.—This application u/s 34 of the Arbitration (Old) Act, 1940 read with Section 151, CPC, moved in this suit No. 127/92, makes a prayer that the proceedings in the suit be stayed.

2. The ground for moving this application is that the applicant and the plaintiff of the aforesaid suit had entered into an agreement and the disputes arising thereof are to be statutorily arbitrated, in view of the provisions of Securities Contract (Regulation) Act, 1956 and the Stock Exchange Bye Laws, Rules and Regulations made thereunder.

3. The facts of the plaint case appear to be that the plaintiff entered into agreement with defendant No. 2 M/s. Jayantilal Khandwala & Sons (the applicant) for sale and purchase of certain units. In that contract dated 31.7.1991 the defendant No. 2 is said to have acted as an agent of defendant No. 1. Certain disputes arose between the parties in respect of that contract. Admittedly, the defendant No. 2 approached the concerned stock exchange in terms of the aforesaid contract and the provisions of the Bye-laws and regulations of the Bombay Stock Exchange. That reference was numbered as reference No. 135/91. The plaintiff in the suit was issued notice by the plaintiff appeared before the Arbitration Committee and requested for extension of time and four weeks time was granted to it till 9.1.1992 for appointment of an arbitrator. Though the plaintiff took further time to appoint the arbitrator but failed to do so within the given time and ultimately the Bombay Stock Exchange

intimated the plaintiff that since it failed to appoint its arbitrator within the appointed time the executive Director had appointed Mr. Nivesh Mehta to be an arbitrator on its behalf.

4. The applicant takes the shelter of Securities Contract (Regulations) Act, 1956 and says that its Section 9(2)(n) provides for framings of Bye-laws pertaining to and providing for the method and procedure for settlements of the claims and disputes including settlement by arbitration. The applicant says that Bombay Stock Exchange has made Bye-laws being the Stock Exchange Bye-laws and Regulations, 1957. Its clause 240 provides for arbitration. Further the applicant says that its Clause 240(b) provides that an acceptance whether expressed or implied on a contract subject to arbitration as provided in non-clause (a) shall constitute and shall be deemed to constitute an agreement between the member and non-member and that all claims whether admitted or differences and contracts of a date prior to or subsequent to the date of the contract shall be submitted to and decided by arbitration and that in respect thereof any question whether such dealings, transactions and contracts have been entered into or not shall be submitted to and decided by arbitration as provided in the Rules. Bye-laws and Regulations of the Exchange.

5. The learned counsel for the opposite party (the plaintiff) does not dispute the aforesaid statutory position and rather accepts that if the suit was only against defendant No. 2 the suit would not lie and the differences and disputes have to be decided by statutory arbitration. But this contention is that since there is no arbitration agreement or as the case may be, a statutory arbitration provision vis-a-vis defendant No. 1 the suit of the plaintiff is maintainable and the suit cause is not be referred to arbitration. In support of his submissions he relies on Sheodatt Lonkaran and another v. Prakash Distributors and others AIR 1954 Nag 289 , The Barium Chemicals Ltd. Vs. Bombay Industrial and Chemical Company, Bombay, , and Sewa Ram Ahmednagar Vs. Raj Rani and Another, .

6. The trust of the arguments of the learned counsel for the opposite party (plaintiff) is that when there are more then one defendant and with any defendant there is no agreement to refer the disputes to arbitration the suit is maintainable because part of claim led in the suit would be beyond jurisdictions of arbitration. In Sheodatt Lonkaran's case (supra) it was observed that where, in the suit, a part of the controversy raised by the plaintiff is not covered by the agreement to refer to arbitrating up on the action. In the Barium Chemfeials Ltd.'s case (supra) it was observed that a suit in which a single claim is made, against defendants 1 and 2, cannot be split up and the disputes as against one cannot be referred to arbitration while it is tried against another by the Court.

The reason being that the first defendant was not a party to the arbitration agreement.

7. On the other hand the learned counsel for the applicant relies on M/s. Lala Ram Ved Prakash v. M/s. Maharani of India and another AIR 1989 Del 169, and

Ashok Kumar v. Sanjeev Gupta 1995 (54) DRJ 31 : 1995 (2) Arb. LR 398.

8. The plaintiff of the suit had filed his replies but the defendant No. 1 of the suit had not filled its reply to this application. Learned counsel for the opposite party (plaintiff) was keen to know the reaction of the defendant No. 1 and when Mr. Mukul Rohtagi learned senior counsel for defendant No. 1 was asked as to what was the stand of the defendant No. 2 so far as this application is concerned and further stated that the disputes be decided by statutory arbitration.

9. I have carefully considered the respective contentions of the learned counsel for the parties. In view of the fact that the dispute between the applicant (defendant No. 2) and the opposite party (plaintiff) had already been submitted to statutory arbitration and the opposite party (plaintiff) had subjected itself to her jurisdiction of the statutory arbitration prior to the filing of this suit, it would be appropriate that this suit should remain stayed till the aforesaid arbitration proceedings are finally adjudicated. So far as the plea of the opposite party (plaintiff) regarding incompetency of her arbitration proceedings is concerned, the plaintiff should take the plea then first. At this stage of the matter I am not entering into the merits of the legal question whether the suit is maintainable or not.

10. Consequent the application is partly allowed and the proceeding of the suit are stayed.