
(1961) 10 AP CK 0017
In the Andhra Pradesh High Court
Case No : A.A.O. No. 301 of 1959

Mutcherla Ramanath Rao

APPELLANT

Vs

Tungaturti Venkata Krishna Sastry

RESPONDENT

Date of Decision : 24-10-1961

Acts Referred:

Arbitration Act, 1940 — Section 20, 20(1)

Citation : AIR 1962 AP 381

Hon'ble Judges : P. Chandra Reddy, C.J.;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : T. Dhanurbhanudu, for the Appellant; V. Gopalakrishnaiah, for the Respondent

Judgement

P. Chandra Reddy, C.J.—This is an appeal against the order of the District Judge, Warangal rejecting an application u/s 20 of the Arbitration Act, 1940 (X of 1940).

2. The facts material for the purpose of this enquiry lie in a narrow compass. The appellant and the respondent entered into an agreement on 24-6-1955 to refer certain matters in difference between them to the arbitration of three persons viz., (i) C. Ramalingam, (ii) Tanadra Venkatram Narsiah and (iii) K. Rajeshwar Rao, the last two of them being advocates practising at Warangal. Alleging that subsequent to the date of agreement neither the arbitrators nor the respondent evinced party interest in the matter of settlement of disputes, the appellant filed an application u/s 20 of the Arbitration Act for filing the arbitration agreement Into Court.

3. The application was resisted by the respondent on the objection that such an application was incompetent without the institution of a suit. This objection found favour with the District Judge with the result that he rejected the application in limine. It is this order that is under appeal now.

4. The short question that falls for decision is whether the pendency of a suit is a prerequisite to the filing of an application under Sec. 20 of the Arbitration Act .

As the answer to this question turns on the interpretation of Section 20, it is necessary to read it here.

20(1): Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

2. The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

3. On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed.

4. Where no sufficient cause is shown the Court shall order the agreement to be filed and shall make an order of reference to the arbitrator appointed by the parties whether in the agreement or otherwise or when the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court.

5. Thereafter the arbitration shall proceed in accordance with, and shall be governed by, the other provisions of this Act so far as they can be made applicable.

5. We do not find anything in the language of the section which can lead to the inference that a suit has to precede an application u/s 20. On the other hand, the indications are that the section does not contemplate the institution of a suit. It is plain from subsection (2) of Section 20 that the application itself will be regarded as a suit and not that an independent Suit should be laid for the enforcement of the agreement referring the disputes to arbitration. The very intendment of the legislature as manifested in the section seems to be to make a reference to the arbitrators and to direct them to proceed in accordance with the provisions of the Act in cases where there is an arbitration agreement between the parties. That being so, we fail to see for what purpose a suit should be brought. The relief to be obtained by the parties is to direct the arbitrators to proceed with the enquiry for the settlement of disputes and to make an award embodying their decision. That being So, there does not seem to be any warrant for the conclusion that an independent suit is envisaged by the section.

6. Another indication furnished by S. 20(1) is that if any difference arises in regard to an arbitration agreement, the aggrieved party may instead of having a resort to Chapter II invoke the jurisdiction of the Court u/s 20. Chapter II of the

Arbitration Act deals with arbitration without the intervention of Court. The intervention contemplated by Chapter in is to be invoked by the initiation of proceedings u/s 20. We, therefore, disagree with the conclusion of the trial Court as to the scope and effect of Section 20 of the Arbitration Act.

7. We accordingly set aside the order of the trial Court and direct it to determine the other issues arising in the matter. Costs of the appeal will abide the ultimate result of the application. The Court-fee on the memorandum of appeal will be refunded to the appellant.