

(2011) 09 CAL CK 0072

In the Calcutta High Court

Case No : R.V.W. No. 83 of 2011, C.O. No's. 2654 and 3211 of 2007

Nader Chand Paul @ Provat Paul

APPELLANT

Vs

Nemai Chand Pal and Others

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 14, 15, 16, 16(2)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1

Citation : (2011) 09 CAL CK 0072

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Shyamal Kr. Chakraborty and Swarup Kr. Ghosh, for the Appellant; Basudeb Gayen and Soumya Bandopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—This application for review has been filed against the judgment dated April 12, 2011 passed by this Bench in C.O. No. 2654 of 2007.

2. The short fact is that two revisional applications being C.O. No. 2654 of 2007 and the C.O. No. 3211 of 2007 have been disposed of by the common judgment dated April 12, 2011 by this Bench. The said judgment in C.O. No. 2654 of 2007 is under challenge in this application for review.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned Counsel for the parties and on going through the materials on record, this Bench finds that the above noted two revisional applications were disposed of by the common judgment dated April 12, 2011. The learned Advocates of both the parties were allowed to make argument over the two matters and accordingly, they did so referring several decisions. All the submissions and the decision referred to by both the sides have been discussed in details in the judgment under challenge. Therefore, in order to succeed in this application for review, the Petitioner is required to show either of the conditions

as laid down in Order 47 Rule 1 of the CPC has been fulfilled.

5. During argument, Mr. Chakraborty has referred to the provisions of Sections 8, 11, 14, 16 & 34 of the Arbitration and Conciliation Act, 1996. Mr. Chakraborty has contended that according to Section 11 of the Arbitration and Conciliation Act, 1996, the power of appointment of an arbitrator or the power of removal of the arbitrator lies only with the Chief Justice of the concerned High Court where the cause of action arose. But, in the instant case, the concerned District Judge appointed the Arbitrators and so, the order under challenge should be set aside. Thus, he submits that the concerned District Court had No. jurisdiction at all to issue notice as per Sections 11, 14 & 15 of the Arbitration and Conciliation Act of 1996 and so, the notice should be quashed. In the conclusion, he has submitted that there is an apparent mistake in the order dated April 12, 2011 in connection with the order dated May 17, 2007 passed by the learned District Judge, Hooghly in Misc. Case No. 141 of 2004, holding that the misc. case is maintainable, and as such, the impugned judgment cannot be sustained.

6. On the other hand, Mr. Gayen appearing on behalf of the opposite parties supports the order under challenge.

7. Having gone through the entire materials on record, I find that the dispute between the parties is over partition of the paternal properties. The contesting parties are the two full brothers and the dispute between the parties to the concerned misc. case is over partition of the paternal properties, share of crops etc. A written agreement was held amongst themselves and such agreement lays down the clause of arbitration.

8. This Bench has considered the submissions advanced by both the parties in the two revisional cases referred to above and ultimately has come to the conclusion that as per agreement, two arbitrators were appointed and the parties participated in the process and ultimately, both the arbitrators passed an award on December 26, 2000. So, if either of the parties had any grievance, the remedy was to take appropriate steps u/s 34 of the 1996 Act within the stipulated time as mentioned in the said Section. This Bench has also held that if any objection relating to composition of the Arbitral Tribunal is to be made, it shall be placed before the Arbitral Tribunal itself within the time prescribed u/s 16(2) of the said Act. If No. objection is raised within the time limit u/s 16(2) of the 1996 Act, there will be a deemed waiver of objection u/s 4 of the 1996 Act. So, after passing of the award, there is No. scope of challenge of the award as to the composition of the Arbitral Tribunal. Accordingly, this Bench has disposed of the two revisional matters.

9. In disposing of the C.O. No. 2654 of 2007, this Bench has also held that the learned Trial Judge has held the misc. case was maintainable and the belated application, challenging the same order, was not entertain able.

10. In view of the facts and circumstances as stated above, I am of the opinion that the present application for review does not come within either of the clauses

of Order 47 Rule 1 of the CPC The application for review cannot be entertained at all. Moreover, it is barred by limitation for being not filed within 30 days from the date of order and No. application for condonation of the delay was filed. So, the application for review cannot be entertained.

11. It is, therefore, dismissed.

12. Considering the circumstances, there will be no order as to costs.

13. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.