

(2007) 08 AHC CK 0109

In the Allahabad High Court

Case No : Civil Revision Nos. 898 of 1986 and 389 of 1991

Nagar Mahapalika, Gorakhpur

APPELLANT

Vs

Parasnath Ji Trust

RESPONDENT

Date of Decision : 07-08-2007

Acts Referred:

Arbitration Act, 1940 — Section 8
Limitation Act, 1963 — Article 137

Citation : (2007) 08 AHC CK 0109

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.—In spite of sufficient service, no one appeared on behalf of the opposite party at the time of hearing, hence, only the arguments of learned Counsel for the applicants were heard in both the revisions.

2. Revisions are withdrawn/treated to be withdrawn to this Court under Section 24 C.P.C.

3. First revision is directed against order dated 30/9/1986 passed by Civil Judge, Gorakhpur in Misc. Case No. 128/70 of 1983. The said case had been instituted by Parasnath Ji Trust, opposite party under Section 8 of Arbitration Act, 1940. Arbitration Act, 1940 has been repealed by Arbitration and Conciliation Act, 1996. However, by virtue of Sections 21 and 85 of new Act, proceedings which had commenced before passing of the new Act will have to be completed in accordance with Arbitration Act, 1940 vide T. Esthal Union GMBH v. Steel Authority of India, AIR 1999 SC 3923 and Neeraj Munjal v. Atul Grover, AIR 2005 SC 2867.

4. The case of the opposite party before the Court below was that a particular piece of land had been let out by predecessor in interest of applicant Nagar Mahapalika Gorakhpur i.e. Municipal Board, Gorakhpur to the predecessor in interest of applicant opposite party Parasnath Ji Trust and under the lease deed it was provided that the lessee was entitled to make construction over the land in

dispute and at the time of vacation of land cost of the construction would be paid by the lessor to the lessee and decision of Chairman/Administrator of the lessor in respect of cost of construction would be final. It was further pleaded that constructions of the lessee applicant were demolished on 2381975 by lessor Nagar Mahapalika, Gorakhpur and that in terms of the leased deed, lessee gave a notice on 178 1983 to the Administrator, Nagar Mahapalika Gorakhpur for giving award in respect of the cost of constructions which were demolished in his capacity as Arbitrator. The case was filed under Section 8 of Arbitration Act, 1940 on 1391983 as Arbitration proceedings were not initiated in pursuance of notice dated 1781983. Before the Court below Nagar Mahapalika, Gorakhpur raised two main objections one was of Limitation and the other was that in fact there was no agreement for Arbitration and the Clauses in the leased deed relied upon by the trust did not amount to an agreement for referring the dispute to Arbitrator. Both the points were decided against applicant Nagar Mahapalika by the impugned order, hence, the first revision.

5. As far as limitation is concerned, it has got two dimensions; one is limitation to file application under Section 8 Arbitration Act, 1940. Limitation for the said purpose is three years, under misc. article (Article 137) of the Schedule to Limitation Act, 1963. It has been held in different authorities including the following that the aforesaid limitation of three years starts from the date on which period of notice asking for initiation of arbitration proceeding before the arbitrator expires.

(1) M. Mandal SSK Limited v. New India Assurance Company Limited, 2001 ACJ 847

(2) Utkal CCC v. CC Fields, AIR 1999 SC 801.

6. Accordingly, the view of the Court below that application under Section 8, Arbitration Act was not barred by limitation is correct.

7. However, the second aspect of limitation is regarding limitation for raising the dispute before the arbitrator. In para 12 of the aforesaid authority of Utkal CCC, this aspect has been adverted to. The Supreme Court held that such plea could be examined only when relevant particulars and details of the dispute were placed before the Court. Prima facie it appears that nothing was stated in the application under Section 8, Arbitration Act, 1940 regarding delay in making the request for consideration of dispute by arbitrator through notice dated 1781983. In this regard learned Counsel for the applicant has cited an authority of Supreme Court reported in State of Orissa v. Sri Damodar Das, AIR 1996 SC 942, wherein it was held that the period of limitation for commencing the arbitration runs from the date on which cause of action accrues and claim for arbitration must be raised as soon as the cause for arbitration arises as in the case of cause of action arising in a civil action. However, I am not expressing any conclusive opinion on this point as revision deserves to be allowed on the point of there being no agreement to refer the dispute to arbitration/arbitrator.

8. The applicant Nagar Mahapalika had pleaded and argued before the Court below that there was no arbitration clause in the leased deed. The said point has been rejected by the Court below. In my opinion, the view of the Court below in this regard is erroneous in law. The only thing mentioned in the leased deed in this regard was that decision regarding cost of construction taken by the Chairman/ Arbitrator would be final. Interpreting somewhat similar clause Supreme Court in *Bharat Bhushan Bansal v. UPSIC*, 1999(1) JCLR 1025 (SC) : AIR 1999 SC 899, has held that such clause brings the authority concerned in the category of expert for deciding the matter pertaining to the contract and such clause cannot be read as a clause for decision by the authority concerned like arbitrator.

9. Accordingly first revision is allowed. Order dated 30/9/1986 is set aside.

10. Second revision is directed against order dated 15/3/1991 passed by Civil Judge, Gorakhpur in Misc. Case No. 207 of 1988 which was an off shoot of the case which was subject matter of the first revision. Through order dated 15/3/1991, instead of Administrator. Mukh Nagar Adhikari, Nagar Mahapalika was appointed as Arbitrator. He was directed to file the award within four months. As the main order appointing Arbitrator has been set aside, hence, order impugned in this revision is also liable to be set aside. Accordingly, second revision is also allowed.

11. However, there is one aspect of the matter, which requires consideration. In the second revision on the stay application the stay order was passed on 13/5/1991. However, due to inadvertence, stay order passed in some Rent Control matter was written over the stay application filed in the second revision. Thereafter, an application was filed for correction of the stay order but no order could be passed thereupon. Learned Counsel for the applicant has stated that Mukhya Nagar Adhikari appointed as Arbitrator by the order challenged in the second revision did not take any step for decision on arbitration due to pendency of the second revision. If it is so then the matter ends. However, if Mukhya Nagar Adhikari has given the award in pursuance of order challenged through the second revision and the award has been made rule of the Court then this judgment passed in both the revisions shall stand automatically vacated and the revisions should be treated to have been dismissed as infructuous.

Decided accordingly.