

(1943) 03 CAL CK 0007
In the Calcutta High Court

Nanda Kishore Goswami and Another	APPELLANT
Vs	
Bally Co-operative Credit Society, Ltd. and Others	RESPONDENT

Date of Decision : 16-03-1943

Acts Referred:

Arbitration Act, 1940 — Section 17
Co-operative Societies Act, 1912 — Section 43

Citation : AIR 1943 Cal 255

Hon'ble Judges : Blank, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—These two analogous appeals arise out of two execution proceedings commenced by the Bally Cooperative Credit Society Limited who is the respondent before us, on the basis of two awards, obtained against the appellants in the two appeals under Rule 22 of the rules framed u/s 43, Co-operative Societies Act (2 of 1912). The judgment-debtors appellants raised certain objections to the execution proceedings and they were substantially of a two-fold character. In the first place, it was argued that in view of the provisions of Section 46, Arbitration Act, it was necessary for the co-operative credit society to get a judgment and decree upon the award u/s 17, Arbitration Act, before it could be enforced as a decree, and as the time for filing the award in Court had already elapsed in accordance with the provisions of Schedule 4 of the Act, the award was altogether unenforceable. The other contention was that the award was not a proper award inasmuch as the arbitrator had not finished the award within four months from the date when he entered on the reference as is necessary under para. 3 of Schedule 1, Arbitration Act.

2. The trial Court gave effect to both these contentions and dismissed the execution proceedings. On appeal, the judgment was reversed, and the judgment-debtors have now come up in second appeals to this Court. Mr. Banerjee who appears in support of the appeals has reiterated both the points which were put forward on behalf of his clients in the Courts below. To decide the points that have been raised in these appeals, it is necessary to advert first of all

to the provisions of Section 46, Arbitration Act. That section extends with certain exceptions, the provisions of the Arbitration Act to what may be called statutory arbitrations unless the rules regulating the latter are inconsistent with those of the Arbitration Act. The section runs as follows:

The provisions of this Act, except Sub-section (1) of Section 6 and Sections 7, 12 and 37 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that other enactment or with any rules made thereunder.

3. Now, Sub-rules (1) to (6) of Rule 22 as framed u/s 43, Co-operative Societies Act, lay down the mode of appointing arbitrators and the entire procedure that is to be followed down to the stage when the award becomes final and conclusive. Sub-rule (2) of the Rule empowers the Registrar to decide the dispute himself or he can appoint an arbitrator for the same purpose. He can also refer it to the arbitration of three persons of whom one shall be nominated by each of the parties and a third by the Registrar himself. The mode of taking evidence and the procedure to be adopted are laid down in sub-rules (3) and (4). Sub-rule (5) gives the aggrieved party a right of appeal against the award of the arbitrator or arbitrators, and the appeal is to be heard by the Registrar himself. In cases, where there is no appeal preferred against the award of the arbitrators and when the appeal has been filed and disposed of, the award shall be deemed to be final and conclusive. Sub-rule (7) then lays down that decisions and awards mentioned in Sub-rule (6) shall, on application to any civil Court having local jurisdiction, be enforceable in the same manner as a decree of such Court.

4. The whole scheme of these provisions is to oust the jurisdiction of the civil Court throughout the arbitration proceedings and the application to the civil Court is necessary only for the purposes of enforcing the award which has been given the same force and effect as the decree of a civil Court. In our opinion, the machinery and the procedure indicated by these provisions are totally inconsistent with the provisions contained in Chap. 2, Arbitration Act. The civil Court has got no jurisdiction to appoint an arbitrator in a proceeding under Rule 22 as framed u/s 43, Co-operative Societies Act, as it can certainly do u/s 8, Arbitration Act, nor can it remove an arbitrator as can be done u/s 11. The whole thing has got to be done -without any intervention of the Court. The Court cannot modify an award as laid down in Section 15, Arbitration Act, nor is there any necessity of filing an award in Court, as is contemplated by Section 14, and we are definitely of opinion that it is not necessary to have a judgment and award as indicated in Section 17, Arbitration Act. If there is no necessity for filing the award, Article 178, Limitation Act, can obviously have no application, and the amended provision regarding limitation as it occurs in Schedule 4, Arbitration Act, is also inapplicable. The first contention raised by the appellants, therefore, fails.

5. The second contention also, in our opinion, has got no substance. Schedule 1, Arbitration Act, lays down all the conditions that are to be implied in all arbitration agreements as defined in the Act unless something to the contrary was expressly provided in the agreement itself. Paragraph 3 of the schedule lays down that the arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. The contention of the learned advocate is that as there was nothing to the contrary indicated in the rules framed u/s 43, Co-operative Societies Act, para. 3 of Schedule 1 would be attracted. Assuming that this argument is correct, we do not think that it would help his clients in the least so far as these two cases are concerned. In one of the cases, the award was made by the arbitrator within three months from the date when the arbitrator was appointed. In the other case it is true that five months had elapsed from the date of the appointment, but we have no materials before us to show as to when the arbitrators did enter on the reference. It goes without saying that an arbitrator cannot be said to enter on the reference the moment that he is appointed an arbitrator. It is necessary that he must actually begin the work in the presence of the parties or with notice to them before he can be said to have entered on the reference. It seems to us further that the provisions of para. 3 of Schedule 1, Arbitration Act, are also inconsistent with those of H. 22 framed u/s 43, Co-operative Societies Act. Paragraph 3 of Schedule 1 contemplates a case where no time limit is fixed by the parties themselves in the arbitration agreement. If no such limit is given, four months are given by the provision of para. 3, but the Court has always the power to extend time.

6. As we have already stated, the Court has got no authority to intervene and cannot do anything whatsoever with regard to the proceedings before the Registrar or the arbitrator under Rule 22 framed u/s 43, Co-operative Societies Act. That being the position, para. 3 of Schedule I, Arbitration Act, in our opinion, is inapplicable to a proceeding for arbitration of a dispute relating to co-operative societies. In deciding these points, we have throughout assumed that Section 46, Arbitration Act, is applicable to arbitration under rules framed u/s 43, Co-operative Societies Act. Upon that question, it is not necessary to pronounce any final opinion for the purpose of these appeals, nor is it necessary for us to decide whether co-operative societies being exclusively a provincial subject, the Central Legislature has got any authority whatsoever to affect any of the provisions of the Co-operative Societies Act. The result, therefore, is that these appeals fail and are dismissed with costs - we assess the hearing fee at one gold mohur in each appeal.

Blank, J.

7. I agree.