

(1970) 02 DEL CK 0021

In the Delhi High Court

Case No : First Appeal No. 102 of 1969

Neelma Stationery Manufacturers and Another

APPELLANT

Vs

The National Small Industries Corporaton Ltd.

RESPONDENT

Date of Decision : 26-02-1970

Acts Referred:

Citation : (1970) 6 DLT 240

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : H.N. Chaudhary and J.P. Chopra, for the Appellant;

Judgement

Om Parkash, J.

(1) This appeal against, an order of the learned Subordinate Judge, 1st Class, has arisen out of an application made by the appellant, u/s 34 of the Arbitration Act for the stay of proceedings in a suit, filed by the respondent for the recovery of Rs. 10489. 33 as arrears of hire rent etc. in respect of the machines delivered to the appellant on the basis of a hire purchase agreement. The learned Subordinate Judge, who was trying the suit, has dismissed the application on the "round that the application did not even contain the allegation that the appellant was ready and willing to do all things necessary for the conduct of the arbitration, which was a condition precedent for the exercise of the discretion of the Court to stay proceedings.

(2) The learned counsel for the appellant has contended that the order of the learned Subordinate Judge was erroneous inasmuch as it was not necessary for the appellant to make an allegation in the application that he was ready and willing to do all things necessary for the proper conduct of the arbitration. The learned counsel placed reliance on Sansar Chind v. State of M. P.I He invited attention to the follow- ing observations made in the case :-

" IT was also urged on behalf of the appellant that to take advantage of the provisions of Section 34 of the Act the defendants should have shown that they

were ready and willing to have the matter decided by arbitration and they have failed to do so in the instant case. The point raised is without any substance. The defendants in their reply dated 8th September, 1959, have clearly drawn the attention of the Court to the subsistence of the arbitration agreement and further have pointed out that that was the correct remedy for the plaintiff to follow. It is implicit on the objection raised that they were "prepared to have the dispute decided by arbitration".

(3) The learned counsel for the respondent on the other hand, cited *Punjab State vs. Soni Construction Co Middle East Trading Co. vs The New National Mill's Ltd. and NC. Padma nabhan and others vs. S. Srinivasan*. In the last authority, it was observed :-

"A party who invokes S. 34 must specifically allege that he was not only, at the commencement of the suit quite ready and willing to have the dispute resolved by arbitration proceedings but that he is throughout ready and willing for such arbitration and do every thing necessary for the proper and successful conduct of the arbitration proceeding. The readiness and willingness to do every thing necessary for the proper conduct of the arbitration proceeding lines should cover the entire period both before the commencement of the suit and thereafter. The readiness of the defendant should not be a matter of implication but there should be a clear unambiguous and specific averment to that effect in an affidavit filed by them applicant for the stay of the suit. In the Bombay authority it was said that it is necessary for the defendant to ask for stay of the suit u/s 34 of the Arbitration Act that he should specify not only that he is but also was at the commencement of the proceeding ready and willing to do everything necessary for the proper conduct of arbitration. In the Punjab authority *Punjab State v. Soni Construction Co.* the Subordinate Judge had stayed the proceedings u/s 34, Arbitration Act, in a suit, though there was no averment that the defendant was ready and willing at the time when the proceeding was commenced until the time of the making of application u/s 34 of the Arbitration Act to do all things necessary for the proper conduct of the arbitration. On appeal, the Senior Subordinate Judge had reversed the finding. On revision to the High Court, it was observed :- "The only question that remains to be decided is as to what is the effect of the defendant not having even averred in his application on the point mentioned above. I am further informed by the learned counsel for the defendant that no affidavit to that effect was filed and no witness was examined by the defendant in section 34 proceedings. There was, therefore, material whatever before the Court below on which it could possibly be satisfied about the State fulfilling this necessary condition precedent for the stay of proceedings u/s 34 of the Act." - The learned Judge finally observed : "In view of this state of law it cannot be disputed that in order to have jurisdiction to exercise the discretion vested in the court u/s 34 of the Act to stay a suit it is one of the conditions precedent for the court concerned to be satisfied that the applicant for stay was at the time when the proceedings were commenced and continued till filing of the application to be ready and willing to do all things necessary to the proper

conduct of the arbitration."

(4) I am in respectful agreement with the above observations.

(5) The question, Therefore, which requires decision is whether there is any material on record on which the court could have come to the conclusion that the appellant was, and is ready and willing to do all things necessary for the proper conduct of the arbitration. There is no averment in the application, filed by the appellant, u/s 34 of the Arbitration Act, that the appellant was ready and willing to do all things necessary for the conduct of the arbitration. Neither the affidavit filed in support of the application contains any such averment. The issue with respect to the stay of the suit was framed on the 9th April, 1969. The case was adjourned to the 22nd August, 1969 for the evidence of the parties. The appellant did not produce any evidence. Thus, there is no material on record, on which the Court could have been satisfied that the appellant fulfilled the condition precedent for the stay of the suit. The learned subordinate Judge did not err in dismissing the application of the appellant.

(6) So far as the case, Sansar Chand v State of M. P. cited by the learned counsel for the appellant, is concerned it is not clear from the report of the case that whether or not there was material on record showing that the defendant was ready and willing to do all things necessary for the conduct of arbitration.

(7) The conclusion from the above discussion is that the appeal fails and is dismissed with costs. The order of the learned Subordinate judge is maintained, though for slightly different reasons.