

(1961) 03 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 692 of 1960

Nyalchand Gulabchand Weaving Factory

APPELLANT

Vs

Himatlal Rameshchandra

RESPONDENT

Date of Decision : 24-03-1961

Acts Referred:

Arbitration Act, 1940 — Section 15, 16, 17, 41

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 11, 151

Citation : AIR 1962 Bom 40 : (1961) 63 BOMLR 655 : (1962) ILR (Bom) 70

Hon'ble Judges : Patel, J

Bench : Single Bench

Advocate : B.J. Kapadia and D.H. Jhaveri, for the Appellant; M.C. Shah, instructed by M/s. Chimanlal Shah and Co. Attorneys, for the Respondent

Judgement

(1) This is an application in revision against an order in an arbitration proceeding before the City Civil Court after the filing of the award.

(2) It appears that there were business dealings between the petitioner and the opponent and the disputes between the parties were referred to arbitration of two arbitrators. The arbitrators made an award directing that the petitioner should pay an amount of Rs. 24,150/- in cash by 31st May 1960 in one or two instalments. At the time when the notice of motion was taken out for making a decree in terms of the award, the petitioner made an application that the amount decreed by the award should be made payable by instalments of Rs. 500/- per month. The learned Judge dismissed the notice saying that he had no jurisdiction to grant instalments by interfering with the award made by the arbitrators.

(3) Mr. Kapadia on behalf of the petitioner argued that the Court has power under O. 20, R. 11 and Section 151 of the CPC to grant instalments while making a decree in terms of the award. He relied upon the decision in the case of Biswanath Ghose and Others Vs. Sudhir Kumar De, .

(4) Section 41 of the Arbitration Act provides that:

"Subject to the provisions of this Act and the rules made thereunder the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals under this Act."

If O. 20, R. 11 applies then necessarily the Court will have the power contended for. The application, however, of O. 20 of the CPC would be subject to the provisions of the Act itself.

(5) u/s 15, the Court is given a very limited power to modify or correct an award (a) where award is upon a part not referred to and such portion can be separated from the portion referred and does not affect the decision on the matter referred; (b) where it is imperfect in form and contains an obvious error which can be amended without affecting the decision; (c) where there is a clerical error or an accidental slip or omission. Section 16 gives power to remit the award under certain circumstances. Section 17 makes a consequential provision since it provides that if the Court sees no cause to remit the award or set it aside it shall proceed to pronounce judgment according to the award and a decree shall follow.

(6) These three sections show that the power of the Court in respect of an award is very limited and no power is given to it to interfere with the award made by the arbitrators. The purpose of arbitration is to substitute a private forum of the choice of the parties in place of a Court of law. Interference with the decision of the private forum could only be to the extent to which it is allowed by law and no more. Sections 15, 16 and 17 of the Arbitration Act give a very limited power of interfering with the decision of the arbitrator. Section 34 of the CPC enables the Court to award interest when making a decree and yet the Legislature found it necessary to make provision for awarding interest by Section 29 of the Act. While making an order of instalments if it can be said that the Court is not interfering with the decision of the arbitrator then only the Court will have power to award instalments. The crucial question then is, when an order of instalments is made does it amount to interfere with the award.

(7) One cannot say what circumstances weigh with an arbitrator when he makes an award. In this case he has directed the payment by or before 31st May 1960. Prompt payment may be responsible for his probably not even awarding the full amount to which the plaintiff may have been entitled inasmuch as an arbitrator has greater freedom than the Court while deciding the dispute between the parties. While considering, therefore, the question at issue, the Court has to bear in mind this fact.

(8) Taking the present case, the arbitrators have directed that the amount in question must be paid in one or two instalments by the 31st May 1959. The decree directing instalments to be paid at the rate of Rs. 500/- per month would amount to substituting the original order by an order directing the amount to be paid in about six years time. It is true interest can be awarded. Even so I find it extremely difficult to hold that changing the award in such a radical form will not amount to a modification of the award which can only be done under the limited

circumstances mentioned under S. 15 of the Arbitration Act. It is not contended- and rightly so - that relief asked for cannot be claimed u/s 15 of the Act.

(9) It appears to me that the provisions of O. 20 R. 11 cannot apply to an arbitration proceeding for the obvious reason that such modification is not within the purview of Section 15 of the Act. In the case referred to, the learned Judges with respect have not even referred to Section 15 of the Arbitration Act. For the reasons stated above I find it difficult to agree with the ratio of the case. I am, therefore, of the view that the learned Judge was perfectly justified in holding that he had no jurisdiction to award instalments.

(10) Even if it were possible to hold that the Court has jurisdiction to award instalments, this is not a case where instalments could have been granted. The petitioner's application to the learned Judge is as vague as it can be. Except a vague recital in the petition that he is not able to pay the amount directed to be paid by the award, there is nothing from which the Court can judge the capacity of the petitioner to pay and the manner of payment. The petitioner does not disclose what is the total volume of his business, and what his profit is. He does not mention what other debts he has got. There are no sufficient allegations in the application which can form an inquiry into the capacity of the petitioner to pay the amount by instalments.

(11) Mr. Kapadia says that if necessary his client is prepared to file a further affidavit of particulars and an opportunity should be given to his client to prove his allegations. It is too late to permit the petitioner to go on amending his case from stage after stage. The debt in question is a business debt and to allow amendment would be doing injustice. The result is that the rule is discharged with costs.

(12) Rule discharged.