
(2005) 09 PAT CK 0083

In the Patna High Court

Case No : Miscellaneous Appeal No. 196 of 2004

Pandey and Co. Builders Pvt. Limited

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 21-09-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16(3), 17, 2(1), 2(3), 37(2)
Civil Procedure Code, 1908 (CPC) — Section 15

Citation : (2006) 1 ARBLR 429 : (2006) 3 BLJR 2219 : (2005) 4 PLJR 385

Hon'ble Judges : Shashank Kumar Singh, J; Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : Nand Kishore Singh, for the Appellant; Lalit Kishore, AAG and Asha Kumari, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad, J.—This miscellaneous appeal is directed against the order dated 21.5.2004 passed by the sole arbitrator appointed by the nominee of the Hon'ble the Chief, Justice whereby he declined to proceed with the arbitral proceeding.

2. Appellant filed application for appointment of an arbitrator before Hon'ble the Chief Justice under the provision of the Arbitration and Conciliation Act, 1996 which was registered as Request Case No. 28 of 2002. The nominee of the Chief Justice by order dated 31.1.2003 appointed a retired Judge of this Court to be the sole arbitrator. Respondents took an objection before him that in view of the earlier award, he cannot proceed with the arbitral proceeding. The sole arbitrator accepted the plea of the respondents by order dated 21.5.2004 and observed that in view of the earlier award he has no jurisdiction to continue with the arbitral proceeding. Relevant portion of the order reads as follows :

Thus, on a careful consideration of the submission made on behalf of the parties and after going through the papers filed by them, I hold that I have no jurisdiction to continue with this proceedings for the reasons, mentioned above.

3. Aggrieved by the same appellant has preferred this appeal u/s 37(2)(a) of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the Act.

4. Mr. Lalit Kishore, Additional Advocate General raises a preliminary objection in regard to the maintainability of this appeal. He points out that appeal against the order of the arbitral tribunal lies before a Court u/s 37(2)(a) of the Act and the expression "Court" would obviously mean Civil Court of original Jurisdiction.

5. Mr. Singh appearing on behalf of the appellant, however, contends that the Court would also include the High Court, which exercises original jurisdiction and remedy of appeal is available to the appellant u/s 37(2)(a) of the Act.

6. It is well settled that remedy of appeal and its forum is creature of the statute and one can avail the remedy of appeal when provided by the statute and in case remedy of appeal is available, it has to resort to the forum provided under the statute. In view of this settled legal position one is required to examine the scheme of the Act as to whether it provides for remedy of appeal and if so the forum thereof.

7. In fairness to Mr. Kishore, he does not dispute that the remedy of appeal is available, but his plea is that the forum of the said remedy is not the High Court where the appellant has chosen to file the appeal.

8. Section 37(2)(a) provides for remedy of appeal from an order of the Arbitral Tribunal accepting the plea referred to in Sub-section (2) or Sub-section (3) of Section 16 or granting or refusing to grant an interim measure u/s 17 of the Act. Same reads as follows :

37. Appealable orders-(1) :

xxx xxx (2) An appeal shall also lie to a Court from an order of the Arbitral Tribunal-

(a) accepting the plea referred to in Sub-section (2) or Sub-section (3) of Section 16 : or

(b) granting or refusing to grant an interim measure u/s 17.

(3) xxx xxx (underlining mine)

9. From a plain reading of the aforesaid provision, it is evident that from certain orders of the Arbitral Tribunal, appeal shall lie to a Court. The word "Court" has been defined u/s 2(1)(e) of the Act as follows :

2. Definitions.-(1) :

XXX XXX (e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-mater of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court or

any Court of Small Causes.

10. In view of the specific definition of the word "Court" in Section 2(3) of the Act, the remedy of appeal before the Court as provided u/s 37(2) of the Act has to be read to mean, the Court as defined u/s 2(e) of the Act. According to the said definition, the Court would mean the principal Civil Court of original jurisdiction in district and includes the High Court which exercises the original civil jurisdiction. The question is as to whether the High Court of judicature at Patna exercises ordinary original civil jurisdiction and could have entertained the suit had the subject matter of arbitration been the subject matter of a suit.

11. The answer to the aforesaid question is emphatic no Chapter II of Bengal, Agra and Assam Civil Courts Act, 1857 deals with constitution of Courts and Section 3 thereof provides for classes of Courts. Same reads as follows :

3. Classes of Courts.-There shall be the following classes of Civil Courts under this Act, namely :-

- (1) the Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.

Chapter III of the Bengal, Agra and Assam Civil Court relates to ordinary jurisdiction of the civil and Section 18 thereof provides for extent of original jurisdiction of District or Subordinate Judge. Same reads as follows :

18. Extent of original jurisdiction of District or Subordinate Judge.-Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of Section 15 of the Code of Civil Procedure, 1908 to all original suits for the time being cognizable by Civil Courts.

12. The rules framed by the High Court do not authorise this Court to entertain suits as a Court of original jurisdiction excepting few matters in which the Court exercises original civil jurisdiction.

13. Thus, the Bengal, Agra and Assam Civil Courts Act does not make the High Court of judicature at Patna as one of the classes of the Civil Court and further does not vest original jurisdiction to this Court.

14. Further no rule has been brought to our notice to show that "the question forming the subject matter of the arbitration could have been entertained by this Court had it been the subject matter of the suit. A learned Single Judge of this Court had the occasion to consider this question in somewhat different context in the case of Industrial Investment Bank of India and Another Vs. Magadh Spun Pipe Ltd. and Others, wherein paragraph 10, it has been observed as follows :

Then the question comes in, if it is not a company petition then this Court under the Patna High Court Rules, having no original jurisdiction except for specific purpose like that of Indian Succession Act etc. no such petition can be maintained under the original jurisdiction.

15. Accordingly, I am of the opinion that this Court being not a Court of ordinary original civil jurisdiction to entertain the suit had the subject matter of the arbitration being the subject matter of the suit, the appeal is not maintainable.

16. Accordingly, I sustain the preliminary objection raised by Mr. Lalit Kishore. Appellant, if so desire may take recourse to the remedy available to it before the competent forum.

17. In the result, the appeal stands dismissed as not maintainable with cost to be paid by the appellant to the respondents, which I assess at Rs. 5,000/- (five thousand).

Shashank Kumar Singh, J.

18. I agree.