
(1996) 10 KAR CK 0049
In the Karnataka High Court
Case No : MFA No. 660 of 1997

Parasmal S. Jain

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 24-10-1996

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1997) ILR (Kar) 830 : (1997) 1 KarLJ 18

Hon'ble Judges : M.B. Vishwanath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.S. Vishwanath, J.—The Learned High Court Government Pleader is directed to take notice for respondent No. 1. Accordingly, she takes notice.

2. Heard the Learned Counsel for the appellant and the Learned Government Pleader.

3. In this appeal, the appellant-plaintiff has challenged the order dated 21.1.1987 passed by the Learned Civil Judge, Gadag, on I.A.No. II filed u/s 34 of the Arbitration Act staying the suit in O.S.No. 71/1986 and allowing I.A.II.

4. The appellant-plaintiff filed the suit against the 1st defendant -Deputy Commissioner, 2nd defendant - Chairman, Karnataka Food and Civil Supplies Corporation and the third defendant - M/s. D. Ganesh Shankar Naushad, Bangalore, claiming Rs. 86,000/-.

5. The plaintiff's case is that on account of illegal locking of the godown the plaintiff was made to unnecessarily pay Rs. 8000/-towards rent. His further case is that 113 barrels of oil were taken into custody illegally. He has incurred a loss of Rs. 36,160/- in this regard. The plaintiffs has further claimed the cost of 113 barrels, which amounts to Rs. 22,500/-. He has also claimed Rs. 20,000/- towards the loss of reputation, business and mental agony.

6. In this Court, respondent-Deputy Commissioner was not represented. The Learned Government Pleader was directed to take notice and accordingly, she took notice. The second respondent-defendant No. 2 was served but absent. It is seen from the order sheet dated 10.2.1988 this Court directed the appellant to take out notice to the Counsel appearing for the parties in the Court below. The Counsel appearing for the 3rd respondent-defendant No. 3 has been served with notice but he has not appeared before this Court.

7. The Learned Counsel for the appellant submits that after she appeared she again took out notice to the Counsel for the 3rd respondent - 3rd defendant and the 3rd respondent's counsel was again served but has not chosen to appear before this Court. What happened in the lower Court was that after service of suit summons to 3rd respondent-defendant No. 3 he appeared before the Court and filed his own affidavit along with I.A.II u/s 34 of the Arbitration Act.

8. The Learned Civil Judge as I have already stated, allowed I.A.II u/s 34 of the Arbitration Act and stayed the suit.

9. The Learned Counsel for the appellant took me through the affidavit in support of I.A.II u/s 34 of the Arbitration Act. Nowhere in the affidavit has the 3rd defendant stated that he was ready and willing at the commencement of the proceedings and is still willing to do all things necessary for the proper conduct of arbitration proceedings.

10. The law in this regard has been laid down in Food Corporation of India Vs. Kishan Lal Agarwal, , and in Middle East Trading Co. Vs. The New National Mills Ltd., . It has been laid down by the Bombay High Court that where the defendant asks for the stay of suit u/s 34, it is incumbent on him to aver all the requirements of the Section which are necessary in order to obtain stay of the suit. It is also necessary that he should satisfy not only that he is but also was at the commencement of the proceedings ready and willing to do everything necessary for the proper conduct of the arbitration. This is also the view taken by the Allahabad High Court.

11. I agree with the view taken by the Bombay High Court and also Allahabad High Court. The Learned Civil Judge has failed to notice that one of the relevant averments has not been made by the 3rd respondent-defendant No. 3 between whom and the appellant-plaintiff there was agreement to refer the dispute for arbitration.

12. The reasoning of the Learned Civil Judge that on the very day the 3rd defendant put in appearance, he filed I.A.II and this shows that he is ready and willing to abide by Clause 31 of the agreement cannot be sustained.

13. For the aforesaid reasons, the appeal is allowed and the impugned order passed by the Learned Civil Judge dated 21.1.1987 is set aside and he is directed to proceed with the suit in accordance with law.

14. The Learned High Court Government Pleader is permitted to file memo of

appearance within four weeks.