

(1964) 01 PAT CK 0027
In the Patna High Court
Case No : A.F.O.O. No. 198 of 1960

Raghunandan Sao and Others

APPELLANT

Vs

Narain Sao and Others

RESPONDENT

Date of Decision : 09-01-1964

Acts Referred:

Arbitration Act, 1940 — Section 31, 32, 34, 39

Citation : AIR 1964 Patna 542

Hon'ble Judges : U.N. Sinha, J;S.P. Singh, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh and Krishna Nandan Prasad Singh, for the Appellant; Lalnarain Sinha, Govt. Advocate, Thakur Prasad and Tara Kumar Das, for the Respondent

Judgement

U. N. Sinha, J

1. This appeal has been filed by the plaintiffs u/s 39 of the Indian Arbitration Act, challenging an order dated the 7th of April, 1960, passed In Title Partition Suit No. 46 of 1959, filed by the plaintiffs against the defendants. By the impugned order, the learned Subordinate Judge has stayed the hearing of the suit until an award is filed by the arbitrators appointed under a deed of agreement, dated the 22nd of September, 1957.

2. The relevant facts are these : The plaintiffs have filed the suit in question for a partition of the properties, mentioned in Schedules 1 to 4 of the plaint as joint family properties of the plaintiffs and the defendants. It has been mentioned in the plaint that oft the 22nd of September, 1957, a document had been brought into existence by duping some of the plaintiffs, which document was not a genuine document, but was fabricated and void. The document purported to be an agreement appointing some arbitrators, which was compulsorily registered, In spite of objections made by the plaintiffs Nos. 1 to 5. According to the plaintiffs, they were not bound by the alleged deed of agreement.

During the course of the proceedings in Court, the defendants filed a petition on the 12th of February, 1960, under Sections 31, 32 and 34 of the Indian Arbitration Act. It was mentioned therein that an arbitration agreement dated the 22nd of September, 1957, had been executed by plaintiffs Nos. 1 to 5 and defendants Nos. 1 to 6, appointing certain arbitrators to settle the dispute between the parties, which agreement was later on registered. It was alleged that the present suit had been filed by the plaintiffs dishonestly, for a declaration that the agreement was void and was not binding on the plaintiffs. It was contended that the Court had no jurisdiction to entertain the suit, in view of the said arbitration agreement. It was mentioned that it was necessary, in the ends of justice, that the question of jurisdiction of the Court and of the maintainability of the suit should, first, be decided before the defendants are called upon to file a written statement. It was prayed that the suit may be stayed in the meantime. A rejoinder to the defendants' petition was filed by the plaintiffs on the 1st of March, 1960.

3. On hearing the parties, the learned Subordinate Judge has, as indicated earlier, stayed the hearing of the suit, until an award is filed by the arbitrators, pursuant to the deed of agreement dated the, 22nd of September, 1957.

4. Learned counsel for the appellants has contended that the defendants could not have applied u/s 34 of the Indian Arbitration Act, after taking various steps in the suit, in the year 1959, as is indicated by the order-sheet of the case. Our attention has been drawn in this connection to the orders passed by the learned Subordinate Judge on the 3rd of July, 1959, 6th of July, 1959, 7th of July, 1959 and 8th of July, 1959. Our attention has further been drawn to an order dated the 13th of July, 1959, in which it is mentioned that defendant No. 2 filed a petition in Court, stating that he was representing all other defendants and that for all practical purposes, defendant No. 2 was managing the business of the defendants. Reference is also made to an order dated the 11th of November, 1959, in which it is mentioned that the defendant, meaning defendant No. 2, applied for time to file written statement.

From these orders it is contended by learned counsel for the appellants that after taking steps in the proceedings, the defendants were disqualified from applying u/s 34 of the Indian Arbitration Act for stay of proceedings. It is further argued that in any event, the order passed by the learned Subordinate Judge is wrong on merits, as nothing has been stated as to the reasons for staying the proceedings, except that it was for the ends of justice. It is contended that even according to the learned Judge, after the award is filed, pursuant to the agreement dated the 22nd of September, 1957, all the matters in controversy would be considered again in this suit itself. It is, therefore, argued that ends of justice require that this suit should proceed on its own merits, especially when the plaintiffs have challenged the alleged arbitration agreement as collusive, void and not binding on the plaintiffs.

Learned counsel for the defendants has, on the other hand, argued that Sections

31, 32 and 34 of the Indian Arbitration Act, under which the petition was filed by the defendants in the Court below, did not really apply, and the learned Subordinate Judge has passed his order of stay of the suit under his inherent powers for the ends of justice, and an appeal u/s 39 of the Arbitration Act does not lie. It is argued also that in any event, when the Court has stayed the suit for ends of justice this Court should not interfere.

I will consider the case, first, in the light of the application that was, in fact, filed by the defendants under Sections 31, 32 and 34 of the Arbitration Act. If at all, only Section 34 of the Act could have applied to the facts and circumstances of the case, and it is quite clear, under the provision of Section 34 of the Act, that it was too late for the defendants to apply for a stay of proceedings under that section. In Section 34 of the Act it is laid down that a party can apply for stay of proceedings, at any time before filing a written statement, or taking other steps in the proceedings. It is clear from the orders of the year 1959, mentioned above, that defendant No. 2 had taken various steps in the proceedings, representing the entire family of the defendants. It was, therefore, too late in the day for the defendants to come to Court on the 12th of February, 1960, and ask for stay of proceedings.

Furthermore, it appears that the scope of the application filed on the 12th of February, 1960, was also somewhat different. The defendants actually prayed that the suit may be stayed until the questions of maintainability of the suit and the jurisdiction of the Court were decided by the trial Court. But the learned Subordinate Judge has not stayed the suit merely for the purpose of deciding the maintainability of the suit and the jurisdiction of the Court to entertain it. The learned Judge has stayed the suit until the arbitrators have filed their award upon the arbitration agreement dated the 22nd of September, 1957.

It has been further ordered that after the award is filed, the questions whether the parties are joint or separate or whether there was previous partition or not, would be considered in the suit itself. The learned Judge has specifically held that the objections regarding validity of the arbitration agreement or insertion of some fraudulent recitals in the deed of agreement were premature for decision at this stage. It is clear, therefore, that the order of stay passed by the learned Subordinate Judge was not also in accordance with the actual prayer that was made by the defendants.

Moreover, the learned Subordinate judge has not indicated the reasons for which he considered that justice required a stay. The expression utilised, "that a stay was necessary for the ends of justice", does not give any indication as to what factors were in the mind of the learned Subordinate Judge for a conclusion that justice to the parties required a stay of the proceedings in the suit. In my opinion, the order passed by the learned Subordinate Judge should, therefore, be set aside.

Even if it be assumed that the application filed by the defendants did not fall

within the purview of Sections 31, 32 and 34 of the Arbitration Act, and that the order actually passed by the learned Subordinate Judge was passed under his inherent powers, this Court can still interfere u/s 115 of the Code of Civil Procedure. Therefore, the preliminary objection to the effect that the appeal is not maintainable, and an argument that no interference is called for in any event, must fail. I am of the opinion that on the facts and circumstances of this case, ends of justice between the parties would be met by proceeding with the trial of the suit to its conclusion upon the allegations made by the plaintiffs and the counter allegations of the defendants. The plaintiffs have challenged the deed of agreement dated the 22nd of September, 1957, and the defendants have relied upon it. If this matter is to be ultimately decided in this very suit, then this suit should proceed for a final adjudication of all the controversies raised by the parties. It must, however, be clarified that this Court is not expressing its opinion either way as to the validity of the contentions raised by the parties in their pleadings with respect to the deed of agreement dated the 22nd of September, 1957. No observation of this Court should be taken as conclusive for the determination of the suit itself.

5. For the reasons given above, the judgment and order passed by the learned Subordinate Judge is set aside and it is directed that the suit should now be taken up for hearing as expeditiously as possible from the stage at which it was pending on the 7th of April, 1960. There will be no order for costs of this Court,

S.P. Singh, J.

6. I agree.