
(1996) 07 DEL CK 0021
In the Delhi High Court
Case No : F.A.O. (OS) No. 149 of 1996

Rajender Prasad Sharma

APPELLANT

Vs

Ashok Kumar Sharma and others

RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Citation : (1996) 07 DEL CK 0021

Hon'ble Judges : S.N. Kapoor, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : Sh. Ravi Gupta, for the Appellant; Sh. Rakesh Tikku, for the Respondent

Judgement

S.N. Kapoor, J.—It is pointed out by the learned counsel for the appellant as also by the respondent No. 2 appearing in person that on 11.7.1996, there was an inadvertent error in recording the proceedings, inasmuch as Mr. Rakesh Tikku is representing the appellant and not the respondent and it was respondent No. 2 who was present in person on that date. That statement is taken on record.

Admit.

Heard finally.

2. The plaintiff/appellant filed an application under Sections 14 and 17 of the Arbitration Act, 1940 for making the award a rule of the court. Objections under Sections 30 and 33 of the "Arbitration Act" were filed by one Suresh Kumar. The objection petition was registered as is 2366/89. As the objection petition was not filed within the time prescribed, an application u/s 5 of the Limitation Act registered as is 2365/89 was also filed. After the filing of these applications, the matter was posted for hearing but was adjourned on a few dates.

3. It appears that Suresh Kumar died on 18.4.1994. The appellant moved an application under Order XXII Rule 4 CPC for bringing the LRs. on record. After moving of the application the appellant sought permission to withdraw the

application, which was allowed. The appellant then filed an application under Order XXII Rule 4(4) of the CPC registered as is 302/96 seeking exemption from the necessity of bringing on record the legal representatives of Suresh Kumar. By the impugned order the court has declined the exemption and rejected the application.

4. It is submitted by the learned counsel for the appellant that the learned Single Judge has committed a serious error of law in not granting the exemption though the grounds for permitting such exemption were made out. It is submitted that the objection petition filed by Suresh Kumar was barred by time and it was for Suresh Kumar or his legal representatives to have pressed for decision of the application u/s 5 of the Limitation Act which if not done, there was no objection petition in the eye of law before the court and further as Suresh Kumar had not appeared in the court after October, 1991, the court should have granted the exemption.

5. We are not impressed by the submissions made by the learned counsel for the appellant. Looking to the scheme of the Arbitration Act, it cannot be said that if no objection is filed under Sections 30 and 33 of the Arbitration Act then u/s 17 of the Act, it is merely a mechanical order that remains to be passed by the court : or in other words, till the expiry of limitation for filing the objections against the award, if there are no objections preferred, a decree has to necessarily follow without any application of mind by the court on the prayer under Sections 14 and 17 of the Arbitration Act.

6. On a plain reading of Section 17 of the Arbitration Act, it is clear that whether there be any objections preferred or not before passing the judgment in terms of the award followed by decree, the court has to apply its judicial mind and arrive at a finding that it has been no cause to remit the whole or any of the matters referred to arbitration for reconsideration or to set aside the award. Without burdening this order with the authorities we are very clear in our mind that there may be cases where inspite of no objections having been preferred under Sections 30 and 33 of the Arbitration Act, the court may be inclined to set aside award or to remit the same or to refuse to pronounce a judgment in terms of the award.

7. A person who moves an application under Sections 14 and 17 of the Arbitration Act occupies the position of the plaintiff in the suit. Procedural provisions of the CPC are applicable to proceedings under the Arbitration Act pending before the court by virtue of the provisions contained in Section 41(a) of the Arbitration Act. It was for the petitioner to have moved an appropriate application under Order XXII Rule 4 CPC. It was not for the LRs. of the deceased objector to have taken steps themselves for coming on record despite the failure of the plaintiff to do so. Needless to say the court could not have pronounced a judgment based on an award if the party against whom the judgment was sought to be pronounced, followed by decree, was already dead.

8. In view of the above, we find no error having been committed by the learned Single Judge in refusing to grant exemption under Order XXII Rule 4(4) CPC in the terms sought for in the application. We find the appeal wholly devoid of any merit and liable to be dismissed. It is dismissed accordingly. The appellant shall pay Rs. 1,000/- as costs to the State Legal Services Authority.

9. Appeal dismissed.