
(1955) 08 MAD CK 0013
In the Madras High Court
Case No : O.S. Appeal No 95 of 1955

Rallis India Ltd.

APPELLANT

Vs

B.V. Manickam Chetti and Co. and another

RESPONDENT

Date of Decision : 25-08-1955

Acts Referred:

Arbitration Act, 1940 — Section 19, 20, 34

Citation : AIR 1956 Mad 369 : AIR 1955 Mad 369

Hon'ble Judges : Rajamannar, C.J.; Panchapakesa Ayer, J

Bench : Division Bench

Advocate : R. Narasimchariar and N. Varadarajan, for the Appellant; G.N. Chary, for the Respondent

Final Decision : Allowed

Judgement

Rajamannar, C.J.—The parties to this appeal entered into three contracts in respect of purchase and sale of groundnut expeller oil cake

each of which contract contained a clause that in the event of any dispute arising out of the said contracts including the construction or fulfillment of

the same, such disputes shall be settled by arbitration by and under the rules of the Madras Chamber of Commerce.

Disputes did arise between the parties and the arbitration clause was invoked. The Madras Chamber of Commerce thereupon entered on their

duties as arbitrators. The arbitration was entrusted to one of their members. The hearing appears to have been posted to 9-3-1953, when the

respondents' counsel was absent and a request was made for adjournment on that ground. The arbitrator finding that the time for submission of the

award was fast approaching wanted to know from the parties whether they would agree for an extension of time.

Eventually the appellant before us agreed to such extension, but not the respondents. Thereupon, the arbitrator went on with the proceeding

without the respondents and passed an award. This award was set aside on an application made by the respondents by Chandra Reddy J. on 3-

12-1953. The two grounds on which he set aside the award were (1) that the arbitrator had made the award without passing any order on the

respondents' application for adjournment and without intimating to them that he proposed to proceed with the reference, and (2) that the

respondents were not furnished with a copy of the rejoinder, which had been filed by the appellant.

Though the learned Judge set aside the award, he did not proceed to make any consequential order superseding the reference, which he could

have done under S. 19, Arbitration Act. The appellant then filed an application to this Court under S. 20, Arbitration Act praying that this Court

might be pleased to order that the agreements be filed and make an order of reference to the arbitrator or arbitrators to be appointed by the

Madras Chamber of Commerce in accordance with the Arbitration rules of the Madras Chamber of Commerce.

This application was opposed by the respondents on two grounds; (1) that the result of the prior proceedings, which culminated in the setting aside

of the award by Chandra Reddi J. put an end as it were to the arbitration reference and (2) that the arbitration agreements were not binding on the

respondent firm because the agreements had not been signed by both the partners of the firm. At the end of the counter-affidavit filed by the

respondents it was stated that in any view of the matter, S. 20 of the Act could not be applied to the circumstances of the case.

It was not specified, however, what those circumstances were which prevented the application of S. 20. The application came on for disposal

before Ramaswami J. who dismissed it. He did not agree with the contention of the respondents, that the application was not maintainable because

of the prior proceedings and because the award had been set aside by this Court before. The learned Judge held that the arbitration agreements

must be deemed to be subsisting and that, therefore, the application itself was maintainable unless the apposite party showed sufficient cause why

the agreement should not be filed and an order of reference made to the arbitrator.

The learned Judge was of the opinion that there were three circumstances in the case, which constituted sufficient cause, namely, (1) that the

arbitrator had misconduct the proceedings and this agency had lost the confidence of one of the parties and it would therefore be inequitable to

compel that party to submit to arbitration by the Madras Chamber of Commerce; (2) that a suit had actually been filed and no application under S.

34, Arbitration Act had been made for stay of the suit, and (3) that further arbitration proceedings would only mean further loss of time and

dissatisfaction and further proceedings to get that award set aside.

It was conceded by learned counsel for the respondents that the second of the grounds is based upon a misapprehension. We understand that an

application under S. 34 of the Act has been made and is pending. There remain grounds (1) and (3). Ground (3) can be easily disposed of,

because that is a ground which can be urged against arbitration of any kind and in any case.

We cannot start with the assumption that every award must necessarily be followed by proceedings to have it set aside. We will not be justified in

refusing to enforce an agreement between parties to a contract to refer disputes arising under that contract to arbitration, simply because of the

possibility of an application to set aside the award.

2. We do not think there is anything in the first ground either. There was no allegation in the counter-affidavit filed by the respondents charging the

arbitrator with any misconduct, nor was there any allegation that they had lost their confidence in the arbitrator, or in the Chamber of Commerce.

In the absence of such allegation, the respondents should not have been permitted to urge an objection on that ground.

We are unable to see how the arbitrator can be held to have been guilty of any misconduct, which is likely to have affected adversely the

confidence of the respondents. In respect of this matter we should not be guided simply by the meaning attached to the word "misconduct" as a

ground for setting aside an award. There are categories of legal misconduct, which do not reflect in any manner on the integrity or impartiality of the

arbitrator. There was no suggestion of any bias or partiality on the part of the arbitrator.

Chandra Reddy J. only found that the award was technically bad, because there

was no express order refusing the adjournment prayed for and also that the respondents had not been apprised of the fact that the arbitration proceedings would go on. In our opinion there was no material before the learned Judge to come to the conclusion that one of the parties had lost confidence in the Chamber of Commerce, or the arbitrator appointed by them.,

3. Mr. Chari, learned counsel for the respondents, pressed upon a contention which does not appear to have been raised in their counter-affidavit, or before the learned Judge, Ramaswami J. namely, that S. 20, Arbitration Act would have no application because proceedings had already been taken by the appellant under Chap. II.

We must confess that we have not been able to follow the argument of Mr. Chari. If it meant that because Chandra Reddi J. once before set aside the award, therefore the parties could no longer resort to the arbitration clause, then we cannot accept the argument. So long as the learned Judge did not supersede the arbitration agreement, which he could have done, it must be presumed that the arbitration agreement is subsisting.

We are unable to see what other proceedings had already been taken by the appellant under Chap. II which would preclude him from applying under S. 20 of the Act. A decision of the Lahore High Court in - AIR 1928 170 (Lahore) cited to us has no bearing whatever on the facts of this case.

4. The appeal is allowed and the order of the learned Judge dismissing the application made by the appellant is set aside. The application is here by remanded to the learned Judge in Chambers, who will dispose of it finally. The respondents will pay the appellant the costs of this appeal.