
(1961) 11 MAD CK 0016
In the Madras High Court
Case No : A.A.O. No. 213 of 1960

Rallis India Ltd.

APPELLANT

Vs

B.V. Manickam Chetti and Co., Madras and Another

RESPONDENT

Date of Decision : 16-11-1961

Acts Referred:

Arbitration Act, 1940 — Section 13, 16(3), 19, 20, 30

Citation : AIR 1962 Mad 351 : (1962) 75 LW 216

Hon'ble Judges : Ramachandra Iyer, C.J.; Siunivasan, J

Bench : Division Bench

Judgement

Ramachandra Iyer, C.J.—This is an appeal u/s 39 of the Indian Arbitration Act, against an order of the Third Assistant City Civil Judge,

Madras setting aside an arbitration award and superseding the reference. The proceedings out of which this appeal arises had an unfortunate and

chequered career. The appellant whom we shall refer to hereafter as the seller entered into three contracts for the sale of groundnut oil cake to the

respondent, two of them had been entered into 13-11-1951 and the third on 23-11-1951. The contracts were signed on behalf of the buyers by

one of the partners and the terms of the contract provided that in case disputes arose under the agreements, such disputes should be settled by

arbitration under the rules of the Madras Chamber of Commerce. It was also provided in the contracts that the sellers could resell the outstanding

portion on account and risk of buyers after notice, in case the latter were at default and also to recover from them all damages sustained by reason

of their default.

Certain deliveries of groundnut cakes were effected by the sellers within the time stipulated; the buyers accepted them and extended the time for

delivery in regard to the balance of 415 tons. Letters evidencing extension of time for the performance of the contracts were signed by another

partner of the buyers' firm. on 2-6-1952, the sellers cancelled the outstanding the buyers defaulted sing contracts alleging that in taking delivery of

the balance and claimed damages in a sum of Rs. 11,300/-, after giving credit to the amount paid as advance by the buyers. A dispute arose; that

was submitted to arbitration by a nominee of the Madras Chamber of Commerce. Mr. Rambling, who gave his award on 10-3-1953 in favour of

the sellers for the sum claimed by them. The buyers challenged the award on the original side of this Court in O. P. No. 216 of 1953 (Mad).

Chandra Reddi, J., by his judgment dared 3-12-19 set it aside.

2. Thereupon the sellers applied to this Court u/s 20 of the Arbitration Act praying that the three arbitration agreements contained in the contracts

referred to earlier might be filed into Court and reference to arbitration be directed in accordance therewith. This application met with no success in

the Court of the first instance; but on appeal Raia Mannar, C. J., and Panchapakesa Aiyar, J., held that the sellers were entitled to have the

agreements filed and the disputes referred to arbitration. on that finding the learned judges remanded the application to the Judge sitting in

Chambers to pass consequential orders. The matter then came up before Balakrishna Aiyar, J., on 6-11-1956 when the learned Judge directed

the filing of the three agreements for arbitration and a reference of the disputes to the arbitrator or arbitrators to be appointed by the Madras

Chamber of Commerce In accordance with the Arbitration rules of that body. In that order was also recorded an agreement between the parties

by which the Madras Chamber of Commerce was enjoined to inform the parties of the name of the arbitrator or arbitrators whom it proposed to

appoint two weeks In advance of such arbitrators entering upon their duties.

In pursuance of the order of this Court the Madras Chamber of Commerce appointed Mr. F.C. Johnston, the second respondent to this appeal as

arbitrator. He duly entered on his duties and after an enquiry delivered his award on 22-6-1957 in the form of a special case stating in paragraph

IV thereof thus:

I decide that the contention of the petitioners was right and I hereby award that the said B. V. Manickam Chetti and Co., (buyers) do pay the said,

Rallis India Ltd., (sellers) the sum of Rs. 11,300/-, together with Rs. 167/- being the costs of the arbitration and of this award.

The question for this Hon''ble Court is whether the said decision is right In law.

If neither party sets down this special case for hearing within 14 days from the publication of this award, or if this Hon''ble. Court decides that my

decision was right in law this award is to stand

No specific questions as such have been referred to by the arbitrator for adjudication by the Court. The arbitrator set out in paragraph II seriatim

the contentions of the buyers to show that the sellers were not entitled to recover any damages. In paragraph III he set out the contentions of the

sellers that they were entitled to damages. Some of the contentions set out in paragraphs II and III are question, of fact. Paragraph IV contained

the adjudication which we have extracted above.

3. In the meantime the jurisdiction of the City Civil Court, Madras, to entertain, suits had been increased to Rs. 50,000/-. The subject-matter of

the award being less than that amount, the arbitrator filed O. S. No. 1032 of 1957 to file the award and pas a decree in terms of the award. The

suit was resisted by the buyers; they also filed O. P. No., 254 of 1957 under sections 30 and 33 of the Arbitration Act for setting aside the award

issues were settled and the learned Assistant Judge, City civil Court, gave findings on the several questions that were agitated before the arbitrator

as well as before him, as, a result of which he set aside the award and superseded the arbitration agreements. In the view we take of this matter it

is unnecessary to decide the correctness, or otherwise of the findings given by the learned Judge except in regard to two points.

1. Whether there was a valid award in the form of a special case and (2) Whether the lower court was entitled to supersede the arbitration

agreement.

4. On the first question, the learned trial Judge held that the award was not in the proper form. We are in agreement with him on that part of his

judgment. Section 13(b) of the Arbitration Act states that the arbitrator shall unless a different intention is expressed in the agreement have power

to state a special case for the opinion of the Court on any question of law involved, or state the award, wholly or in part, in the form of a special

case of such question for the opinion of the Court. The arbitrator''s award in the

present case did no doubt conform to the form prescribed under the rules issued by the Madras Chamber of Commerce for the conduct of commercial arbitrations but no specific question of law was set out by the arbitrator as arising out of the facts found by him.

5. On behalf of the appellant it is contended that the questions of law referred to for the determination of the Court are contained in paragraphs II

and III of the award and that in all circumstances of the case they should be regarded as sufficiently definite. We, cannot, however, agree with this

contention. As we shall show presently some of the questions are mixed questions of law and fact. For example, one of the contentions of the

buyers recorded in the award is.

That since the contracts were signed by one partner only, and since the partnership deed does not specifically permit one partner to refer disputes

to arbitration, the agreement (contained in clause 16) to refer disputes to arbitration is not binding on the firm.

In paragraph III of the award the answer of the sellers is, recorded. That states.

That the respondents knowing that the contracts contained an arbitration clause held out that one partner was capable of signing such contracts and

that trade usage is for only one partner of a firm to sign such contracts.

There can be no serious doubt that the questions arising from the contentions set out above are substantially questions of fact, namely, whether

there were facts to justify a plea of estoppel and whether there was any trade usage. Again the buyers contended.

That since the petitioners had no stock at their Royapuram factory on 29-2-1952 and in, sufficient to cover the outstanding amounts on 31-3-

1952, and since the petitioners did not get down to Madras from their other factories sufficient cake to cover the balance due on 29-2-1952 and

31-3-52 and since the petitioners did not appropriate from their stocks on 31-3-1952, 30-4-1952 and 31-5-1952 sufficient cake to cover the

amounts outstanding on each date, the petitioners cannot be said to have been ready or willing to make deliveries and that, therefore, as it was the

petitioners' fault that the contracts were not fulfilled, no damages are due.

To this the answer of the sellers was.

That they were at all times ready and willing to give delivery and that had the

respondents asked for delivery at any time they should and could have given it, either from stocks at Madras or from stocks held elsewhere.

The decision of the question involved in the foregoing pleas will obviously be one of fact. Then there was also a question regarding the precise date of breach and the damages to be calculated thereon. That at best will be a mixed question of law and fact. An award in this form namely where the findings of fact are not separated from those of law, and where no, specific question or questions of law are left for determination by the Court but a rolled up question of law and fact alone are mentioned cannot be said to conform to section 13(b) of the Act. A special case should set out, the facts affirmatively and then formulate the questions of law on which the opinion of the Court is sought. There cannot even be an alternative finding on a question of fact; for example, in the present case the arbitrator has stated ""on the questions of the fact set out above I hold in favour of the sellers."" But at the same time he has stated that this finding will stand vacated if the Court were to hold otherwise. Did the arbitrator mean that Court opinion on facts would alter the award as made by him? In Redman's Law of Arbitration and Awards, 5th Edn. p. 128, dealing with the form of an award in the form of a special case it is stated:.

Form of award stated as a special case. An award stated in the form of a special case should state the facts found by the arbitrator, and then formulate the questions of law for the opinion of the Court and this should be done in such a way that when the decision of the Court is given on the questions submitted, the final result and effect of the award can be ascertained. The Court must accept the findings of fact and if necessary remit the case for further facts but it cannot vary them or investigate them.

The same rule is stated by Russell in his Law of Arbitration 15th Edn. at page 163, A special case must set out all the findings of fact necessary to enable the Court to decide the point submitted to it Questions of fact must not be left for the Court to decide. A final award in the form of a special case must also comply with the normal requirements for a final award. In particular it must be such that the Court has merely to decide the law and thereupon automatically one or other alternative decision of the arbitrator comes into operation."" In a recent case reported in Windsor R. D. C. v. Otterway and Try Ltd., 1954 1 WLR 1494, the observations of Delvin,

J., are even more specific namely,

He has arbitrator power to state questions of law arising in the course of the reference, and I think that to enable the Court to determine whether

questions of law do or do not arise in the course of the reference but he ought to set out in his case something which shows what has arisen under

the reference and what the contentions of the parties are on either side, so as shown how the question of law has arisen. It is not a mere matter of

words. The Court is not at the beck and call of the arbitrator to answer whatever questions the arbitrator may want to put to it and it is not here to

indulge in legal exercises, It is here only to answer questions which it is satisfied do arise in the course of the reference and are material to be

determined. I think, therefore, that it is important "that arbitrators should when they are stating their case state enough to make it plain how the

questions of law arise so that the court can itself judge of their materiality.

Atkins Encyclopaedia of Court Forms in Civil Proceedings (2nd Edn. by Lord Evershed, M. R.) gives the proper form to be adopted in stating an

award in the form of a special case (at page 104). That shows that findings of fact should clearly be given and the question, of law alone should lie

referred to in the present case there are at least two infirmities to the award. First there is no specific mention of the questions of law arising in the

case; the decision of the dispute by the arbitrator comprised questions of fact as well as law. It is not clear whether the arbitrator has left for

decision of the Court his findings of law alone or of fact as well. It cannot even be held that the award has determined finally all questions of fact as

he has made the entirety of his decision subject to the decision of the Court. The award thus passed in the form of a special case is improper in

form and therefore invalid. We consider that in the circumstances of the case the award should be held to have left undetermined matter referred to

arbitration and should normally be remitted back to the arbitrator for reconsideration of the whole question.

6. In this view it is unnecessary to consider the correctness or otherwise of the findings given by the lower court on the various points in

controversy between the parties as stated in the award. The next point for determination is whether the order of the lower court superseding the

arbitration agreement is correct. S. 19 of the Arbitration Act states.

Where an award has become void under sub-sec. (3) of Sec. 16 or has been set aside the court may by order supersede the reference and shall

thereupon order that the arbitration agreement shall cease to have effect with respect to the difference referred.

On the conclusion reached by us earlier, viz., there was no valid award in the form of a special case, the proper procedure would be to remit the

award and not to set it aside. In that view the consequential order of the lower court superseding the arbitration will have to fall to the ground. But

Mr. G.N. Chari learned counsel appearing for the buyers contends that in the particular circumstances of the case the order of the lower court

superseding the arbitration should not be interfered with. The only reason given by learned Assistant Judge of the City Civil Court for superseding

the arbitration agreement is that there has been a considerable lapse of time between the time when disputes arise and now. He has stated,

since the matter has been pending long no useful purpose would be served by referring the matter to another arbitrator, and, under S. 19 of the

Act, order that reference to arbitration be superseded.

We are utterly unable to appreciate that reason as a justification for superseding the reference to arbitration. An order of supersession of an

arbitration agreement ought not to be lightly passed. This is particularly so in a case in which arbitration had been resorted to without, the

intervention of the Court, there being no suit pending. For when a suit is pending no serious harm would be done to the parties if the arbitration

agreement were to be superseded; the rights of the parties can be agitated in the suit itself. But where as in the present case, the arbitration was the

result of a reference under S. 20 of the Arbitration Act, supersession of the arbitration agreement would only compel the parties to resort to the

ordinary courts; questions of limitation would arise, and incalculable harm would be done to a party. The order superseding the arbitration

agreement on the ground that the matter had been pending for a long time savours more of an anxiety on the part of the lower court to put an end

to the disputes between the parties rather than a desire to adjudicate upon their rights. That is hardly reconcilable with judicial responsibility.

Further in the present case, the sellers were not responsible for the long delay. No, delay can be attributed to the parties to the arbitration in the

present case as a substantial portion of the period was taken by the various proceedings in the courts. At no time was there a delay on the part of

the arbitrator in passing his award. We cannot, therefore, sustain the order of the lower court superseding the arbitration agreement. The result is

that the appeal will stand allowed. The award will be remitted to the arbitrator afresh for reconsideration. The appellant will be entitled to his costs.

7. Appeal allowed.