
(2005) 09 AHC CK 0319
In the Allahabad High Court
Case No : C.M.W.P. No. 22934 of 1999

Rani Ramakant

APPELLANT

Vs

The First Additional Civil Judge (SD)

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Arbitration Act, 1940 — Section 30, 33, 41

Citation : AIR 2006 All 5 : (2006) 2 ARBLR 452 : (2006) 1 AWC 271 : (2006) 1 CivCC 440 : (2006) 3 RCR(Civil) 231 : (2006) 3 RCR(Criminal) 231

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : H.R. Misra and J. Nagar, for the Appellant;

Final Decision : Allowed

Judgement

D.P. Singh, J.—This petition was filed on 26th May, 1999. It was taken up by the Court on 27th May, 1999 when notices were directed to be issued to the respondents to enable them to file counter affidavit. From the office report dated 3-7-1999 it transpires that the registered notices were issued fixing 2nd of August, 1999.

2. By the office report dated 22-12-1999, the office has reported that registered A.D. notices had been sent but neither the acknowledgement nor undelivered cover has returned. On this note, a learned Single Judge of this Court vide order dated 27-4-2001 has held that service on the respondents under the Rule of the Court is sufficient and directed the matter be placed before the Court in the week commencing 7th May, 2001. This petition was taken up on several occasions but till date neither any one has appeared nor filed any counter affidavit on behalf of the respondents.

3. This Court is left with no other option but to hear the petition on merits.

4. Heard learned Counsel for the petitioner and the learned Standing Counsel.

5. This petition is directed against an order dated 10-11-1997 abating the proceedings arising out of an award. A dispute amongst the petitioner, respondents No. 3 to 8 and one Sri Ashok Kumar Singh was referred for arbitration which gave its award on 2-4-1983. The award was filed before the Court for making it a rule of the Court which was registered as Misc. Case No. 137 of 1983. Upon issuance of notices objections by some of the parties u/s 30/33 of the Arbitration Act, 1940 was filed which was registered as Original Suit No. 22 of 1984. During its pendency Sri Ashok Kumar Singh died on 17-5-1983 and his heirs were substituted in the suit but no application to bring on record the heirs of late Ashok Kumar Singh was moved in Misc. Case No. 137 of 1983. Respondent No. 1 moved an application that as the heirs of Ashok Kumar Singh were not brought on record in the Misc. Case, the proceedings had abated. Petitioner filed his objections but the Court below vide the impugned order held that it was necessary for the petitioners to have substituted the heirs of the deceased and in its absence the proceedings in the miscellaneous case stood abated. Against the said order a revision was filed but after an objection was raised by the respondent No. 1 with regard to its maintainability the petitioner filed an application for its withdrawal and since no orders were passed on the application of the petitioner he had to prefer writ petition No. 20965 of 1999 for a direction to consider his application. This Court disposed of the petition with a direction to the revisional Court in consequence of which the petitioner was allowed to withdraw the revision petition vide order dated 20-5-1999. Whereafter, the present writ petition was filed challenging the order dated 10-11-1997.

6. Learned counsel for the petitioner has urged that the provisions of Order 22 C.P.C. are not applicable to proceedings under the Arbitration Act, 1940. Secondly, he has urged that presuming provisions of Order 22 were applicable, the award was not liable to be abated. Thirdly, he has urged that since miscellaneous case No. 137 of 1983 and O.S. No. 22 of 1984 were connected and are being heard together, substitution in the suit was sufficient and non substitution in the miscellaneous case would be a mere technicality which can be ignored.

7. Section 41 of the Arbitration Act, 1940 stipulates that subject to the provisions of the Act, the provisions of the CPC shall apply to the proceedings before the Court and appeals under the Act. Order 22 provides that on the death of one or more of the parties if the cause survives, the heirs of the deceased party, if not substituted, the cause itself extinguishes and the proceedings abate. In a suit, there are necessarily two parties, one enforcing his claim and the other resisting it. Where an award under the Arbitration Act has been rendered by the Arbitrator or the Umpire, it partakes the nature of a preliminary decree and once it is presented before the Court for making it Rule of the Court, for all practical purposes, the Arbitrator recluses himself from the proceedings and thereafter the proceedings are between the Court and the parties to the award. In such proceedings none of the parties are required to take steps for effecting service

on the other party but it is the duty of the Court to issue notice inviting objections from the parties. Once the award is filed, its adversarial nature ceases and the matter then is between the Court on one side and the parties on the other. Just as death of a party to a preliminary decree would not vitiate the decree or abate its enforcement, in the same manner, the death of a party to the arbitration agreement would not abate the proceedings before the Court. The very basic nature and fabric of a suit is entirely different from that of proceedings after an award is presented to the Court. A suit commences on presentation of a plaint which claims a cause of action and the Courts of law, subject to the provisions applicable, tries the suit which results in a judgment which embodies the decision of a Court whereafter a preliminary or final decree is drawn. In the case of failure of the suit, the plaintiff cannot re-agitate the same cause of action in the same, or, in any other Court but can only appeal. In the case of arbitration award, in the strict sense there is no appeal akin to an appeal under the code. Even an arbitration agreement is not discharged by the death of any party to it and is enforceable by or against the legal representative of the party. The Calcutta High Court in the case of Ramnibas Jhunhunwalla Vs. Benarashi L. Jhunhunwalla, while confronted with somewhat similar circumstances, after observing in paragraph 12 that:

The nature of an arbitration proceeding is so different in some essential features from a suit that Order 22 CPC cannot be applied without violence to the provisions of the Arbitration Act

has gone on to hold in paragraph 18 that Or. 22 does not apply to an award.

8. There is yet another aspect to this issue. The dominant reason for bringing on record the heirs of a deceased party is to ensure their cause or interest does not go unprotected or no adverse order is passed against their interest. In the present case, it is not denied that the heirs had been brought on record in the suit and as such their interest was represented and since the miscellaneous case and the suit were being tried together, it can not be said that they were deprived of securing their interest in the miscellaneous case also.

9. For the reasons given above, in my opinion, the Court below was not correct in abating the proceedings on the facts of this case and the order cannot be sustained. Thus, the petition succeed and is allowed and the impugned order dated 10-11-1997 is hereby quashed. No order as to costs.