

(1963) 02 CAL CK 0020
In the Calcutta High Court
Case No : Appeal No. 196 of 1962

Rebati Ranjan Chakravarti

APPELLANT

Vs

Suranjan Chakravarti and Others

RESPONDENT

Date of Decision : 04-02-1963

Acts Referred:

Arbitration Act, 1940 — Section 31, 39, 39(1), 41, 41(2)

Citation : AIR 1963 Cal 642

Hon'ble Judges : S. Datta, J; D.N. Sinha, J

Bench : Division Bench

Advocate : Sankar Ghosh, for the Appellant; D.N. Das, (for No. 1), Lily Mukherjee, (for No. 2) and Hiranmoy Dutt, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an appeal against an order passed by Mallick, J. on the 28th August, 1962 whereby he dismissed two applications for the appointment of a Receiver, one in respect of a Trust known as the "Ram Ranjan Trust", and another in respect of a Trust Known as the Brojabala Trust. The applications were dismissed on a preliminary ground, namely, that the Court had no jurisdiction to entertain them. The Court did not adjudicate on the merits of the applications. The short facts are as follows: Maharaja Ram Ranjan Chakravarti of Hetampur created a trust known as the "Ram Ranjan Trust", by a Deed of trust dated 11th August, 1887; and his wife Maharani Padma Sundari Debi created another trust called the "Brojabala Trust" by a Deed of trust dated 27th February, 1895. These trusts related to various Immovable properties situated outside the jurisdiction of this Court. The trusts were created for various purposes including the Seva Puja of certain deities and for certain charitable purpose. On or about 13th November, 1950 the respondent No. 1, Suranjan Chakravarti, then a minor, acting through his mother Sm. Jyotishamoyee Debi, instituted two suits in the Court of the Subordinate Judge, Birbhum at Suri, being Suits Nos. T. S. 110 and 111 of 1950, against the other trustees, inter alia for removal of trustees, for appointment of

new trustees, framing of a scheme, for the management and administration of the trust, for the appointment of a Receiver and other reliefs. T. S. 110 of 1950 was in respect of the Ram Ranjan trust Estate, and T. S. 111 of 1950 was in respect of the Brojabala Trust Estate. In the said suits applications were made for the appointment of Receiver, and a Receiver was appointed. Appeals were preferred against the said orders to this Court, being F.M.A. No. 36 and F.M.A No. 37 of 1951. At that stage, the disputes between the parties were settled and a compromise petition was put in. The compromise petition was prepared and signed within the jurisdiction of this Court and provided inter alia that the terms of settlement will be sent down to the Suri Court with a direction to pass a decree in terms thereof. Accordingly, the matter went back to the Suri Court and a compromise decree was passed. Under the said compromise decree, a scheme was framed for the management and administration of the trust Estate. The scheme contained provisions as to where the office of the trust Estate will be situated, how the Manager should be appointed to look after the trust Estate and various other matters. There was an arbitration clause for reference to Arbitration, in case disputes arose amongst the Trustees.

2. Disputes having arisen amongst the Trustees, a reference was made to arbitration of a number of Arbitrators. It is stated that all the Arbitrators are persons residing outside the jurisdiction of this Court. Thereupon, three applications were made before this Court; one for the appointment of an Umpire u/s 8 of the Indian Arbitration Act and the remaining two for the appointment of Receiver, one in respect of the "Ram Ranjan Trust" and the other in respect of the "Brojabala Trust". The application u/s 8 was first decided by Mallick, J., and he held that in order to maintain the application it was a precondition that leave under Clause 12 of the Letters Patent should have been obtained. As it had not been obtained, the learned Judge held that he had no jurisdiction to entertain the application and accordingly dismissed it. As regards the two applications for appointment of a Receiver, with which we are really concerned. In this case, the learned Judge held that he should follow his judgment in the case abovementioned, u/s 9 of the, Indian Arbitration Act, and hold that in respect of these two applications also, he had no jurisdiction, for the same reason namely, that these applications required a prior leave under Clause 12 of the Letters Patent and such, leave not having been obtained, the Court had no jurisdiction to entertain them. The learned Judge, in dismissing the applications for appointment of a Receiver, did not elaborate his reasons but referred to his previous judgment in the Section 8 case, dated 19th July, 1962 (Matter No. 189 of 1962) a copy of which is set out in the paper book, p. 157 to 158. Briefly speaking, the reasoning of the learned Judge was that an application for the appointment of a Receiver could only be made in a Court which would have jurisdiction if the Arbitration proceedings were to be considered as a suit and if such a suit lay in that Court. The learned Judge held that jurisdiction to file such a suit could only be obtained in this High Court if leave under Clause 12 was given. According to the learned Judge, no relief could be granted in an

application for appointment of a Receiver unless such prior leave had been obtained.

3. The point that arises upon the merits is one of great importance. Leave under Clause 12 of the Letters Patent can only be given in the case of a suit. It requires very careful consideration as to whether such leave could be granted at all in the case of an application, where no suit has in fact been filed.

4. In this case however, a preliminary point has been taken on behalf of the respondent, namely that by virtue Section 39(1) of the Indian Arbitration, Act read with Section 2(c) of the said Act, no appeal lies. If this preliminary objection succeeds, then of course it is not necessary to enter upon the merits of the case.

5. As I have stated above there is no suit filed to this Court or in any other Court, but there are arbitration proceedings in which an application has been made for the appointment of a Receiver. Such an application can only be made u/s 41 of the Indian Arbitration Act-Under Section 41 (b) it has been provided that the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule to the said Act, as it has for the purpose of, and in relation to, any proceedings before a Court. Clause 4 of the Second Schedule refers to interim injunction or the appointment of a Receiver. In other words, the appropriate Court has the power to make an order for the appointment of a Receiver, in spite of the fact that no suit or proceedings is actually pending before it. The word "Court" has been defined in Section 2(c) as meaning a "Civil Court" having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court. In other words, an application for the appointment of a Receiver may be made to a Court which would have jurisdiction to decide the questions forming the subject-matter of the reference, if the same had been the subject-matter of a suit in that Court. The first thing therefore to be seen is as to whether the subject-matter of the Arbitration proceedings in this case could form the subject-matter of a suit in this court, Various contentions have been put forward by the parties, but eventually it seems to be admitted that the only reason why, the disputes referred could form the subject-matter of a suit in this Court, is that, a part of the cause-of-action has arisen within the jurisdiction of this Court. It is alleged that the only part of the cause of action that has arisen in this Court is that the petition of compromise was executed within jurisdiction and filed in this Court. It appears from the order of the learned Judge that this fact was conceded before him. The position then would be as follows,

6. The subject-matter of the disputes in the arbitration proceedings could form the subject-matter of a suit in this Court, because a part of the cause of action has arisen within its jurisdiction, provided, however, leave under Clause 12 of the Letters Patent was first obtained. Under the Civil Procedure Code, a suit can be instituted in any Court where a part of the cause-of-action arises. But in the

High Court, under the Letters Patent, a suit can only be instituted, where a part only of the cause of action has arisen within the jurisdiction, after obtaining leave under, Clause 12 of the Letters Patent. The learned Judge held that the applications do not lie because no such leave has been obtained and without such leave the Court has no jurisdiction. I now come to the question of appeal. Against an order refusing to appoint a Receiver, an appeal would lie under the Code of Civil Procedure. In the Indian Arbitration Act, however, there is a restriction imposed on the filing of an appeal, by Section 39 thereof. It is in the following terms:-

"39(1) An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order: An order-

- (i) superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) Staying or refusing to stay legal proceedings where there is an arbitration agreement,
- (vi) setting aside or refusing to set aside an award;

Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal in the Supreme Court."

7. The order against which this appeal has been preferred is an order refusing to appoint a Receiver and does not come under any of the headings mentioned in Sub-section (1) of Section 39 set out above. It is accordingly contended that no appeal lies, there being an interdict against such an appeal, by virtue of Sub-section (1) of Section 39. Mr. Ghose appearing on behalf of the appellant has taken several points in answer. Firstly, he says that the order appealed is not an order "passed under this Act", that is to say, the Arbitration Act. As I have pointed out above, an application for the appointment of a Receiver in arbitration proceedings, to a Court is empowered by Section 41 of the said Act read with item 4 in the second Schedule thereof. There is no appeal provided for in Section 39, either against an order appointing a Receiver or refusing to appoint a Receiver. Mr. Ghose argues that the learned Judge below did not go into the merits but held that he had no jurisdiction under the Arbitration Act to entertain the application for the appointment of a Receiver. Therefore, any order made by the learned Judge is not an order "under the Act". This argument seems to be plausible at first sight, but will not stand scrutiny. An application for the

appointment of a Receiver in an arbitration proceeding can only be made u/s 41 of the Arbitration Act read with the Schedule II. It cannot be made under any other provision of law, because the Arbitration Act is a complete Code in itself. Where an application is made invoking the Court's jurisdiction under this provision, then an order allowing such an application or dismissing such an application for whatever reasons, must be deemed to be orders under the said provision and not outside it. Any other interpretation would give rise to the most startling results. Against certain decrees an appeal lies to a superior Court under the Code of Civil Procedure. Supposing a Court dismisses a particular suit on the ground that it has no jurisdiction. That does not make it any the less a decree under the Code. Otherwise, no appeal would ever lie. In other words, an order or a decree dismissing an application in a suit on any ground whatsoever cannot be distinguished from an order or a decree granting relief, for purposes of appeal, unless of course, the provision as to appeal expressly provides that an appeal would lie only from an order or a decree granting relief and not from one of dismissal. There is, therefore, nothing in this point. The second point taken is that under Sub-section (1) of section 39, only appeal from one Court to another Court is contemplated and not an infra-court appeal. The third point taken is that if an appeal does not lie under Sub-section (1) of Section 39, it still lies under Clause 15 of the Letters Patent. These two points may be conveniently dealt with together. On both these points, there was a conflict of decisions between several High Courts, but this conflict has now been set at rest by the Supreme Court in Union of India (UOI) Vs. Mohindra Supply Company, . The facts in that case were as follows. A dispute arising under a contract between Messrs. Mohindra Supply Co. and the Governor-General of India in Council was referred to the arbitration of two arbitrators. The arbitrators found in favour of the contractor. This award was filed in the Court of the Subordinate Judge. First Class, Delhi. The Governor General applied for an order setting aside the award but the learned Subordinate Judge rejected the appeal. Against the order refusing to set aside the award, the Governor General preferred an appeal before the Lahore High Court, which was later on transferred to the East Punjab High Court, at Delhi. Falshaw, J., who heard the appeal set aside the order. Against that order, an appeal was preferred under Clause 10 of the Letters Patent of the High Court at Lahore, which, by the High Court (Punjab) Order, 1947, applied to the East Punjab High Court. Before the Appellate Bench, the Governor-General contended that the appeal under the Letters Patent was prohibited by Section 39(2) of the Indian Arbitration Act. The question whether the appeal was maintainable was referred to a Full Bench of the High Court. The Full Bench opinion (sic) that an appeal from the judgment of a single Judge exercising appellate powers did lie under clause 10 of the Letters Patent, notwithstanding the bar contained in Section 39(2) of the Arbitration Act. After the opinion of the Full Bench was delivered, a Division Bench considered the appeal on its merits and set aside the order of Falshaw, J. The Union of India appealed to the Supreme Court against the decision of the High Court. The appeal was allowed and it was held that under the circumstances, no appeal lay under clause 10 of the Letters Patent. Although the point that arose was under Sub-

section (2) of Section 39 it necessarily involved Sub-section (1) as well, and the general question as to appeals in the case of arbitration proceedings has been dealt with, including the question as to whether the appeals referred to in Section 39 deal only with appeals from one Court to another Court and not intra-court appeals. Shah, J. said as follows:

"The problem to which attention must then be directed is whether the right to appeal under the Letters Patent is at all restricted by Section 39, Sub-sections (1) and (2). Clause 10 of the Letters Patent of the High Court, in so far as it is material, provides:

"And we do further ordain that an appeal shall lie to the said High Court from the Judgment (not being a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in the exercise of revisional jurisdiction. . . .) of one Judge of the High Court....."

By this clause, a right to appeal except in the cases specified, from one Judge of the High Court to a Division Bench is expressly granted. But the Letters Patent are declared by Clause 37 subject to the legislative power of the Governor-General in Council and also of the Governor-in-Council under the Government of India Act, 1915, and may in all respects be amended or altered in exercise of legislative authority. u/s 39(1), an appeal lies from the orders specified in that sub-section and from no others. The legislature has plainly expressed itself that the right of appeal against orders passed under the Arbitration Act may be exercised only in respect of certain orders. The right to appeal against other orders is expressly taken away. If by the express provision contained in Section 39(1), a right to appeal from a judgment which may otherwise be available under the Letters Patent is restricted, there is no ground for holding that Clause (2) does not similarly restrict the exercise of appellate power granted by the Letters patent."

8. Clause 10 of the Letters Patent of the Lahore High Court corresponds to clause 15 of our Letters Patent of 1855. These clauses include provisions for appeals from the Courts of original jurisdiction of the High Court and includes appeals from a single Judge of the High Court to a Division Bench of the same High Court. In the case before the Supreme Court, it was a case of an appeal from single Judge to a Division Bench of the East Punjab High Court, although the single Judge was himself hearing an appeal from a subordinate Court. That, in my opinion makes no difference, and the principles adumbrated above will apply. The learned Judge then proceeds to deal with the question of intra-Court appeals and says as follows:

"The Punjab High Court in *Banwarilal v. Hindu College Delhi* AIR 1949 EP 165 and the Lahore High Court in *Hanuman Chamber of Commerce Ltd. Delhi v. Jassa Ram Hira Nand* AIR 1948 Lah 64 held that the appeals contemplated by Section

39 are appeals to superior Courts and not "intra-court appeals" and therefore the right to appeal under the Letters Patent was not restricted by Sub-sections (1) and (2). But a little analysis of this argument is likely to exhibit the somewhat startling consequences. If the appeal contemplated by Section 39(1) is only an appeal to a superior court, orders passed by a subordinate Court decisions whereof are made appealable to the same Court will not be appealable at all under the Arbitration Act."

9. The learned Judge then proceeded to give various instances where decisions of Judges are made appealable to Judges of the same Court. For instance under the Bombay Civil Courts Act certain decisions of the Assistant Judges are made appealable to the District Court. The learned Judge then proceeds to say as follows:

"The qualifying expression "to the Court authorised by law to hear appeals from original decrees of the Court passing the order" in Section 39(1) does not import the concept that the appellate Court must be distinct and separate from the Court passing the order or the decree. The legislature has not so enacted and the context does not warrant such an interpretation. The clause merely indicates the forum of appeal. If from the decision of a Court hearing a suit or proceeding an appeal will lie to a judge or more Judges of the same Court, by virtue of Section 39(1) the appeal will lie from the order passed under the Arbitration Act, if the order is appealable, to such Judge or Judges of that Court."

10. The learned Judge held that the Indian Arbitration Act was a code by itself and an appeal would lie only if it came within the enabling provision and would not lie if it came within the mischief of the interdict contained therein. So far as this High Court is concerned, a Division Bench expressly held that an appeal would not lie under Clause 15 of the Letters Patent, in *R. Wright v. Governor-General in Council* 52 CWN 224. The facts in that case were shortly as follows: There was a contract between the respondent company and the Industries and Supplies Department of the Government of India for the supply of certain goods. The contract contained an arbitration clause. Certain disputes having arisen, the company referred the matter to arbitration. The Government took up the position that under the terms of the contract the inspector's decision was final and, therefore, there was no dispute that could be referred to arbitration. This objection was ignored and the arbitration proceeded, whereupon the company made an application u/s 33 of the Indian Arbitration Act. Gentle, J. held that the arbitrator had no jurisdiction to proceed with the arbitration. From this order an appeal was preferred before a Division Bench of this Court. An objection was taken that no appeal lay because of the provisions of Section 39 of the said Act, nor under clause 15 of the Letters Patent. It was conceded that an order u/s 33 of the said Act was not appealable u/s 39, but it was argued that an appeal lay under clause 15 of the Letters Patent. It was held that the right of appeal under Clause 15 of the Letters Patent was, by Clause 44, subject to the legislative powers of the Governor-General in council and Section 39 of the Arbitration Act

1940, had expressly taken away that right. Since the CPC was a general law, clause 15 of the Letters Patent was not controlled by Section 588 of the Code of 1882, but the Arbitration Act, 1940 was a special Act and, therefore, controlled the general right of appeal given by Clause 15 of the Letters Patent.

11. In view of the Supreme Court decision it is unnecessary for us to enter into the merits or demerits of the conflicting decisions of various High Courts. In our opinion, the point raised has now been finally determined by the Supreme Court in the decision abovementioned, and we must respectfully follow the same.

12. That being so, we must hold that no appeal lies in the present case and the appeal must be dismissed upon this preliminary point. There will be no order as to costs. We have already stated that the question raised on the merits is an extremely important one, but we have no doubt that it will be decided in an appropriate case.

Datta, J.

13. I agree with the conclusions arrived at by my lord Sinha, J.

14. I wish to add a few words on a contention advanced on behalf of the appellant which in my view is capable of being approached differently.

15. It was urged inter alia on behalf of the appellant that an order refusing to entertain the application on the ground that the Court had no Jurisdiction as no leave under Clause 12 of the Letters patent was taken notwithstanding that a part of the cause of action regarding the subject matter of the dispute and/or differences had arisen within the jurisdiction of the Court, was not an order under the Arbitration Act or, in other words, was not an order under "this Act", within the meaning of Section 39 of the Arbitration Act.

16. It is necessary to set out the following provisions of the Arbitration Act in order to deal with this contention

"Section 2. In this Act, unless there is anything repugnant in the subject or context:

(c) "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court."

"Section 31(1). Subject to the provisions of this Act, an award may be in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity effect or existences of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be filed, and by

no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that COURT alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court."

Section 39(1). An appeal shall lie from the following orders passed under this Act (and from no others) to the court authorised by law to hear appeals from original decrees or the Courts passing the order. An order-

- (i) superseding an arbitration,
- (ii) on an award stated in the form of a special case,
- (iii) modifying or correcting an award,
- (iv) filing or refusing to file an arbitration agreement,
- (v) setting aside or refusing to set aside an award:

Provided that the provisions of this section shall not apply to any order passed by a Small cause Court."

17. Clause 12 of the Letters Patent deals expressly with the jurisdiction of the High court in its ordinary Original Jurisdiction or Original Side to receive, try and determine suits and suits only, for it states Inter alia-

"that the said High Court. . . .in the exercise of its Ordinary Original Civil Jurisdiction, shall be empowered to receive, try and determine suits of every description it, in the case of suits for land or other immovable property such land or immovable property shall be situated, or in all other cases if the cause of action shall have arisen either wholly, or in case leave of the Court shall have been first obtained, in part, within the local limits of the Ordinary Original Jurisdiction of the said High Court or if the defendant at the time of commencement of the suit shall....."

18. Hence Clause 12 of the Letters Patent does not determine the jurisdiction of the High Court in its Ordinary Original Side to entertain applications and/or deal with awards under the Arbitration Act.

19. Consequently, in the absence of any other provision, the High Court in its original side cannot have jurisdiction to entertain applications under the Arbitration Act and/or deal with Awards under the Arbitration Act.

20. There are, however, provisions elsewhere. Section 2(c) and Section 31 of the Arbitration Act deal with the jurisdiction of the Court.

21. Section 2(c) of the Arbitration Act points out the Court which can have jurisdiction over the subject matter of a reference. It is that Court which could entertain a suit if the subject matter of reference was the subject matter of a suit. Section 31 lays down the conditions requisite for entertaining an Award and/or an application. In other words, Clause 12 of the Letters Patent does not determine the jurisdiction of the Court but Section 2(c) read with Section 31 does it and in so doing Section 2(c) indirectly incorporates the provisions of the Letters Patent. To put it differently, Clause 12 of the Letters Patent cannot determine the jurisdiction but for Section 2(c) read with Section 31. Hence jurisdiction of the Court to entertain an application including an application for appointment of Receiver and/or an Award does not flow from the Letters Patent but springs from Section 31 read with Section 2 which by reference attracts Clause 12 of the Letters Patent.

22. Hence the determination of the existence or non-existence of jurisdiction of a Court to entertain an application under the Arbitration Act is conditioned by Section 2(c) and Section 31 of the Arbitration Act and is consequently "under this Act", and therefore attracts Section 39(1) of the Arbitration Act.

23. In this view of the matter it is immaterial to consider whether it is necessary in order to found jurisdiction in the High Court that a part of the cause of action should arise within the local limits of jurisdiction and further in such a case leave should be taken before filing the plaint or it is sufficient if a part of the cause of action only arises within the local limits of the jurisdiction.

24. It may, however, be noted that it was not pressed before us that it was incumbent to obtain leave under Clause 12 of the Letters Patent where a part of the cause of action arose within the local limits of the jurisdiction.

25. The Sub-clauses to Clause (1) of Section 39 do not provide for an appeal against an order refusing to entertain an application for want of Jurisdiction.

26. Therefore, no appeal lies as it is now well settled by the Supreme Court in Union of India (UOI) Vs. Mohindra Supply Company, that inter-court appeals fall within the ambit of Section 39(1) of the Arbitration Act.