
(1932) 02 PAT CK 0018
In the Patna High Court

Ruplal Agarwahi

APPELLANT

Vs

Dhansar Goal Co. and Others

RESPONDENT

Date of Decision : 12-02-1932

Acts Referred:

Arbitration Act, 1940 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 115
Companies Act, 1882 — Section 152

Citation : AIR 1933 Patna 49

Hon'ble Judges : Scroope, J

Bench : Division Bench

Judgement

Scroope, J.—This application u/s 115, Civil P.C., is against the order of the District Judge of Man-bhum-Sambalpur dismissing an appeal from the decision of the Subordinate Judge of Dhanbad directing under para. 20, Schedule 2 Civil P.C., that an award be filed.

The Dhansar Coal Company and the East Indian Railway Company had a difference of opinion regarding the rates to be levied from the petitioner Mr. Ruplal Agarwala, who is a colliery proprietor, for the use of the assisted siding, constructed at the expense of the Dhansar Coal Company.

2. The terms and conditions relating to the siding are to be found in the memorandum of agreement usually known as the Assisted Sidings Agreement between the Dhansar Coal Company, and the Railway Company. It would appear that the Railway Company under Clause 14 of this agreement fixed the rate of tollage for the use of the siding payable by Mr. Ruplal Agarwala, petitioner, at two annas per ton; but the Dhansar Coal Company were not agreeable to this rate and in accordance with Clause 22 of the agreement both parties agreed to submit the dispute to arbitration. The question referred was what would be chargeable by the Railway Company to Mr. Ruplal Agarwala for using the siding, and there was also another matter about loading space which does not concern us here.

3. The arbitration proceeded and an award was made to the effect that the tollage should be at the rate of 3 annas 6 pies per ton of coal subject to a minimum tollage Rs. 1,800 per year. Then the Coal Company made an application in the Court of the Sub-Judge, Dhanbad, for filing the award under para. 20 of Schedule 2, Civil P.C., making the East Indian Railway Company only a party; but Mr. Ruplal Agarwala intervened and was made a party by the order of the High Court. The Subordinate judge allowed the application and directed the award to be filed. Mr. Ruplal Agarwala appealed to the District Judge and his appeal was dismissed and now he has come to this Court u/s 115. Civil P.C.

4. As regards the first two contentions pressed on his behalf, there is no substance in them and they can be disposed of without any difficulty. The first was that the arbitrators had no right to fix a minimum tollage and went outside the scope of the reference in doing so. Clearly as found by both the Courts below there is nothing in this point. The arbitrators struck a mean rate between the proposals of Dhansar Coal Company and the East Indian Railway Company and it is perfectly natural that they should further fix a minimum flat rate, as the learned Subordinate Judge has shown, this is a customary method of fixing tollage for the use of an assisted siding.

5. As regards the absence of notice u/s 80 on the Secretary of State, the defect on this score has been waived by the Secretary of State. The Railway have no objection to urge on the score of waiver when the case went on appeal to the District Judge though they had taken it before the Subordinate judge, nor do they raise the objection now in this Court and a third party is not competent to raise the question of notice when the Secretary of State has waived it, vide *Bhola Nath Ray v. Secy. of State* [1913] 40 Cal 503. The substantial contention was that the Court of Subordinate Judge acted without jurisdiction in entertaining the application to file the award under para. 20 of Schedule 2, Civil P.C., because the agreement embodied in para. 22 of the Assisted Sidings Agreement being one u/s 152, Companies Act 1882, in accordance with the Arbitration Act, u/s 3 of this latter Act, para. 20, Schedule 2, Civil P.C., can have no application. There can be no doubt that the agreement in question to submit future differences to arbitration was made u/s 152, Companies Act "in accordance with the Arbitration Act", the award itself is described as an award "in the matter of the Arbitration Act.

" 6. The learned Advocates for the opposite parties, the Railway Company and the Dhansar Coal Company, contend however that the Arbitration Act has not been extended by the Local Government under the proviso of Section 2 of the Act to this province at all and that, therefore, the Act has no application. But according to Section 1 this Act extends to the whole of British India though its application is limited by Section 2 to cases where the suits relating to the subject matter of the arbitration could be instituted in a Presidency Town or in local areas declared by the local Government to be deemed to be a Presidency Town; and the answer to the contention is to be found in Clause (3) of Section 152,

Companies Act, which runs as follows:

"The provisions of the Arbitration Act 1899, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations between companies and persons in pursuance of this Act."

7. In other words the facilities in the matter of arbitration which the Companies Act, 6 of 1882, gave to Companies, so that the reference may be the act of the corporate body are not to be restricted by Section 2, Arbitration Act, which limits its application to cases where the subject-matter could be the subject of a suit in a Presidency Town. In 1899 the Arbitration Act was passed and the second proviso to Section 3, as it then stood, expressly exempted arbitrations under the Companies Act from its operation; the position has not been altered by the passing of the new Companies Act (7 of 1913), because the third subsection of Section 152 has rendered unnecessary the second proviso to Section 3, Arbitration Act, which has accordingly been repealed by Section 290 of Act 7 of 1913. The learned Advocates for the opposite parties also relied on a Punjab case, *Sunder Mal Lakhu Mal v. Paris Business Corporation Ltd.* AIR 1931 Lah 555 which lays down that Section 152, Companies Act, is subject to the applicability of the Arbitration Act to the local area in which the suit has been instituted.

8. For the reasons given above I cannot agree with this decision. In my view the award ought to have been filed in "the Court" as defined in Section 4, Arbitration Act. The Court of a Sub-Judge is not such a Court. Examination of Sections 96, 123, Companies Act of 1882, which was passed before there was an Arbitration Act at all, makes the position clear still. Section 119 of the old Act laid down that:

"full effect shall be given by the Courts according to their respective jurisdictions to all agreements, references, arbitrations and awards in accordance with this Act; and the performance thereof may, where the Courts think fit, be compelled by any process against the companies respectively or their respective property that the Courts or any Judge thereof shall direct and, where requisite, frame for the purpose."

9. I cannot, therefore, agree with the view of Jai Lal, J., in the above case [*Sunder Mal Lakhu Mal v. Paris Business Corporation, Ltd.* AIR 1931 Lah 555] when he states that the last clause of Section 152 appears to be intended to extend the operation of the Arbitration Act even to cases where the subject-matter of dispute could not be the subject of an arbitration under that Act. I have shown that the object of the relevant sections of the Companies Act of 1882 was to give facilities to companies for arbitration so as to bind the corporate body and it was never one of the purposes of the Arbitration Act to restrict these facilities to Presidency Towns or local areas notified as such.

10. In my view the law has been correctly stated in *Attock Oil Co., Ltd. v. Abdul Majid* AIR 1929 Lah 246. The Court of the Subordinate Judge of Dhanbad not being a "Court" as defined in the Arbitration Act, the reference to him was without jurisdiction and this vitiates the whole proceeding. His decree, therefore,

must be quashed and the application must be allowed with costs. Hearing fee 2 gold mohurs.