

(1986) 06 CAL CK 0007
In the Calcutta High Court
Case No : C.O. No. 3244 of 1985

Santosh Kumar Patsaria

APPELLANT

Vs

Radha Krishna Patsaria and Others

RESPONDENT

Date of Decision : 27-06-1986

Acts Referred:

Arbitration Act, 1940 — Section 14, 14(2), 17, 30, 33

Citation : 91 CWN 237

Hon'ble Judges : Susanta Chatterji, J; Mookerjee, J

Bench : Division Bench

Advocate : Tarun Chatterjee and Jiban Ratan Chatterjee, for the Appellant; B.K. Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Mookerjee, J.—Under a registered agreement dated 16th November, 1970 made between the predecessor-in-interest of the present petitioners and the opposite parties, two persons named, Chiranjilal Jhunhunwalla and Jagdish Roy Gupta, were appointed as Arbitrators. After the said Arbitrators had made their award, Sagarmal Patsaria (since deceased), the predecessor-in-interest of the present opposite parties, had filed in the Subordinate Judge's court, Asansol, an application praying for a direction upon the learned Arbitrators to file their award along with the depositions and documents by the date fixed by the court and for passing a judgment and decree in terms of the said Award. The said application was made in substance under sub-section (2) of section 14 of the Arbitration Act, 1940 and the same was registered as Title Suit No. 20 of 1971. On 29th October, 1971 the said Arbitrators filed their Award in the court below. Thereupon, the opposite party nos. 4 to 6 of their suit, had filed an application under sections 30 and 33 of the Arbitration Act. It appears that the said application was, however not registered as a separate Misc. Case.

2. The opposite parties' said application under sections 30 and 33 of the Arbitration Act had been pending and the court has as yet passed no judgment

and decree upon the aforesaid Arbitration Award. On 19th March 1981, the defendant no. 1, Kamala Prasad, the predecessor-in-interest of the opposite parties 16 to 19 of this Revisional Application, died. On 19th May, 1984 the plaintiffs in Title Suit No. 20 of 1971 (opposite party nos. 1 to 9 herein) made an application before the learned Assistant District Judge Asansol for bringing on record for ends of justice the heirs of the deceased defendant No. 1. The opposite party no. 6 in the court below opposed the said application, inter alia, on the ground of limitation. According to him, more than three years having passed from the date of the death of the defendant no. 1, prayer for substitution of the heirs of the defendant no. 1 was based under Article 137 of the Limitation Act, 1963. The remaining opposite parties in the court below did not, however, contest the plaintiff's prayer for substituting the heirs of the defendant no. 1.

3. By his order complained of in this Revisional Application, the learned Assistant District Judge has allowed the prayer for bringing on record the heirs of the deceased defendant no. 1.

4. We hold that the court below did not commit any error of jurisdiction by passing the aforesaid order. Mr. B.K. Banerjee, learned advocate for the opposite parties nos. 1 to 9, has rightly submitted that in the instant case no question of abatement arises. The application of the predecessor-in-interest of the contesting opposite parties which was registered as a title suit, was in substance under sub-section (2) of section 14 read with section 17 of the Arbitration Act, 1940 for a direction upon the Arbitrators to file their award and for passing judgment upon the said award. The petitioner does not even allege the said application was in any way barred under Article 119(a) of the Limitation Act, 1963. In fact, long before the death of defendant no. 1, the Arbitrators had filed their award. Thereafter, it was the duty of the court itself to give to the parties to the award notices for filing of the said award. It was not obligatory for the contesting opposite parties to apply within any prescribed time to the court for giving such notices to the parties of the filing of the award. We may also note before us the petitioner does not contend that prior to the death of defendant no. 1 in the year 1981 such notices were given to the parties including the defendant no. 1. In fact, the opposite party Nos. 4 to 6 of the court below had already filed an application under sections 30 and 33 of the Arbitration Act for setting aside the said award. According to clause (b) of Article 119 of the Limitation Act such application for setting aside the award was to be filed within 30 days from the date of the service of the notice of the filing of the award.

5. We have already observed that the application filed in the court below by the predecessor-in-interest of the opposite party nos. 1 to 9 was a composite one containing prayers for passing orders both under sections 14 and 17 of the Arbitration Act. The Arbitrators having filed their award, their prayer made u/s 14(2) of the Act already stands satisfied. Limitation Act, 1963 does not prescribe any period of limitation for pronouncing judgment according to the award filed in the court. Section 17 of the Arbitration Act provides:

Where the court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration or to set aside the award, the court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree.....

In the instant case, the opposite parties 4 to 6 in the court below had made an application inter-alia for setting aside the award and such application had been pending. When the defendant no. 1 died, carriage of proceedings in the said application under sections 30 and 33 of the Arbitration Act was upon the persons who had made the said application. It does not however, appear that the said applicants had made any separate application for bringing on record in their application under sections 30 and 33 of the Act the heirs of the deceased defendant no. 1.

6. As already observed, until the disposal of the said application preferred for setting aside the award, there could be no question of the court pronouncing the judgment according to the award. In case the said application under sections 30 and 33 of the Arbitration Act be hereinafter refused, it would be the duty of the court itself to proceed to pronounce judgment according to the award. In other words, in the event the application under sections 30 and 33 of the Act be rejected, the court below would have no option but to pronounce its judgment according to the award and to draw up a decree. If after filing of the award and before the judgment is pronounced any party dies, the court may bring the heirs of the deceased party on record. S.K. Dutt, J. in the case of Ramnibas Jhunhunwalla Vs. Benarashi L. Jhunhunwalla, , correctly that court has such inherent jurisdiction to bring heirs on record before judgment is pronounced upon filing of an award in court.

7. Section 41(a) of the Arbitration Act no doubt makes the provisions of the CPC applicable to proceedings before the court and to appeals but the same is subject to the provisions of the Arbitration Act and the Rules made thereunder. S.K. Dutt, J. in the case of Ramnibas Jhunhunwalla v. Benarasi L. Jhunhunwalla (supra), correctly pointed out that the nature of an arbitration proceeding is so different in some essential features from a suit that Order 22 of the CPC cannot be applied without violence to the provisions of Order 22 itself and the provisions of the Arbitration Act. Making of any application by a party is not a condition precedent for pronouncing judgment according to the award which has been filed. After an award is filed when either the time for setting aside the same had expired or such application has been refused, the court is required to proceed to pronounce judgment according to the award and upon the judgment so pronounced, a decree shall follow. When making of any application for pronouncing judgment according to the award was not required, we fail to see how the petitioners can rely upon the residuary Article 137 of the Limitation Act and contend that after expiry of three years from the date of the defendant no. 1 no application for bringing his heirs on record was maintainable. Before pronouncing its judgment

upon the award on record, the heirs of a deceased party to the award, the step is necessary for two purposes. The heirs of a deceased party to the award ought to be brought on record so that notices of filing of the award may be served and thereby the heirs would get an opportunity to apply for setting aside the award. Secondly, the names of the said heirs are to be incorporated in the decree which would follow the judgment upon the award. In fact, heirs of other deceased parties to the award were brought on record of the court below personally without anybody raising any objection. For the foregoing reasons, the court below has rightly held that question of limitation did not arise for bringing on record the heirs of the deceased defendant no. 1. We express no opinion on the merits of the pending application under sections 30 and 33 of the Limitation Act or about its maintainability. We accordingly dismiss this application without any order as to costs.

Susanta Chatterji, J.

I agree.