
(2004) 04 PAT CK 0084

In the Patna High Court

Case No : Appeal from Original Order No. 327 of 1997

Saukhi Lal Prasad

APPELLANT

Vs

Chandradip Yadav and Others

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0084

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This appeal is directed against the judgment dated 27.5.1997, passed by the learned Subordinate Judge-II, Patna City, Patna, in Title Suit No. 315 of 1987, Chandradip Yadav v. Shokhilal Prasad, whereby the award in terms of the Arbitration Act, 1940 (hereinafter referred to as the. "Act"), has been made a rule of the Court and decree has been passed accordingly.

2. Defendant No. 1 is the appellant. The case of the plaintiff (respondent) is that the plaintiff is the karta of his own family consisting of defendant Nos. 4 and 5, and similarly other defendants of the 1st set are kartas and representatives of their respective families. Subject matter of the dispute is stated in detail at the end of the plaint which is situate at Chakrasil, PS. Alamganj, District-Patna, bearing khata No. 194., plot No. 252, area 29 decimals. Dispute arose between the plaintiff and the defendant 1st set with respect to the suit property. The plaintiff and defendant 1st set entered into an arbitration agreement who executed a panchnama on 20.1.1987, and Awadh Bihari Singh, defendant No. 8, was appointed sarpanch and authorised to decide the dispute. The further case of the plaintiff is that both the parties presented their case and the panches gave their award on 12.4.1987. The award was duly and legally registered on 18.4.1987, and notice about giving of the award was sent to the parties through registered post on 18.4.1987. The suit was filed so that the award may be made a rule of the Court.

3. A written statement was filed on behalf of defendant Nos. 2 to 7, inter alia, stating therein that the plaintiff is not entitled to get the relief but in other

paragraphs of the written statement these defendants have supported the claim of the plaintiff.

4. Another written statement has been filed on behalf of defendant No. 1 (Shokhilal Prasad), inter alia, stating therein that the suit as framed is not maintainable. It is barred under the provisions of India Arbitration Act. This defendant was found in possession over the disputed land. It has been further stated that some common friends of the parties persuaded this defendant and the plaintiff and the defendant Nos. 2 to 7 to settle the matter through arbitration who signed a blank stamped paper for the purpose of appointment of arbitrator and gave the same to. Awadh Bihari Singh in the year 1985. Sri Awadh Bihari Singh was appointed arbitrator by the plaintiff and Rameshwar Prasad was appointed arbitrator by this defendant. Defendant No. 1 several times requested the arbitrator for arbitration which he refused to do. Thereafter defendant No. 1 approached Rameshwar Prasad and Awadh Bihari Singh to return the unstamped signed paper which was not returned. Under the circumstances, defendant No. 1 filed Misc. Case No. 76 of 1987 for revocation of the authority given to Rameshwar Prasad and Sri Awadh Bihari Singh. The panches and sarpanch have misconducted the proceeding and have made and signed the award in collusion with the plaintiff. Hence the award is liable to be set aside.

5. After hearing the parties, the award was made rule of the Court.

6. While assailing the validity of the impugned judgment, learned counsel for defendant No. 1 (appellant) submits that the objection was summarily rejected on the ground of delay. He submits that the same ought to have been considered on merits. He relies on the unreported judgment of this Court passed in Bihar State Construction Corporation Ltd. v. Complete Export, M.A. No. 477 of 1997, disposed of on 23.1.2002, and the judgment of the Orissa High Court reported in Executive Engineer, Rural Engineering Division, Puri Vs. Construction India, He next submits that he has challenged the very appointment of the Arbitrator and his case is covered by the provisions of Section 33 of the Act, apart from his detailed objection u/s 30 of the Act.

7. Learned counsel for the plaintiff and other defendants (respondents herein) have supported the impugned judgment.

8. I have perused the materials on record and considered the submissions of learned counsel for the parties. It appears to me that defendant No. 1 had filed his written statement before the panches. The panchnama (the arbitration agreement) was signed by the parties on 20.1.1987, referring the dispute to arbitration by the signatories. The Arbitrator issued notices to all the parties, including defendant No. 1 (appellant) who submitted his written statement on 19.2.1988 but did not thereafter appear before the Arbitrator. He had, in the meanwhile, filed Misc. Case No. 76 of 1987 in Court of Sub-Judge-f, Patna, stating therein that he was not a party to the arbitration agreement and his signature on blank paper had been obtained and has been illegally converted into

an arbitration agreement. The Arbitrators gave their award on 12.4.1987 which was duly registered on 18.4-1987.

9. The plaintiff filed the aforesaid Title Suit No. 315 of 1987 that the award be made a rule of the Court. Notices were issued to the defendants. Defendant No. 1 had appeared on 15.1.1988. The award was filed in Court on 17.3.1988. He filed his objection on 3.5.1988. The learned trial Court has refused to consider the same on the ground that the same was filed belatedly and was barred by limitation. He has further held in paragraph 8 of the judgment "that no petition for condonation of delay in filing the objection has been filed on behalf of defendant No. 1." He has, therefore, concluded that in view of the provisions of Article 119(b) to the schedule to the Limitation Act, the objection is hit by delay. Law is well settled that in cases covered by statutory period of limitation, the limitation sets in by automatic operation of law unless an application u/s 5 of the Limitation Act (or a cognate provision of any specialised Act) is filed making sufficient cause for condonation of delay. In the present case, the period of limitation had expired on 17.4.1988. The Court felt helpless and had no option but to refuse to entertain the objection because there was no application for condonation of delay. In that view of the matter, the learned Subordinate Judge was right in refusing to entertain the objection petition. The judgments relied on by the learned counsel for defendant No. 1 (appellant) were confined to the facts and circumstances of the case where the High Court felt that the delay was fit to be condoned.

10. There is yet another aspect of the matter Defendant No. 1 had filed written statement before the Arbitrator but had refused to pursue the same and did not participate in the proceedings.

11. There is yet another aspect of the matter. Due to the intervention of well-wishers, the parties including defendant No. 1 had agreed to enter into arbitration agreement and defendant No. 1 had appointed Rameshwar Prasad as panch on his behalf, defendant No. 1 did not participate in the proceedings and had, therefore, challenged the entire arbitration agreement as bad in law, and it was in that background that the aforesaid Misc. Case No. 76 of 1987 was filed, which was rejected by the learned Subordinate Judge by his order dated 28.12.1987, on the ground that the final award had been passed. Defendant No. 1 had challenged the same by preferring Civil Revision No. 1249 of 1990 in this Court which was dismissed vide order dated 14.11.1995. It appears to me on a perusal of the panchnama that the appointed panches are Awadh Bihari Singh, Prem Kumar, Brajendra Bahadur, Gopal Prasad Srivastava, Lal Babu Prasad, the name of Rameshwar Prasad does not find place in the list of panel of Arbitrators. Therefore, defendant No. 1 wanted to resile from the arbitration agreement on a seemingly false ground.

12. The disputes relates to plot No. 252 of khata No. 194, covering a total area of 29 decimals. The dispute is so small, the same has been gone into by the Arbitrators and there should be an end to the litigation. It cannot be a wise

exercise of discretion to allow this appeal and remit the matter back to the Civil Court. Defendant No. 1 (appellant) must suffer, if at all, on account of his refusal to press his written statement before the Arbitrator, and for having resorted to the false ground of not being a party to the arbitration agreement.

13. In the result, this appeal is dismissed..