
(1975) 10 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1092 of 1975

Shri Madan Mohan

APPELLANT

Vs

Shri Manohar Lal

RESPONDENT

Date of Decision : 03-10-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1975) 10 P&H CK 0028

Hon'ble Judges : Pritam Singh Pattar, J

Bench : Single Bench

Advocate : D.N. Awasthy, for the Appellant; R.S. Bindra and Mr. R.L. Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Pritam Singh Pattar, J.—This is a revision petition filed by Madan Mohan defendant against the order dated April 2, 1974, of Sub Judge 1st Class, Amritsar, whereby he dismissed his application u/s 151 of the CPC praying that his application u/s 34 of the Indian Arbitration Act may be decided before deciding the application of the plaintiff made under order 6, rule 17 of the CPC for amendment of the plaint.

2. The facts of this case are that one Gauri Mal the father of Madan Mohan petitioner and of Manohar Lal and Sham Sunder, respondents Nos. 1 and 2 and the husband of Shrimati Uma Vati, Respondent No 3, died in the year 1933. Manohar Lal plaintiff respondent No. 1 filed a suit for partition of the property owned by the Joint Hindu Family constituted by him and his two brothers and their mother Smti. Uma Vati and for separate possession of his one fourth share, in April, 1974. Madan Mohan defendant made an application u/s 34 of the Arbitration Act on June 9, 1974, in that suit that there was an arbitration agreement between him and his brothers Manohar Lal plaintiff and Sham Sunder defendant, according to which the dispute involved in the suit has to be referred to the arbitration of one Seth Hardwari Lal, and therefore the proceedings of this

suit may be stayed. This application was contested by the plaintiff and other defendant inter-alia on the ground that Smt. Uma Vati defendant was not a party to that arbitration agreement, and therefore, the question of staying the proceedings of the case did not arise. Thereafter, the plaintiff Manohar Lal made application on December 12, 1974 under order 6, rule 17, Civil Procedure Code, to amend the plaint to include one other property situated in Bombay. This application was contested by the defendant Madan Mohan on the plea that that property did not belong to the family and it belonged to Smt. Amar Kaur, his mother-in-law, who had purchased the same, therefore, this amendment should be refused. Madan Mohan defendant made an application on February 11, 1975, u/s 151, Civil Procedure Code, alleging that his application u/s 34 of the Arbitration Act should be decided before the application of the plaintiff made under order 6, r. 17, Civil Procedure Code, is decided. This application of Madan Mohan was contested by the plaintiff and the other defendants. After hearing the counsel for the parties, the Subordinate Judge dismissed this application filed by Madan Mohan defendant u/s 151, Civil Procedure Code, and adjourned the case to April 18, 1975 for hearing arguments on the application for amendment filed by the plaintiff. Feeling aggrieved, Madan Mohan petitioner has filed this civil revision alleging that the decision of the Subordinate Judge is wrong and incorrect and it may be set aside and he may be directed to decide first his application made u/s 34 of the Arbitration Act.

3. It is undisputed that after hearing the arguments of the counsel for the parties the application of the plaintiff to amend the plaint was accepted by Sub-Judge and he permitted him to amend the plaint on payment of Rs. 50/- - as costs, on June 9, 1975. The present revision petition No. 1092/1975 was filed by Madan Mohan petitioner in August, 1975. Since the application for amendment of the plaint has been decided, therefore, the petition u/s 151, CPC made by Madan Mohan petitioner has become infructuous and consequently this Civil revision must fail on this short ground. It appears that the petitioner was not serious about his application u/s 151, Civil Procedure Code, otherwise he would have immediately filed revision petition against this order dated April 2, 1975, of the Sub Judge in the High Court and obtained a stay order, but this he did not, do for reasons best known to him.

4. Even on merits there is no substance in this revision petition, Mr. D.N. Awasthy, the Learned Counsel for the petitioner, argued that it was proper for the Sub-Judge to decide his application u/s 34 of the Indian Arbitration Act first and then to decide the application of the plaintiff for amendment of the plaint and that the procedure followed by him contravened the provisions of section 34 of the Indian Arbitration Act. This contention is without force. Section 34 of the Arbitration Act simply says that any party to an arbitration agreement may at any time before filing a written statement or taking any other steps in the proceedings apply to the Court to stay the proceedings of the case and the Court if satisfied that there is no sufficient ground why the matter should not be referred in accordance with the arbitration agreement and that the petitioner is

still ready and willing to do all things necessary to the proper conduct of the arbitration, may stay the proceedings of the case. "It is thus clear "that the provisions of section 34 of the Indian Arbitration Act are not contravened by the procedure adopted by the Sub-Judge, Admittedly, the arbitration agreement dated February 23, 1974, is between three brothers, namely, Manohar Lal plaintiff, Madan Mohan petitioner and Sham Sunder, defendant Respondent, and their mother Smt. Uma Vati is not party to that agreement. She claimed one-fourth share in the Joint Hindu Family property, which is the subject-matter of the suit. She filed a written statement in the quit and claimed her one-fourth share in the property. If after the amendment of the plaint Smt. Amar Kaur, who is the mother in law of the petitioner, is also impleaded as a defendant, it would not affect the rights of Madan Mohan Petitioner under the arbitration agreement, if any. For all these reasons, the contention of the Learned Counsel for the petitioners is rejected.

5. It is well-settled law that the power of the High Court u/s 115, Civil Procedure Code, is exercisable in respect of any case which has been decided. The expression "case" is not defined in the Code, nor in the General Clauses Act It is not restricted to a litigation in the nature of a suit in a civil Court and includes civil proceeding other than a suit in which the jurisdiction of the Court is invoked for the determination of some claim or right legally enforceable, and it also includes a part of a case, vide Major S.S. Khanna v. Brig. F.J. Dhillon AIR 1961 SC 497 and AIR 1943 65 (Lahore) . Now, in the instant case by dismissing the application u/s 151, Civil Procedure Code, of the petitioner the Court did not decide any rights and obligations of the parties pertaining to the suit. Therefore, no revision petition against the impugned order dated April 2, 1975, is competent and this petition must fail on this ground alone.

6. Section 115 CPC empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction (b) that the case is one in which the court ought to exercise jurisdiction ; and (c) that in exercising jurisdiction the court has not acted illegally, i.e., in breach of some provision of law, or with material irregularity by committing some error of procedure in the court of the trial which is material. If the High Court is satisfied on these three matters, it has no power to interfere because it differs from the conclusions of the Subordinate Judge on questions of fact or law. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision u/s 113 of the Code when there was no illegality or material irregularity committed by the lower court-Vide D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, and Shri M.L. Sethi Vs. Shri R.P. Kapur, The Subordinate Judge while dismissing the application of the petitioner u/s (sic) Civil Procedure Code, did not act illegally or with material irregularity and the decision is correct.

7. For the reasons given above, it is held that there is no sub-stance in this revision petition and the same is dismissed with costs.