
(1969) 07 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 33 of 1968

Shri Ram Singh

APPELLANT

Vs

Hindustan Embroidery Mills (P.) Ltd. and others

RESPONDENT

Date of Decision : 28-07-1969

Acts Referred:

Arbitration Act, 1940 — Section 34

Citation : (1969) 07 P&H CK 0012

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Advocate : K.L. Kapur, for the Appellant; Bhagirath Dass, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Pandit, J.—This order will dispose of three connected Civil Revision Petitions Nos. 33. 894 and 895 of 1968.

Vide my order dated 29th October 1963, while deciding Civil Revisions 08. 894 and 895 of 19618 I had set aside the impugned orders and directed the learned Judge to pass fresh orders after hearing both the parties and considering all the contentions raised by the Petitioner-company. The learned judge was directed to submit his fresh orders to this Court within six weeks. In compliance with my direction, the learned Judge has rewritten his orders after hearing the parties and they have been placed before me.

This order may be read in continuation of my earlier one dated 29th October, 1968. The counsel for both the parties were heard and after doing so, I have come to the conclusion that there is no merit in these petitions. In the order dated 29th October, 1968 it is clearly stated that it was conceded by the learned Counsel for the parties that the decision in Civil Revision No. 895 of 1968 would cover the other case, namely, Civil Revision No. 894 of 1 1968, as well. In that order, there-fore, I referred to the facts of the former civil revision. The Respondent had filed a suit for the recovery of certain amounts against the

Petitioner and that suit was pending in Amritsar. The Petitioner applied for the stay of the said suit u/s 34 of the Arbitration Act and in support thereof applied for the issue of a Commission for the examination of two arbitrators and one Gurbaksh Singh all of whom were residents of Bombay. By the impugned order, the said application was rejected by the trial Judge, which led to the filing of the revision petition in this Court.

2. The Petitioner's case was that the parties to the suit were bound by the arbitration agreement dated 18th August, 1965, which covered the matter in dispute in the Civil suit at Amritsar and the Plaintiff was bound by that agreement, being a subsidiary concern of Messrs. Hindustan Embroidery Mills Private Limited. It was also urged by the Petitioner that the matter in dispute in the Civil suit was already pending before the arbitrators at Bombay, where the Plaintiff had taken proceedings for the revocation of the arbitration agreement. The witnesses sought to be examined on Commission had to produce the original arbitration agreement as well as the original bifurcation agreement. They had also to be confronted with the litigation which was pending in the Bombay High Court for revocation of the arbitration agreement and they were further to depose that the dispute in the Civil suit was already before the arbitrators.

3. The stand taken by the Plaintiff Respondent was that the application filed by the Petitioner u/s 34 of the Arbitration Act was not bona fide and had been made with the ulterior object of prolonging the case. The Respondent placed on the file the copies of the arbitration agreement and the bifurcation agreement, After the production of those two agreements, which were admitted to be correct by both the parties, the learned Judge came to the conclusion that the examination of the arbitrators became unnecessary, because they had only to produce the said two documents. Gurbaksh Singh had to be examined for establishing that the Plaintiff was a subsidiary firm of Messrs Hindustan Embroidery Mills Private Limited and also that it was bound by the arbitration agreement. The learned Judge observed that the question whether the Plaintiff was bound by the arbitration agreement or not would depend on the interpretation of the said agreement. As regards the fact whether the Plaintiff was a subsidiary firm of Hindustan Embroidery Mills Private Limited, that could be proved by the bifurcation agreement and the Defendant could also lead evidence to show that the Hindustan Embroidery Mills Private Limited controlled the Plaintiff company. The learned Judge also came to the conclusion that the application filed by the Petitioner was frivolous and it was merely a device to prolong the litigation as much as possible. The same was, consequently, dismissed.

4. It is undisputed that before an application u/s 34 of the Arbitration Act could succeed, it had to be established by the applicant that the subject matter of dispute in the Civil suit was covered by the arbitration agreement and the Plaintiff in that suit was a party to the said agreement. The suit, which is required to be stayed u/s 34 of the Arbitration Act, has necessarily to be in respect of a matter which the parties had agreed to refer to arbitration. In the

instant case, when the arbitration agreement is produced before the Civil Court, it could come to the conclusion on the interpretation of the said agreement whether the dispute before it was covered by the same and further whether the Plaintiff was a party to that agreement. After the agreement had been filed in Court, the arbitrators need not be examined to produce the same. So far as the other contention of the Petitioner, namely, that the matter in dispute was already pending before the arbitrators, was concerned, they could produce a copy of the claim applications filed by the Plaintiff before the arbitrators and show therefrom that the present dispute was already before them. Regarding the third submission of the learned Counsel for the Petitioner that after having once referred the dispute to the arbitrators, the Plaintiff could not bring an action in the Civil Court, that would depend on, firstly, whether, as a matter of fact, the Plaintiff had referred the dispute to the Arbitrators, and, secondly, if in law they could institute a Civil suit after having done so. As regards the question of fact whether the Plaintiff had actually referred this very dispute to the arbitrators, it could be, as already mentioned above, determined by the production of the claim application filed by the Plaintiff before the arbitrators. If the said dispute was not covered by the claim application, it was obviously not referred to the arbitrators and in that contingency, the other question, namely, whether after having once referred the matter to the arbitrators, a party could bring a civil action for the same relief, would not arise. If, on the other hand, it was found that it had been so referred, then the second question which was purely a legal one, could be determined by the Civil Court, but without any further evidence.

5. In view of what I have said above, there was no need to issue a Commission in this case. It cannot be said that the discretion vested in the Court below in deciding the said application had been exercised in an arbitrary or perverse manner. The trial Judge had, therefore, rightly dismissed the application of the Petitioner for that purpose and no interference is called for in the impugned order.

6. As regards Civil Revision No. 33 of 1938, it was conceded by the counsel for the parties, that the order in the other two revision petitions would govern that case as well. I may add that in the civil suit, out of which the said revision petition has arisen, the learned Counsel for the Respondent had undertaken to produce a photostate copy of the arbitration(sic) agreement dated 18th August, 1965, and a copy of the bifurcation agreement dated 26th March, 1965, on the first date of hearing fixed by the Court below.

7. The result is that all these petitions are dismissed, but with no order as to costs. The parties have been directed to appear before the trial Court on 25th August, 1969 for further proceedings in the suits.