
(2003) 05 JH CK 0012
In the Jharkhand High Court
Case No : Civil Revision No. 184 of 2003

Smt. Sushila M. Maru and Another

APPELLANT

Vs

Chittaranjan M. Maru

RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

Citation : (2005) 2 JCR 546

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Manjul Prasad and Manoj Kumar, for the Appellant; S.L. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This Civil Revision application is directed against the order dated 7.3.2003 passed by Sub-Judge I, Ranchi in Misc. Case No. 6/2000 whereby the Court below has rejected the application filed by the petitioners for summoning the Arbitrators as witnesses.

2. It appears that by an agreement dated 24.11.1989 the petitioners and the opposite party referred their dispute relating to partition of joint family properties to the Arbitrators, Namely, Sri Jagdish H. Chouhan and Sri Radheshyam Marathia. The said Arbitrators, without entering into the reference passed an interim award dated 25.12.1989. Thereafter they published their final award and the same was filed in the Court and was registered as Title Suit No. 130/99. The petitioners challenged the award by filing objection which was registered as Misc Case No. 6/2000. In the said case the petitioners filed an application for summoning the Arbitrators as witnesses. The grounds taken by the petitioners in their objection are that the Arbitrators gave their award even without entering into reference and without issuing notices to the parties and without hearing them. The said application has been rejected by the Court below by the impugned order holding that there does not appear any misconduct on the part of the Arbitrators and therefore summoning the Arbitrators will served no

purpose.

3. I have heard Mr. Manjul Prasad, counsel for the petitioners and Mr. Shankar Lal Agrawal, learned counsel for the opposite parties.

4. A copy of the agreement by which the parties agreed to refer the dispute to the Arbitrators, has been annexed as Annexure A to the counter affidavit. Para 2 of the agreement empowers the Arbitrators to proceed ex parte in case of any of the parties failing to attend the Arbitration proceeding even after reasonable notices given to them. Admittedly the Arbitrators, without entering into the reference, gave interim award. The objection raised by the petitioners for setting aside the award is that the Arbitrators never entered into the reference before giving their final award nor any opportunity of hearing was given to the parties. It was also alleged that one of the Arbitrators, namely, Jagdish H. Chouhan never came to Ranchi after 1994 till the date of publication of the award and, therefore, question of entering into reference does not arise.

5. It is, rather, surprising that the parties entered into agreement in December, 1989 whereby the Arbitrators were requested to adjudicate their dispute but till 1997 the Arbitrators did not enter into reference which is evident from letter dated 4.3.1997 written by the parties requesting the Arbitrators to enter into the reference and give their award as early as possible. A copy of the said letter has been annexed as Annexure-B to the counter affidavit.

6. While hearing this matter on 22.4.2003 I called for the Lower Court record in order to find out whether the Arbitrators have maintained any minutes of proceeding to show that notices of hearing was given to the parties before giving the award. From the Lower Court record it does not appear that any record was maintained by the Arbitrators to show that they have atleast followed the procedure before or after entering into reference and opportunity of hearing was given to the parties. In my opinion, therefore, sufficient grounds have been made out the petitioners justifying the Arbitrators being called as witnesses. The Court below has committed errors of law in holding at this stage that no case of misconduct is made out while hearing the interlocutory application for summoning the Arbitrators. The Court below has not correctly appreciated the ground taken by the petitioner for summoning the Arbitrators as witnesses.

7. In the case of Union of India (UOI) Vs. Orient Engg. and Commercial Co. Ltd. and Another, , the Supreme Court held that the Court may exercise its power of summoning the Arbitrator as witness on the basis that grounds justifying his being called as a witness are affirmatively made out. Their lordship observed :

Of course, if a party has a case of mala fide and makes out prima facie that it is not a frivolous charge or has other reasonably relevant matters to be brought out the Court may, in given circumstances exercise its power to summon even an Arbitrator, because no body is beyond the reach of truth or trial by Court. In the present case, after having heard counsel on both sides we are not satisfied that on the present material there is justification for the examination of the Arbitrator.

We therefore, set aside the order."

8. Similarly in the case of State of Orissa Vs. Niranjan Swain, the Supreme Court observed :

"We may dispose of the second point urged by learned counsel for the appellant straightaway since it does not merit any elaborate consideration. The argument of the learned counsel for the appellant relating to calling the Arbitrator for examination as a witness in the Court was based on the decision of the Orissa High Court in State of Orissa v. D.C. Routray, that decision itself says that even though an Arbitrator is a competent witness the Court must exercise the power of calling him as a witness cautiously and sparingly and not in a routine manner. It is obvious that when the Court is requested to call the Arbitrator for examination as a witness it must be shown that there is some cogent ground for his examination within the permissible limits. Nothing has been shown in the present case to indicate that it was at all necessary to call the Arbitrator as a witness to depose on any matter which could legitimately be examined by the Court in the proceedings. This alone is sufficient to justify the view taken by the High Court. This contention of learned counsel for the appellant is, therefore, rejected."

9. As noticed above, in the instant case the Arbitrators did not enter into reference for more than six years. By an agreement the parties referred their disputes to Arbitration in 1989 and the Arbitrators gave their award in 1999. Even in 1997 the Arbitrators admittedly did not enter into reference. Not only that the Arbitrators even did not maintain records and the minutes of the proceedings and there is no cogent evidence to show that the parties were given opportunity of hearing by the Arbitrators publishing the award. I am, therefore, of the view that the petitioners have made out a case justifying the examination of the Arbitrators as witness. The Court below, therefore, ought to have allowed the application of the petitioners.

10. For the aforesaid reasons this revision application is allowed and the impugned order passed by the Court below is set aside. Consequently the application filed by the petitioner for summoning the Arbitrators is allowed.