

(1998) 06 KAR CK 0060

In the Karnataka High Court

Case No : Civil Revision Petition No. 2873 of 1993

State Government of Karnataka (Irrigation Department),
UKP, Bheemarayanagudi

APPELLANT

Vs

B. Ranveer Kumar Sharma

RESPONDENT

Date of Decision : 02-06-1998

Acts Referred:

Arbitration Act, 1940 — Section 20, 52 (3)
Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 137

Citation : (1998) 5 KarLJ 553

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : C. Ramakrishna, Government Pleader, for the Appellant; Sri V.S. Kulkarni, for the Respondent

Judgement

1. This civil revision petition u/s 115 of the CPC has been filed by the State of Karnataka challenging the judgment and order dated 14-6-1993 passed by Sri D.A. Lathe, Civil Judge, Yadgir, in Arbitration Case No. 17 of 1991 allowing the application of the contractor-present respondent for appointment of Arbitrator and in pursuance thereof Sri S.R. Ujjankop, Chief Engineer, I.D., UKP Canal Zone No. 2, Kembhavi, Taluk Shahapur, has been appointed as the sole Arbitrator. The contractor-present respondent filed the application u/s 20 of the Arbitration Act, 1940, with a prayer for appointment of sole Arbitrator as per sub-clause (3) of Clause 52 of the agreement dated 18-4-1986 and to refer for determination of the disputed claims as set up by the contractor in his letter dated 29-10-1990 addressed to the Executive Engineer. The petitioner who was the Class III contractor was entrusted with the work of construction of six-bedded hospital at Bheemarayanagudi, Taluk Shahapur by the present revisionist. The revisionist states that the authority accepted the tender of the petitioner-contractor on 18-4-1986 and entered into the contract. As per the terms of the contract, the work was to be completed by 8-1-1987 i.e., within nine months from 9-4-1986

and the cost of tender work was Rs. 3,50,112.78 ps. whereas the petitioner-contractor had quoted his tender for Rs. 3,47,840-86 ps. The case of the petitioner-contractor was that some differences arose between the petitioner-contractor in respect of the work carried on beyond the tender period inclusive of the extended period from 8-1-1987 to 7-1-1988 for which no rates were agreed to by the parties nor were specified in the concluded contract. According to the applicant, the respondent did not make the prompt and proper payment as a result of which the contractor was made incapable to continue further work. The measurement of the finally executed work was done and accepted by the parties and according to the contractor's case, he submitted his claim in writing by his letter dated 29-10-1990 and the respondent-authority vide its letter dated 26-11-1990 rejected the said claims. Thereafter, according to the facts of the case, on 19-12-1990 the contractor wrote a letter to the authority concerned expressing his intention to refer the dispute to the arbitration for settlement under Clause 52 of the contract and submitted the names of the panel of Arbitrators for being accepted by the respondent-authority within 30 days failing which the contractor-revisionist could appoint any one of the persons named in the panel as the sole Arbitrator for conducting arbitration proceedings to settle his claims and the dispute. The authority vide letter dated 10-4-1991 along with the copy of the letter of the Chief Engineer dated 26-3-1991, intimated that as per the opinion of the Chief Engineer, the applicant cannot refer the disputes to the arbitration. The applicant-contractor now the respondent in revision asserted his cause of action to have accrued to him when the present respondent-contractor received the letter dated 10-4-1991 in the second week of April 1991 at Shahapur, which is within the territorial jurisdiction of the Court and he prayed for the reliefs (a) to (e) and also prayed for the appointment of sole Arbitrator under sub-para (3) of Clause 52 of the agreement.

2. The State namely the present revisionist who was respondent before the Court below filed objections on many counts including the ground that the application was barred by limitation and that Clause 52, according to the State, had been deleted from the contract and so, according to the State, the applicant who is present respondent had no cause of action. It was also asserted in the objections that the Court had no jurisdiction under Arbitration Act as there was no dispute. It was asserted by the State that the applicant i.e. present respondent having accepted the measurements and the rates which were paid as per the tender, accepted the final bill without raising any objection in August 1990. So the agreement did come to an end.

3. On the basis of the pleadings of the parties, the subordinate Court framed the following issues.--

(1) Whether the petitioner proves that there existed the dispute touching the arbitration agreement between the parties?

(2) If so, whether the matter can be referred to the Arbitration?

(3) Whether the sole Arbitrator can be appointed?

(4) What order?

4. The learned Civil Judge held the application to be in time u/s 137 of the Limitation Act. It further found that there was an agreement and Clause 52 had not been deleted but it was only modified and there existed the modified sub-clause (3) of Clause 52 on record in the agreement. The learned Civil Judge observes as under in page 14 of the certified copy of the judgment.--

"Even the respondent admitted in the reply letter dated 26-11-1990 that the above said sub-clause (3) of Clause 52 exists on record in the agreement dated 18-4-1986 executed between the parties".

The Court after quoting the modified Clause 52(3) observed that the sub-clause (3) of Clause 52 provides that arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1940, and the decision of the sole Arbitrator shall be final and binding on the parties. Thus it opined that sub-clause (3) of Clause 52 existed in the agreement in modified form and it cannot be said that it was scrapped. It also found that there was a dispute between the parties as the claim made by the contractor was rejected by the Government and when the claim made by the contractor was rejected by the Government, the cause of action definitely was there for moving application u/s 20 and therefore the application was maintainable and it appointed the Arbitrator. It also held that it had got the jurisdiction to entertain the application and disposed it of as the cause of action for the case had accrued i.e. taken place within the jurisdiction of the Court below. Having recorded these findings, the Civil Judge allowed the application u/s 20 after having held that it fulfilled the requirements of Section 20 of the Arbitration Act. It appointed Sri S.R. Ujjankop, Chief Engineer, I.D., UKP Canal Zone No. 2, Kembhavi, Taluk Shahapur as the sole Arbitrator.

5. As mentioned earlier, feeling aggrieved from the order of the Civil Judge, the State has come up in revision u/s 115 of the CPC. I have heard the learned Government Pleader Sri Ramakrishna as well as Sri V.S. Kulkarni, learned Counsel for the respondent, at some length.

6. It has been contended by the learned Government Counsel that the application u/s 20 was barred by limitation and it was not maintainable on other ground as well, namely, that Arbitration Clause 52(3) had been deleted and further that the contractor has accepted the amount after final measurement and the rates which were paid as per tender, accepted the payment of final bill without any objection.

7. These contentions of the learned Government Counsel have hotly been contested by the learned Counsel for the respondent Sri V.S. Kulkarni,

8. The jurisdiction of this Court u/s 115 of the CPC is confined and limited to pure question of jurisdiction or the findings decisions which affect the jurisdiction of the Court namely if the Court exercises jurisdiction on the basis of wrong

decision of question of fact or law touching jurisdiction as well namely in cases where the Court has refused to exercise jurisdiction vested or in other words failed to exercise a jurisdiction so vested or exercised a jurisdiction not vested in it or has exercised its jurisdiction illegally or with material irregularity. Section 20 of the Arbitration Act reads as under.--

"Section 20. Application to file in Court Arbitration Agreement.--

(1) Where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where difference has arisen to which the agreement applies, they or any of them instead of proceeding under Chapter II, may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested or plaintiff or plaintiffs and the remainder as defendants if the application has been presented by all the parties or if otherwise between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all parties to the agreement other than the applicants requiring them to show cause within the time specified in the notice why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed and shall make an order of reference to the Arbitrator, appointed by the parties, whether in the agreement or otherwise, or where the parties cannot agree upon an Arbitrator, to an Arbitrator appointed by the Court.

(5) Thereafter, the arbitration shall proceed in accordance with and shall be governed by the other provision of this Act so far as they can be made applicable".

A reading of sub-section (1) of Section 20 per se reveals that in order to move an application u/s 20, the applicant making application has to make out and to establish the following necessary ingredients namely (a) that the parties to the case have entered into an arbitration agreement in respect of subject-matter of the agreement or any part thereof and (b) that difference has arisen between the parties with respect to the matter to which the agreement applies or dispute has arisen between the parties with respect to the matter relating to which agreement applies, then the person gets the right to apply to the Court having jurisdiction in the matter to which the agreement relates and that the Court may be pleased to appoint the Arbitrator and refer the matter to Arbitrator appointed by the parties or where the parties cannot agree upon an Arbitrator, to an Arbitrator appointed by the Court. Therefore, sine qua non for moving the application u/s 20 of the Arbitration Act is coming into existence of the dispute

between the parties with reference to the matter to which arbitration agreement applies and is essential to give a right to move application u/s 20 of the Arbitration Act. A dispute arises or comes into being when a party makes a claim in relation to subject under agreement and other party denies or refuses it, on whatsoever ground, then on the refusal to accept the claim made, it may be said that dispute has arisen between the parties relating to matter covered by the agreement. I may clarify that claim made by one party under the agreement and other party denies the claim, then dispute arises. No doubt, agreement must contain a clause for arbitration.

9. So far as the question of limitation is concerned whether the application u/s 20 of the Arbitration Act was barred by limitation, I think it proper to deal with this question first. There is no specific Article prescribing limitation for moving this application u/s 20 of the Arbitration Act. As such, the residuary clause is to apply in such cases namely Article 137 of the Limitation Act is to apply to such an application. Article 137 reads as under:--

Description of suit

Period of limitation

Time from which period begins to run

137. Any other application for which no period of limitation is provided elsewhere in this Division

Three years

When the right to apply accrues

Thus the period of three years prescribed under Article 137 of Limitation Act may be applicable to such cases within which a person may move an application u/s 20 if cause of action and right to move such an application accrues i.e., within three years from that date of accrual of right or cause of action thereof. When I so opine, I find support of their Lordships of the Supreme Court in the cases of *The Vulcan Insurance Co. Ltd. Vs. Maharaj Singh and Another*, and *Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority*, :

10. The question before this Court in this case is when did the right to move the application did accrue, u/s 20. As mentioned earlier, the cause for moving an application u/s 20, sub-section (1) of the Arbitration Act would be coming into existence when a dispute arises between the parties in regard to matter covered by an agreement containing arbitration clause or providing for arbitration. According to the facts of the case, the applicant made claim for amounts vide letter dated 29-10-1990 and the respondent-authority by its letter No. UKP/SB/DD/1/P- 5/Bldg/Constn/90-91-2739 dated 26-11-1990 rejected the claim of the contractor-present respondent in the revision namely the applicant in application u/s 20. Thereafter, the contractor addressed a letter to the respondent-authorities expressing his intention to refer the dispute to the arbitration for

settlement under Clause 52 of the contract which the authority rejected vide letter dated 10-4-1991. These facts per se reveal that really dispute did arise on 26-11-1990 when the claim made by the claimant-contractor i.e. present respondent in the revision was rejected by the State authorities vide letter dated 26-11-1990. Further, when the State authorities refused to refer the matter to arbitration though the contractor-applicant in application u/s 20 had desired to refer the dispute to the arbitration of the Arbitrator appointed by the parties. So lastly again cause of action and right did accrue on 10-4-1991. Limitation is three years as per Article 137 of the Schedule to the Limitation Act and three years period begins to run when the right to apply u/s 20 did arise. Right to apply u/s 20, no doubt, did arise on or after 26-11-1990 and lastly on 10-4-1991. The application u/s 20 of Arbitration Act was moved on 21-10-1991 i.e. well within one year's period from the date of rejection of claim of the contractor by the State Authorities i.e., the present revisionist.

11. Thus considered in my opinion, the application u/s 20 has been well within time i.e., well within the period of limitation. As such, the contention of the learned Government Pleader that the application u/s 20 was barred by limitation has got no substance and such argument of the learned Government Pleader has to be rejected and it is being rejected herewith. The other contention of the learned Government Pleader has been that the arbitration Clause 52(3) had been deleted and therefore there was no question of any arbitration agreement being existed. I am unable to accept this contention of the learned Government Pleader in view of the fact that really sub-clause (3) of Clause 52 of the agreement had not been deleted, but it was only modified and the modified clause provided that arbitration in respect of any dispute shall be conducted in accordance with the provisions of the Arbitration Act, 1940, and the award given by the sole Arbitrator shall be final. This does not amount to deletion of arbitration clause instead only modification. So the second contention of the learned Government Pleader is also without substance. Learned Government Pleader very much emphasised that the contractor i.e. present respondent in revision had accepted, after the work was finalised in August 1990, the measurements and the payment for the final bill and did not raise any objection for the same. The objections raised are afterthought. The learned Government Pleader has placed no documents before this Court which may show that any final and full settlement of the claim was made. If it was in writing and that the Contractor has given in writing that in full and final settlement of his claim he has accepted the amount, then there would have been some force in the contention of the learned Government Pleader. But no such evidence has been placed. A person may accept the payment, but may dispute and press his further claim. Unless he has given in writing that he accepts the amount in full and final settlement of the claim, dispute may arise and continue. In my opinion, there did exist a dispute and a dispute did arise when the claimant made claim vide letter dated 29-10-1990 addressed to the Executive Engineer and that claim was rejected by the authorities namely the present revisionist before this Court. So there did

exist a dispute between the parties on 26-11-1990 when the claim of the contractor was rejected. All the ingredients, as such, have been present which entitled the respondent-contractor to move an application u/s 20. The proposal of the present respondent i.e. applicant u/s 20 which he had made earlier to the parties for appointment of sole Arbitrator had also been rejected in April 1991. So there was no other way except accepting the prayer and appointing the Arbitrator. No other point has been pressed on behalf of the parties.

12. Thus considered in my opinion, the order passed by the learned Civil Judge cannot be said to be suffering from any error of jurisdiction either of exercise of jurisdiction not vested illegally or refusal to exercise the jurisdiction illegally nor the order suffers from any illegality or irregularity in exercise of jurisdiction. Thus considered in my opinion, the present revision has got no merits. It has got to be dismissed and it is hereby dismissed. Costs are made easy.