

(1978) 12 PAT CK 0006
In the Patna High Court
Case No : Civil Revision No. 1331 of 1976

State of Bihar and Others	Vs	APPELLANT
Paras Nath Pandey and Others		RESPONDENT

Date of Decision : 21-12-1978

Acts Referred:

Arbitration Act, 1940 — Section 14, 2, 31, 31(4), 33

Citation : AIR 1979 Patna 196

Hon'ble Judges : Hari Lal Agrawal, J;B.P. Jha, J

Bench : Division Bench

Advocate : Radha Raman, A.A.G, D.N. Sinha, No. 4 and R.C. Sinha, for the Appellant; Shreenath Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jha, J.—The defendants --first party preferred a civil revision application challenging the validity of the order dated 9-11-1976 passed by second Subordinate Judge, Muzaffarpur.

2. The opposite party No. 1, Paras Nath Pandey, filed an application u/s 14 of the Arbitration Act, 1940 (Act 10 of 1940) (hereinafter referred to as the Act) in the court of first Subordinate Judge, Muzaffarpur, on 28-9-1972 which was registered as title suit No. 177 of 1972. The opposite party, Paras Nath Pandey, filed this application for passing a decree in terms of the award. Later on the application was transferred for hearing before the first Additional Subordinate Judge, Muzaffarpur, The defendants -- first party filed an application u/s 33 of the Act on 13-2-1974 before the first Additional Subordinate Judge, Muzaffarpur. The plaintiff (Paras Nath Pandey) raised an objection about the maintainability of the miscellaneous case. By the order dated 25-6-1974 the first Additional Subordinate Judge upheld the validity of the petition filed by the defendant first party before him. Later on the case was again transferred to the court of Second Subordinate Judge, Muzaffarpur, for disposal. In the court of second Subordinate Judge, Muzaffarpur, the plaintiff again filed an application on 31st Aug. 1976 in

respect of the maintainability of the petition filed by the defendant first party u/s 33 of the Act. The main objection of the plaintiff was that the first Additional Subordinate Judge had no jurisdiction to entertain an application u/s 33 of the Act as it was not a court within the purview of Section 31(4) of the Act.

3. It is relevant to quote Section 31(4) of the Act which runs as follows :

"31 (4) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that court and in no other Court."

On a perusal of Section 31(4) of the Act it is clear that all subsequent applications arising out of the reference and the arbitration proceedings shall be made in that court which has jurisdiction to entertain an application under the Act, In the present case the first Subordinate Judge, Muzaffarpur, had jurisdiction to entertain an application u/s 14 of the Act and as such all subsequent applications arising out of the proceedings u/s 14 of the Act shall be made in the Court of the first Subordinate Judge and in no other court. The word "Court" has also been defined u/s 2(c) of the Act which runs as follows :--

"2 (c) -- "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court".

On a perusal of Section 2(c) "Court" means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference. In the present case the first Subordinate Judge Muzaffarpur, was the Civil Court where an application u/s 14 of the Act could have been filed. If it is so, all the subsequent applications arising out of a proceedings u/s 14 of the Act shall be filed before the first Subordinate Judge, Muzaffarpur, in view of Section 31(4) read with Section 2(c) of the Act. In this circumstance, second Subordinate Judge was justified in recalling the order dt. 25-6-74. By the order dt. 25-6-74 the first Additional Subordinate Judge upheld the maintainability of the petition filed by the defendant first party u/s 33 of the Act. It is this order which was recalled by the second Subordinate Judge. Muzaffarpur. In our opinion, the impugned order of the second Subordinate Judge, Muzaffarpur, is correct in law. Hence the second Subordinate Judge directed the defendant first party to file a proper application u/s 33 of the Act before the court having proper jurisdiction. In our opinion, there is nothing wrong in the order. In view of Section 31(4) read with Section 2(c) of the Act the application u/s 33 is required to be filed before the first Subordinate Judge, Muzaffarpur.

4. In the result the petition is dismissed. The parties will bear their own costs.

Hari Lal Agrawal, J.

5. While I agree with the judgment of my learned brother that this application must fail, I would like to add a few observations of my own. From the facts, already stated by my learned brother, it is clear that the application u/s 14(2) of the Arbitration Act was filed in the court of the first Subordinate Judge, Muzaffarpur and that the title suit in question, which was registered on that application, was therefore transferred to the court of the first Additional Subordinate Judge under the orders of the District Judge. There an application u/s 33 of the Arbitration Act was filed by the petitioners -- State of Bihar. A preliminary objection was taken by the opposite party that the court of the first Additional Subordinate Judge had no jurisdiction to entertain the said application. The learned Additional Subordinate Judge accepted the objection and, by the impugned order, has held that he had no jurisdiction to entertain the application filed by the petitioner u/s 33 of the Arbitration Act.

6. The Arbitration Act contains specific provisions with respect to the jurisdiction of the court which could entertain an application for reference or such other applications which can be filed under the various other provisions of the Act and has also defined the word "Court" which under Clause(c) of Section 2 means a Civil Court having jurisdiction to decide the question forming the subject-matter of the reference if the same had been the subject-matter of a suit.

Section 33 under which the application was filed by the petitioner provides that any party to an Arbitration agreement or a person under him desiring to challenge the existence or validity of an Arbitration agreement or an award etc. shall apply to the Court which shall decide the questions on affidavits. The expression "Court" is referable to the definition of this word in Section 2(c) already extracted earlier.

7. In order to answer the question arising for consideration in this case reference has got to be made to the provisions contained in Section 31 which is a provision exclusively dealing with the question of "jurisdiction" of the Courts. Sub-section (1) of this section deals with the Court where an award may be filed. Sub-section (2) thereof further provides that all questions regarding the validity, effect or existence of an award or on Arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been or may be filed, and by no other Court. (Emphasis is mine).

As already noticed earlier, the application of the petitioner filed u/s 33 of the Act was to challenge the existence or validity of an Arbitration agreement or an award. Such an application is directly covered within the mischief of Sub-section (2) of Section 31 being a question regarding the validity, effect or existence of an award or an Arbitration agreement between the parties. By the rigour of that provision such a question has got to be decided only "by the Court in which the award under the agreement has been or may be filed....." It has been seen

that the award in this case was filed in the Court of the first Subordinate Judge, Muzaffarpur. It has, therefore, got to be held that inasmuch as the questions raised by the petitioner could be decided only by the Court of the first Subordinate Judge the application u/s 33 could be filed in that Court. It is, therefore, quite clear that apart from the first restriction that all the applications under this Act are to be filed in a Court having jurisdiction in the matter to which the reference relates, in view of the fact that the award had already been filed in a particular Court, all those questions enumerated in Sub-section (2) of Section 31, could be decided by that Court alone and no other Court even assuming that there was any other competent. Court to entertain an independent application u/s 33 of the Act. The scheme of the above provisions clearly lays down that once an application is made with reference to an arbitration agreement in one Court no matter either before or after the filing of the award, that Court alone has the exclusive jurisdiction to deal with all the matters in connection with the reference. In the case of Kumbha Mawji Vs. Union of India (UOI), the Supreme Court observed that while Sub-section (1) of Section 31 determines the jurisdiction of the Court in which an award can be filed, Sub-sections (2), (3) and (4) are intended to make that jurisdiction effective in three different ways :--

"(1) by vesting in one Court the authority to deal with all questions regarding the validity, effect or existence of an award or an arbitration agreement;

(2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in the Court; and

(3) by vesting exclusive jurisdiction in the Court in which the first application relating to the matter is filed.

8. It may be said that reading Section 31 generally the question of jurisdiction must be decided with reference to the provisions of Sections 16 to 20 of the Civil P. C. and the parties can, if so inclined, regulate the jurisdiction by choosing appropriate matter for reference; (a) without the intervention of the Court; (b) with the intervention of the Court, when no suit is pending or (c) in suits.

In a case falling under Clause (a) the award may be filed in any Court having jurisdiction in the matter to which the reference relates, in accordance with the provisions of Sub-section (1) of Section 31, keeping, however, in view the definition of the "Court" as defined in Section 2(c) of the Act. But in cases falling under Clauses (b) and (c), the award has to be filed in the Court which made the order of reference. Every Civil Court having jurisdiction to decide the question forming the subject-matter of the reference, if the same had been subject-matter of the suit, is a Court in which an award may under the provisions of Sub-section (1) of Section 31 could be filed. It is, however, not necessary to lengthen this decision as the petitioners had no option to choose any other forum in view of the restriction contained in Section 31(2) and the only forum available to it was the Court of the first Subordinate Judge. I would, therefore, hold that the learned

Additional Subordinate Judge has committed no error of jurisdiction and this application has got no substance and must fail. I would, accordingly, dismiss the same.