

(1999) 04 CAL CK 0069
In the Calcutta High Court
Case No : F.M.A. No. 539 of 1981

Steel Authority of India Ltd.

APPELLANT

Vs

Ramkrishna Kulwantra

RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Arbitration Act, 1940 — Section 32, 33

Citation : AIR 1999 Cal 295 : (1999) 3 ARBLR 612 : (2000) 1 RCR(Civil) 337 : (2000) 2 RCR(Civil) 331

Hon'ble Judges : V.K. Gupta, J;P.K. Sen, J

Bench : Division Bench

Advocate : Jayanta Mitra and Narayan Bhattacharyya, for the Appellant;

Final Decision : Allowed

Judgement

1. In this appeal the judgment and order dated March 24, 1981 passed by the learned 12th Bench, City Civil Court at Calcutta is under challenge.

2. The plaintiff-respondent has filed a suit inter alia challenging the action of the appellants with respect to certain matters arising out of a contract which also included a clause for reference of disputes between the parties to arbitration. Actually before the suit had been filed, the reference to arbitration in terms of the aforesaid arbitration agreement had already been made and the arbitration proceedings were in Vague. The plaintiff, therefore, apart from challenging certain actions of the appellant before us (defendant in the suit) also prayed for terminating, determining and setting aside the arbitration proceedings, apart from determining the effect, validity and existence of the arbitration agreement between the parties. The learned Court below vide the impugned order stayed the arbitration proceedings pending disposal of the suit. This Court on July 20, 1981 in the present appeal stayed the operation of the aforesaid impugned order and permitted continuance of the arbitration proceedings, but with a rider that final Award as passed by the Arbitrator shall not be filed in the Court. It appears that against the aforesaid order passed by this Court on July 20, 1981 the

respondent preferred a SLP in the Supreme Court and their Lordships of the Supreme Court vide order dated December 12, 1992 in SLP No. 2460 of 1993 disposed of the petition by upholding order passed by this Court on July 20, 1981.

3. Mr. Mitra, learned Senior Counsel appearing for the appellant has drawn our attention to Ground No. V in the Memorandum of Appeal wherein it has clearly been mentioned that prior to filing of the suit in the Court below wherefrom the impugned order has arisen, the plaintiff-respondent had filed an application u/s 33 of the Arbitration Act, 1940 seeking determination of the existence and validity of the arbitration agreement, but, this Court vide judgment and order dated May 31, 1974 had dismissed the application on contest and had directed the learned Arbitrator to proceed with arbitration.

4. Today, when the matter was called on, nobody appeared for the respondents.

Section 32 of the Arbitration Act, 1940 reads as under :

"Bar to suits contesting arbitration agreement or Award.-- Notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of an arbitration agreement or award, nor shall any arbitration agreement or award be (enforced) set aside, amended, modified or in any way affected otherwise than as provided in this Act."

5. A bare perusal of the section would indicate that with respect to any and every matter touching upon the existence, effect, or validity of an arbitration agreement or an Award, there is a complete bar in so far as the jurisdiction of civil Courts is concerned and hence a civil suit for such a relief as comes within the limitation imposed by Section 32 of the Act is not at all maintainable. Actually it is only u/s 33 of the Act that a person feeling aggrieved can approach a Court by filing an application under the Act for seeking relief with regard to the determination, existence, or validity of an arbitration agreement or an Award. This is more so when upon a reference, proceedings before an Arbitrator have already started and are going on. We have no doubt in our mind that Section 32 of the Act being a complete bar, the learned Court below grossly misconstrued the provisions contained in Sections 34 and 35 of the Act and despite those provisions being totally non-applicable to the present case, went ahead with consideration of the matter in the civil suit and ordered stay of arbitration proceedings. This was wholly impermissible under the law. The Arbitration proceedings, once having begun cannot be stalled by the order of a civil Court in a civil suit since the filing of such a civil suit is not permissible in view of Section 32 of the Act, because of the total lack of jurisdiction of a civil Court with regard to such a matter. Actually Mr. Mitra has stated before us that the arbitration proceedings pending before the sole Arbitrator Shri Justice S.C. Ghosh (Retd.) are already at their fag end, the evidence of the parties having already being concluded and arguments being at their final stages.

Based upon the aforesaid reasons this appeal is allowed and the impugned order is set aside. The Award as and when passed by the learned Arbitrator shall be

dealt with in normal course in accordance with the provisions of law as applicable.

There will be no order as to costs.

Let a xerox plain copy of this order, countersigned by an Assistant Registrar (Court) be given to the learned Advocate for the appellant on the usual undertaking.