

(1949) 12 MAD CK 0022

In the Madras High Court

Case No : Civil Revision Petition No. 900 of 1949

Subramanian and Others

APPELLANT

Vs

M.P. Vasudevan Chettiar and Others

RESPONDENT

Date of Decision : 02-12-1949

Acts Referred:

Arbitration Act, 1940 — Section 14, 41
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : AIR 1950 Mad 488 : (1942) 55 LW 174

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : S. Ramachandra Iyer, for the Appellant; K.V. Srinivasa Iyer, for the Respondent

Final Decision : Allowed

Judgement

Krishnaswami Nayudu, J.—The question that arises for determination in this revision petition is whether in a petition filed by the arbitrators

u/s 14, Arbitration Act (Act X [10] of 1940) for filing an award, persons who were eo nomine, not parties to either the agreement of reference or

to the award could be added as necessary parties under Order 1, Rule 10, Civil P. C. On a reference made by three brothers, Subbaratnam

Chettiar, Vasudevan Chettiar and Krishnaswami Chettiar to two arbitrators regarding the partition of their family properties the arbitrators gave an

award. The award was filed by the arbitrators u/s 14, Arbitration Act, in O. P. No. 90 of 1947, on the file of the Subordinate Court of

Trichinopoly. Subbaratnam Chettiar remained ex parte in the arbitration proceedings. He became insolvent since the filing of O. P. No. 9 of 1947,

and the Official Receiver of Trichinopoly was brought on record as representing his estate. Subbaratnam Chettiar filed O. P. No. 124 of 1947 in

the same Court for setting aside the award on certain grounds. O. S. No. 3 of 1949 was filed on behalf of the minor sons of Subbaratnam

Chettiar, who are the petitioners before me, for partition of the joint family properties, wherein they attacked Subbaratnam Chettiar's management

of the family properties and also questioned the arbitration and the award on several grounds, one of which was, that their father had no authority

to bind the sons by reference to arbitration and also on the ground that all the family members were not parties to the reference. Vasudevan

Chettiar applied in I. A. No. 10 of 1949 in O. P. No. 90 of 1947 for adding the petitioners as parties to the said O. P. No. 90 of 1947. He also

presented a similar application I. A. No. 44 of 1949 for adding them as parties as well in O. P. No. 124 of 1947. Both the said interlocutory

applications were made under Order 1, Rule 10, Civil P. C. and Section 41, Arbitration Act. The learned Subordinate Judge dismissed I. A. No.

44 of 1949 observing that the application being one for setting aside the award the question whether the award is or is not binding on the sons of

Subbaratnam Chettiar was beyond the scope of the said application and whatever may be said as to the propriety, of being made parties to an

application to have the award made a decree of Court, they are, however, not necessary parties to O. P. No. 124 of 1947, which was a petition

filed by their father for setting aside the award. I. A. No. 10 of 1949 was allowed and the learned Subordinate Judge made them parties stating

that in view of the fact that the father was adjudicated insolvent and his sons had filed a partition suit it might be that he was not competent to

effectually represent them in the petition and that it was fit and proper that they should be impleaded as parties to the petition so that whatever

objections they might have to the passing of a decree on the award might be once for all heard and decided. No revision has been filed against the

order in I. A. No. 44 of 1949. The petitioners have presented this revision petition against the order making them parties in I. A. No. 10 of 1949.

2. Two contentions were raised on behalf of the petitioners, namely, that it was not open to a Court on a petition filed u/s 14, Arbitration Act to

apply the provisions of Order 1, Rule 10, Civil P. C. and make persons parties to the petition even though they were not parties to the reference

and secondly that in any event the petitioners are not necessary parties. Section 41, Arbitration Act of 1940 is as follows :

Subject to the provisions of this Act and of rules made thereunder --

(a) the provisions of the Code of Civil Procedure, 1908, V[5] of 1908 shall apply to all proceedings before the Court, and to all appeals, under

this Act, and

(b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings the same power of making orders in respect of any of the

matters set out in Schedule 2 as it has for the purpose of, and in relation to, any proceedings before the Court :

Provided that nothing in Clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters.

There is no doubt that the provisions of the Civil P. C., 1908, are applicable to all proceedings before the Court and to all appeals under the Act.

But that would be subject to the provisions of the Act and the rules made thereunder. Provided the provisions of the Code which are sought to be

made applicable to the proceedings are not inconsistent with the provisions of the Act or otherwise not in any way expressly excluded from their

application such provisions would necessarily apply to proceedings before the Court under this Act. It was contended that Clause (b) of Section

41 referred to powers of making orders in respect of certain subject-matters set out in Schedule 2 to the Act, which relate to the preservation,

interim custody or sale of any goods and such similar provisions as the detention, preservation or inspection of any property, granting of an interim

injunction, and the appointment of a receiver, a guardian for a minor or person of unsound mind. It is contended that in view of a special mention of

these powers, the rest of the provisions of the Code could not be made applicable excepting the formal provisions relating to applications for

subpoenas, summoning witnesses enforcing their attendance, provisions relating to production of documents and such other similar provisions and

that all the provisions of the CPC could not be applied. This contention is without any force as Clause (b) of Section 41 makes certain provisions

of the CPC covered under the second schedule of the Act applicable generally to arbitration proceedings, that is, not to proceedings before the

Court but to proceedings before the arbitrators.

3. But there is still the objection, raised on behalf of the petitioners that not all

the provisions of the CPC could be made applicable to proceedings before Court since it must be shown that the provisions made applicable are not, inconsistent with the provisions of the Act. The scope and extent of the powers of a Court with reference to arbitration proceedings are limited and circumscribed. With reference to an award which has been given by the arbitrators and signed and filed u/s 14 of the Act, the Court has power to give notice to the parties of the filing of the award u/s 14(2).

Under Sub-clause (3) the Court has the power to pronounce any opinion on a special case stated by the arbitrators to the Court. Sections 15 and 16 confer power on the Court to modify or correct an award under certain conditions and to remit the award if it is necessary. The power to modify or correct an award is only when it appears to the Court that a part of the award is upon a matter not referred to arbitration or when the award is imperfect in form or contains any obvious error which can be amended without affecting the decision of the arbitrators or when there is a clerical mistake or an error arising from an accidental slip or omission. The power to remit the award can be exercised only when, in the opinion of the Court, the award has left undetermined any of the matters referred to arbitration, or determines any matter not referred to it, or where the award is indefinite as to be incapable of execution or when an objection as to the legality of the award is apparent on the face of it. u/s 17 of the Act, the Court shall be empowered to pronounce a judgment when it sees no cause to remit the award and after the time for making the application to set aside the award has expired and after such judgment being pronounced a decree shall follow. Section 30 empowers the Court to set aside an award on account of the misconduct of an arbitrator or when it is satisfied that the award has been made after an order issued by the Court superseding the arbitration or after the arbitration proceedings have become invalid u/s 35, or when it is satisfied that the award has been improperly procured or is otherwise invalid. It will, therefore, be seen that the Court's powers of interference regarding the awards passed by arbitrators are limited in scope. It is made clear that the Court's power of modifying the award u/s 15 of the Act should be so exercised as not to affect the decision contained in the award. The Court is, therefore, not competent to go into the merits or otherwise of the decision but entitled only

to correct any obvious error or patent mistake or any other error which would appear on the face of the award. The Court will not be competent to adjudicate upon any matters which are contained in the decision even as between the parties to the reference and a fortiori it cannot go into the matters not covered by the reference which may be raised by third parties not parties to the reference. If the rights of persons not parties to the reference could not be adjudicated upon by the Court on an application for filing the award there is no purpose in making such persons as parties though they may be in some way or other interested in the subject-matter of the arbitration. In this case, the petitioners who are the minor sons of one of the parties to the reference are certainly interested being entitled to a share in the properties which are covered by the award. But in view of their attitude in filing a suit questioning the authority of their father to make the reference to arbitration and also questioning his acts of management of the family the petitioners who have independent rights to be agitated and decided upon and which, however, is not competent for the Court to adjudicate in this proceeding itself, would not be said to be necessary parties to the petition u/s 14 of the Act, They will not be competent to question the binding nature of the award as the learned Subordinate Judge has observed in his order in I. A. No. 44 of 1949 since it was beyond the scope of an application u/s 14 of the Act. But if once they are made parties and judgment is pronounced a decree will follow which would bind them since they are parties to the proceeding. The result is they would be bound by a judgment and decree in a proceeding to which they were not initially parties, a judgment and decree which were not passed after the adjudication of the rights of these parties on pleas set up by them, since they would not be allowed to set up such pleas in a proceeding of this nature. It appears to me, therefore, that though it cannot be laid down as a formal proposition of law that Order 1, Rule 10, Civil P. C. could not be absolutely inapplicable to a proceeding before the Court under the Arbitration Act, it cannot be invoked, at any rate, in a proceeding u/s 14 of the Act where an award is filed and a decree is passed on such an award by the Court.

4. Order 1, Rule 10, Civil P. C. enables the Court to add parties if their presence is necessary for the determination of the real matter in dispute.

Certainly the sons of a party to a reference who are not eo nomine parties to the reference itself are not required in a petition for filing an award for a decree to be passed in terms of the award. What all the Court has to consider is whether it has to modify the award or to remit it and such modification could be only without affecting the decision of the arbitrators. The presence of third parties who are not parties to the reference and who had nothing to do with the proceedings of the arbitrators is really not necessary since the proper persons whose presence would be necessary for consideration by the Court of all the matters that required to be considered before passing a decree are the parties to the reference. Whatever interest the sons may have in the subject-matter of the arbitration that cannot be a ground for making them parties. For instance, in a reference made by the members of a partnership for arbitration or their disputes relating to dissolution and accounts it is found eventually by the award that the partners are liable to discharge certain liabilities due to third parties, the amount of such liabilities being fixed by the arbitrators themselves, it can be said that the creditors of the partnership are interested in the subject-matter of the arbitration but certainly they could not be added as parties to an application filed by the arbitrators u/s 14 on the ground that they are interested in the subject-matter. Since even if added, the creditors would not be competent to question the decision of the arbitrators as to the amount of their liabilities and it would not be competent for the Court to go behind the decision and decide upon the rights inter se between the creditors and the partners. The fact that the petitioners here are the minor sons of one of the parties to the reference would not make much difference since the petitioners would have certain rights against the acts of the father in the management. If supposing the father had incurred a liability which the sons want to attack as an Avyavaharika debt and not binding on them, that matter would not be within the competence of the Court to go into in considering the application u/s 14 of the Act. The petitioners therefore cannot be considered to be the persons whose presence would be required for determining the real question in controversy in the proceeding.

5. Mr. Srinivasa Aiyar on behalf of the respondents contends that by reason of Subbaratnam Chettiar becoming an insolvent and consequent on

the filing of O. S. No. 3 of 1919 by the petitioners for partition the father Subbaratnam Chettiar has ceased to represent the minors and it is

therefore necessary that the minors should be represented in the petition before Court. There is no evidence, but on the other hand, there are

allegations in the affidavit to show that the reference to the arbitration was not by Subbaratnam Chettiar for himself and on behalf of his minor sons.

He made the reference on his own behalf and not as the father of the petitioners. But even that would not matter as pointed out already the sons

who have independent rights could not be made parties to the proceeding. The father having become insolvent the Official Receiver has been made

a party rightly as provided u/s 7 of the Act. Subbaratnam Chetti is already represented by the Official Receiver. The Act provides that in the case

of death of a party to an arbitration agreement the agreement shall be enforceable by or against his legal representatives. It may be competent for

the Court in case of death of any of the parties to bring his legal representatives on record. But in this case the petitioners are sought to be made as

additional parties and not as legal representatives and their representation is not necessary since they are not parties to the reference. The learned

counsel relied on the decision in Ramsewak Singh Vs. Ramaprasad Singh and Others, which was also cited by the lower Court where it was held

that,

It is competent to the father of a joint Hindu family in his capacity of the managing member of the family to refer to arbitration, the partition of the

joint family property, and the award made on such reference if in other respects valid is binding on the sons." The question here is not whether the

award is binding but whether the sons are necessary parties to an application for filing an award. It is sufficient to state that the proposition of the

law laid down by the learned Judges of the Patna High Court is not quite relevant to the point to be decided in this revision petition.

6. In the result, the revision petition is allowed with costs.