

(1984) 09 CAL CK 0017
In the Calcutta High Court
Case No : Matter No. 26 of 1983

Sudhir Kumar Saha and Others

APPELLANT

Vs

J.N. Chemicals Private Ltd. and Others

RESPONDENT

Date of Decision : 12-09-1984

Acts Referred:

Arbitration Act, 1940 — Section 2

West Bengal Premises Tenancy Act, 1956 — Section 13, 34

Citation : AIR 1985 Cal 454

Hon'ble Judges : C.K. Banerji, J

Bench : Single Bench

Advocate : Jayanta Mitter, for the Appellant; Hirak Mitra, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Banerji, J.—This is an application for stay of the suit being Suit No, 17 of 1983 instituted in this Court by J. N. Chemicals Private Ltd. thereafter referred to as the Company) against Sudhir Kumar Saha & Ors. The reliefs claimed in the suit, inter alia, are (i) declaration that the plaintiff is a sub-tenant under Saha Films in respect of a portion of premises No. 72/2/1, Lenin Sarani, Calcutta and is entitled to remain in occupation and possession thereof, (ii) perpetual injunction restraining the defendants from interfering with the plaintiff's right in respect of its said sub-tenancy, (iii) declaration that the direction or award of the Arbitrator Mr. Shibaji Sen, inter alia, directing the plaintiff to vacate its city office at No. 77/2/1, Lenin Sarani, Calcutta, is invalid, unenforceable and not binding on the plaintiff.

2. The application is made both u/s 34 of the Arbitration Act, 1940 and Section 151 of the C.P.C.

3. No arguments have, however, been made on behalf any of the parties with regard to stay of the suit under the inherent powers of this Court u/s 151 of the Civil P. C

4. The entire arguments that have been made before me are on the basis of applicability or non-applicability of the provisions of Section 34 of the Arbitration Act, 1940.

5. There is no dispute that the petitioners have not taken any steps in the said Suit No. 1 of 1983 stay of which is prayed for.

6. The company is a family company of the parties, that is. the Saha family. Disputes and differences having arisen between the members of the Saha family, the same were referred to the sole arbitration of Mr. Sibaji Sen, the respondent 5 herein. Three several arbitration agreements were executed by various members of the Saha family. By one of such agreements the parties thereto referred to the sole arbitration of Mr. Sibaji Sen all the disputes and differences arising in relation to their joint properties. By another agreement the partners of Messrs. Saha Films, a partnership business of the parties thereto referred all their disputes and differences arising in relation to or touching or concerning Messrs. Saha Films of No. 77/2/1, Lenin Sarani, Calcutta to the sole arbitration of Mr. Sibaji Sen.

7. In this case I am not concerned with the above two agreements.

8. This case relates to the third agreement which is executed by Jatindra Nath Saha, Sudhir Kumar Saha, Sachindra Nath Saha, Jyotish Kumar Saha, Samir Kumar Saha and Sukriti Saha wife of Jatindra Nath Saha as Directors of the Company. It is necessary to set out the said agreement : --

"We, the undersigned, hereby agree to refer all the disputes and differences arising out of or in connection with or in relation to J. N. Chemicals (P) Ltd., of Vivekananda Road P. O. & Dist. Hooghly and the acts of any of the parties in respect of or in relation to or arising out of the said Company to the sole arbitration of Mr. Sibaji Sen, Advocate of No. 16, Loudon Street, Calcutta."

9. By another agreement the parties vested the Arbitrator with summary powers and also the power to appoint Accountant, Engineers, Valuer and Surveyors etc. at his discretion.

10. The Arbitrator entered on the reference and held several sittings. Ultimately on the 30th Sept. 1981 the Arbitrator made an award which is described as an interim award. The said interim award was made by consent of the parties and at their request. Sub-clause (ii) of Clause V of the said interim award, inter alia, directs that Sudhir Kumar Saha shall pay to the Company a sum of Rs. 9,000.00 and upon such payment being made the Company shall shift its city office within a year from the date of the award.

11. This direction of the Arbitrator in the said interim award is under challenge by the Company in the said Suit No. 17 of 1983 which is sought to be stayed in this application.

12. Mr. Jayanta Mitter, learned Counsel for the petitioners contended that the

arbitration agreement being executed by the signatories thereto as Directors of the Company the Company became a party or should be taken to be a party to the said agreement and as such the suit should be stayed u/s 34 of the Arbitration Act, 1940. In support of his contention Mr. Jayanta Mitter cited the following decisions :- --

1. Lennard's Carrying Company Ltd. v. Asiatic Petroleum Co. Ltd., 1915 AC 705. Here Viscount Haldane L. C. observed inter alia that a corporation is an abstraction having no mind or body of its own and it has to act through an agent who may be under the direction of the shareholders in general meetings or it may be the Board of Directors itself or some one who has authority to coordinate with the Board of Directors given by the Articles of Association and is appointed by the general meeting of the Company.

The dispute in this case arose out a Charter Party which was entered into by the Managers of the appellant representing the appellant.

2. H. L Bolton (Engineering) Co. Ltd. v. T J. Graham & Sons Ltd., . The following observation of Denning LJ was relied on :

"A company may in many ways be likened to a human body. It has a brain and a nerve centre which controls what it does. It also has hands which hold the tools and acts in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

3. Tesco Supermarkets Ltd v. Nattrass 1972 AC 153. Here, Lord Reid referred with approval to the observations of Viscount Haldane, L. C. in Lennard's Carrying Co. Ltd. (supra) and of Denning LJ in H. L. Bolton (Engineering) Co. Ltd. (supra) and observed that these passages clearly indicate that in relation to a company one has to determine who is or are in actual control of the operation of the company and the answer to that question may vary from company to company.

13. Mr. Jayanta Mitter also referred to various documents and minutes of the sittings of the Arbitrator and submitted that those show the conduct of the parties, and of the Company in relation to the arbitration proceedings which clearly establishes that the Company took part in the arbitration proceedings and was a party not only to the arbitration agreement but also to the arbitration proceedings. Mr. Jayanta Mitter referred to Article 37 of the Articles of Association of the Company which authorises the Board of Directors of the company not only to manage the business of the Company and to exercise all such powers and do all such acts and things as may be exercised or done by the Company which are not by the Articles of Association or by the Statute expressly directed or required to be exercised or done by the Company in general meeting.

Therefore, the Directors of the Company by executing the said Arbitration Agreement did so representing the Company or the Board of Directors thereof and the Company is, therefore, bound by and a party to the said Arbitration Agreement. It was urged that the Articles of Association of the Company did not provide nor did it make incumbent that all or any agreements entered into by the Company should bear the seal of the Company. Reference was made to Article 38 of the Articles of Association which provides for the safe custody of the seal and the mode and manner in which the seal is to be affixed if a seal is affixed to any instrument. The validity of the said Arbitration Agreement was not affected merely because the seal of the Company was not affixed thereto.

13A. Mr. Hirak Mitra, learned Counsel appearing for the respondents contended that by the said Arbitration Agreement the Company neither intended to be a party to the same nor was made a party thereto. By the said Arbitration agreement the Company was treated as an object of the disputes and differences amongst the Directors of the Company, the signatories to the said agreement, and also with regard to the acts of the parties in respect of or in relation to or arising out of the company. The company as such never participated in the Arbitration Proceedings. The meeting of the Board of Directors of the Company held on the 6th June, 1981 merely authorised Arun Kami Mandal, the Accountant of the Company to sign and seal on behalf of the Company in relation to the said Arbitration Proceedings and what was done on behalf of the Company in the said Arbitration Proceedings was that only certain documents were produced from time to time as directed by the Arbitrator. It is also significant that no notice of the Arbitration Proceedings was given by the Arbitrator to the Company prior to the 6th Jan. 1983, that is. before the said suit was instituted by the Company. It was next urged that the interim award was, in fact, the final award of the Arbitrator inasmuch as after the said award nothing was left to the Arbitrator to be decided. It was next urged that an agreement or- an instrument to bind the Company is required to be sealed on behalf of the Company which was not done in the case of the said Arbitration Agreement. In support of his contention Mr Hirak Mitra relied on a decision. In re: International Contract Company reported in (1871) 6 Ch App 525. In this case by the Articles of Association of the Company Edward Pickering the Managing Director had power to enter into contracts on behalf of the company. The Managing Director entered into a contract in his own name but it was known to Joseph Pickering the other party to the contract as well to the other Directors of the Company that Edward Pickering was acting on behalf of the Company and not in his individual capacity. The Company paid certain amount as a part of the claim of Joseph Pickering under the said contract. Thereafter the Company was directed to be wound up. Joseph Pickering preferred claim for the balance amount under the contract against the Company which was rejected. Joseph Pickering appealed. Their Lordships of the Court of Appeal held that under the deed the appellant elected to charge Edward Pickering alone. The Company being in the position of a cestui que trust could not be sued.

14. The next decision relied on by Mr-Hirak Mitra was *Mc Collin v. Gilpin* reported in (1880) 5 QBD 390. Here the opening words of the agreement read as agreement between the Company and Mc Collin but under the agreement the amount advanced to the Company by Mc Collin, three of the Directors of the Company who were signatories to the agreement agreed to pay the said amount with interest. The document was not sealed with the seal of the Company nor counter-signed by the Secretary as was required by Article 52 of its Articles of Association nor the signatories to the document expressed that they signed the agreement on behalf of the Company. Lush, J. held that the defendants being the signatories to the document were personally liable for repayment of the loan and the said document did not bind the Company as the same was signed by the defendants and the plaintiff and was not sealed with the seal of the Company nor countersigned by the Secretary pursuant to Article 52 of the Articles of Association nor did the defendants ever express that they signed it on behalf of Company.

15. The Article of Association of the Company in this case does not provide that to bind the Company every instrument must be under the seal of the Company. Article 38 of the Articles of Association provides that the seal of the Company shall never be used except by the authority of the Directors or a Committee of the Directors previously given. Further by the agreement in the above cited decision the signatories thereto bound themselves personally to repay the loan and the Company was not made liable therefore.

16. Mr. Hirak Mitra also relied on a passage from *Palmer's Company Law*. 23rd Edn. at page 887 which reads as under :

" If the Directors contract in their own name but expressly on behalf of the Company or for the Company, that is sufficient: and it does not matter whether the words appear in the description of the parties, or in the body of the contract or are added by way of qualification to the signatures."

17. It was also urged by Mr. Hirak Mitra that the Arbitration Agreement was not in existence any more as it has merged in the award and he relied on the decision of the Supreme Court in *Satish Kumar and Others Vs. Surinder Kumar and Others*, . It is not necessary to deal with this case in detail inasmuch as it is settled law that if all the disputes referred to arbitration by the parties have been decided by the Arbitrator which has culminated in an award there being nothing more to decide by the Arbitrator, the Arbitration Agreement ceases to exist and merges in the award. In this case, however, Mr. Jayanta Mitter has urged that the award that was made by the Arbitrator was an interim award inasmuch as one part of the disputes which was referred to the Arbitrator was decided by him in the interim award while the other part of the disputes being the acts of any of the parties in respect of or in relation to or arising out of the company still remains outstanding.

18. On perusal of the interim award it does not appear that, that part of the

dispute between the parties has been decided by the Arbitrator. Thus in my opinion, the Arbitration Agreement still subsists to that extent and has not merged in the said award which is rightly described as interim award. The next contention of Mr. Hirak Mitra that the direction of the Arbitrator for shifting the city office of the Company given in the said award amounts to an order for eviction of the Company from premises No. 77/2/1, Lenin Sarani, Calcutta. In any event, there can be no arbitration in relation to eviction. A decree for eviction can only be passed u/s 13 of the West Bengal Premises Tenancy Act, 1956 on the grounds mentioned therein and not otherwise. I am unable to accept the contention of Mr. Hirak Mitra. Section 13 of the West Bengal Premises Tenancy Act contemplates a suit for eviction and a tenant can be ejected only on any one or more of the grounds mentioned in the said section on a suit for ejectment being instituted against the tenant.

19. Arbitration Proceeding is not a suit. Therefore Section 13 of the West Bengal Premises Tenancy Act does not in terms apply to such proceedings. There is no bar under the West Bengal Premises Tenancy Act for the parties to refer their disputes to Arbitration. Here, the interim award was made at the invitation of the parties. If the Company was a party to the Arbitration Agreement then the same is binding on the Company as the Company agreed before the Arbitrator to vacate the city office of its own volition. By the decree that may be passed by this Court pursuant to the said interim award, this Court would only direct the parties to carry out the said agreement by directing the award to be carried out. No decree for eviction is, therefore, passed by this Court in that sense and in any event, such decree, if at all, is not passed in a suit for ejectment as contemplated under and provided by Section 13 of the West Bengal Premises Tenancy Act. It was also urged by Mr. Mitra that in the appeal pending before the Appeal Court one of the questions is whether the Company is or is not a party to the arbitration agreement. Therefore, this Court should not decide the question until the disposal of the said appeal. I am unable to accept the contention. The Appeal Court has not made any order staying this application or the hands of this Court.

20. The moot question in this case depends on the interpretation and construction of the said Arbitration Agreement. Did the directors who signed the said agreement intend to make the Company a party to the said agreement or was the Company made a party thereto by implication or otherwise? An Arbitration Agreement denotes and connotes disputes and differences amongst the parties to the Agreement. Section 2 Clause (a) of the Arbitration Act defines Arbitration Agreement as a written agreement to submit present or future differences to arbitration. Thus before coming to any conclusion as to whether the Company was or was made a party to the Arbitration Agreement or not, the Court has to see if there were any differences, present or future, between the Company and any of the parties to the said agreement, being the Directors of the Company who signed the said agreement. From a plain reading of the said Arbitration Agreement I do not find that there were any differences, present or

future between the company and any of the Directors of the company which were referred to the sole arbitration of Mr. Shibaji Sen. Advocate. By the said Arbitration Agreement the parties to the said agreement, namely, the Directors of the Company, agreed to refer (i) all the disputes and differences arising out of or in connection with or in relation to the Company and (ii) the acts of any of the parties to the Agreement) in respect of or in relation to or arising out of the Company. In my view, it is clear from the wordings of the said agreement, that what was referred to arbitration by the said agreement were the disputes and differences of the Directors themselves, who signed the said agreement, arising out of or in connection with or in relation to the Company as well as the acts of all or any of them in respect of or in relation to or arising out of the said Company. Thus in my opinion, the Company was neither a party nor was it made a party to the said agreement. That being the position the suit sought to be stayed by the petitioners by this application cannot be stayed u/s 34 of the Arbitration Act, 19-40 The decisions cited at the Bar are of little assistance because of the view that I have taken. The interim order is accordingly vacated. There will be no order on this application. In the facts and circumstances of the case there will be no order as to costs.