

(1956) 12 RAJ CK 0004
In the Rajasthan High Court
Case No : Second Appeal No. 106 of 1954

The Bundi Municipal Board

APPELLANT

Vs

The Bundi Electric Supply Co. Ltd.

RESPONDENT

Date of Decision : 05-12-1956

Acts Referred:

Arbitration Act, 1940 — Section 2, 21
Civil Procedure Code, 1908 (CPC) — Section 107

Citation : AIR 1957 Raj 278

Hon'ble Judges : Ranawat, J;Bhandari, J

Bench : Division Bench

Advocate : S.B.L. Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Ranavvat, J.—This appeal has been referred to a division Bench by Bapna J., as an important point of law whether a dispute in a pending appeal can be referred to arbitration was involved in it.

2. A suit was filed by the Bundi Electric Supply Co. Ltd., Bundi, against the Municipal Board of Bundi on 1st July 1952, for refund of certain moneys collected from it by way of octroi duty and also for an injunction restraining the defendant from collecting octroi duty from it in future. The suit was partly decreed and an injunction was issued restraining the defendant from collecting octroi duty from the plaintiff in future. The defendant went in appeal to the Court of the Civil Judge, Bundi, but it was dismissed on 19th December 1953. The defendant filed a second appeal in this Court. While that appeal was pending an application was moved by both the parties on 14th September 1956 for referring the matter in dispute in the appeal to arbitrators. The petition came up before Bapna J., who has referred the case to this Bench.

3. The decision of the case depends upon interpretation of Section 21 of the Indian Arbitration Act (hereinafter referred to as the Act) as to whether the term

"suit" and the term "court" used therein are wide enough to include an "appeal" and an "appellate Court" respectively. Section 21 is as follows :

"Where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before Judgment is pronounced apply in writing to the court for an order of reference".

The term "Court" has been defined in Section 2(c) of the Act as follows :

" "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 the suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court."

According to the definition as contained in Section 2(c) of the Act "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 the suit. An appellate Civil Court in exercise of its appellate jurisdiction has got co-extensive powers with those of an original Court except as limited by special provisions contained in the Civil Procedure Code. Such portion of the subject-matter of a suit as is also the subject-matter of an appeal falls within the jurisdiction of an appellate Court and questions forming the subject-matter of a reference relating to such subject-matter of appeal lie within the competence of an appellate Court. An appellate Court should, therefore, be considered to be a "Court" within the definition of the term as contained in Section 2(c) of the Act. There is no reason to put a restricted meaning on the term "Court" so as to limit its application to an original Court only.

4. As regards the term "suit" it may be pointed out that no definition has been given of the term either in the Act or in the Civil Procedure Code. The term "suit" has sometimes been interpreted as not including an appeal but at the same time it has also been at places interpreted to include an appeal which is regarded as a continuation of the suit. The meaning to be given to the term "suit" should depend on the context in which the term is used. In the CPC special procedure has been provided for appeals, and the term "suit" appearing in the procedure prescribed for original Courts is, therefore, taken as not including an Appeal. But this does not, however, mean that the Legislature has always used the term "suit" in the same context. At places it has been used in its wider sense as including an appeal, also. We shall, therefore, have to interpret the term "suit" in the sense in which it has been used in Section 21 of the Act. There appears no reason to give a restricted meaning to this term "suit" in Section 21 so as to deprive the parties to an appeal to get the benefit of the provisions of the Act. Ordinarily, parties to an appeal should not be deprived of their rights to get an adjudication of their dispute by means of arbitration which rights they possessed before the coming into force of the Act under the provisions of Second Schedule to the Civil Procedure Code. We are, therefore, inclined to construe the term

"suit" as used in Section 21 of the Act in its wider sense as including an appeal.

5. Taking the meaning of the term "Court" and the term "suit" as discussed above, we find the provision of Section 21 is clear on the point so as to authorise an appellate Court to refer the subject-matter of an appeal to arbitration if all the parties to the appeal apply in writing to the Court for an order of reference. We may refer to the decisions in *Thakur Prasad Vs. Baleshwar Ahir and Others*, and *Subramannaya Bhatta Vs. Devadas Nayak and Others*, in support of the above view. The Allahabad High Court has also arrived at the same conclusion but on different considerations in *Moradhwaj Vs. Bhudar Das*. In earlier decisions of that Court the meanings of the terms "Court" and "suit" were similarly taken to be wide enough to justify a reference by an appellate Court for arbitration. The only case which interprets Section 21 differently is of *Abani Bhusan Chakravarty and Others Vs. Hem Chandra Chakravarty and Others*, but that decision is distinguishable on the ground that in that case the appellate Court which made a reference had no inherent jurisdiction to decide the appeal but acquired the power to decide it by virtue of the fact that it had been transferred to it by the District Judge. The learned Judges who decided that case observed that the Jurisdiction of the appellate Court in that case was a special one and for this reason they could not regard the appellate Court as having jurisdiction in the meaning of Section 2(c) of the Act to decide the subject-matter of the suit. That, however, is a circumstance which was peculiar to that case and the decision in that case cannot be taken as the rule. The majority of the High Courts in India have interpreted Section 21 as conferring Jurisdiction on an appellate Court to refer the subject-matter of an appeal to arbitration but the reasons which have weighed with different High Courts are not the same. We may further add that the interpretation which we have given to Section 21 is in conformity with the history of the rule and is also in favour of the accepted canon of interpretation that one in favour of the Jurisdiction of a civil Court should be preferred to the one for its absence. In this view of the matter we accept the application for reference to arbitrators and order that a reference be made as prayed for with a direction to submit their award within 3 months.