

(1950) 07 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Revn No. 365 of 1948

The Hanuman Chamber of Commerce Ltd.	APPELLANT
Vs	
Parmeshri Lal Co.	RESPONDENT

Date of Decision : 11-07-1950

Acts Referred:

Arbitration Act, 1940 — Section 19, 34, 4
Punjab Courts Act, 1918 — Section 44

Citation : (1950) 07 SHI CK 0004

Hon'ble Judges : Harnam Singh, J

Bench : Single Bench

Advocate : Daya Krishan Mahajan, for the Appellant; I.D. Dua and K.L. Gosain, for the Respondent

Judgement

Harnam Singh, J.—To appreciate the point arising in this case the facts must be set out in some detail.

2. On 6-11-1947, Firm Parmeshri Lal Company instituted the suit out of which these proceedings have arisen for the recovery of Rs. 95,000 from Hanuman Chamber of Commerce Limited and Firm Goenka Brothers. Defendant 1 appeared at the trial on 9-2-1948, and applied u/s 34 of the Indian Arbitration Act, 1940, hereinafter referred to as the Act, for the stay of proceedings. On 24-11-1948, the trial Court ordered:

Without prejudice to the decision of the Defendant's application u/s 34, Arbitration Act, the Defendant should file his written statement on 10-12-48. The parties should also file their documents and list of reliance by that date.

On 10-12-1948, Defendant 1 applied for the review of the order passed by the trial Court on 24-11-1948, calling upon the Defendant to file the written statement on that date. On 16-12-1948, the trial Court, however, disallowed the application made by the Defendant for the review of the order passed by that Court on 24-11-1948.

3. Hanuman Chamber of Commerce Limited now applies u/s 44, Punjab Courts Act, 1918, for the revision of the order passed by the trial Court on 16-12-1948.

4. Mr. Daya Kishan Mahajan, learned Counsel for the Petitioner, contends that Section 34 of the Act does not contemplate an enquiry for deciding an application for stay. He then contends that it was not open to the trial Court to call upon the Defendant to put in a written statement before deciding the partition u/s 34 of the Act.

5. Dealing with the first contention first, I think that before ordering stay u/s 34 of the Act the Court has to be satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant asking for stay was, at the time the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration. Clearly, before ordering stay u/s 34 of the Act the Court has to enquire into all the circumstances of the case justifying the stay of proceedings u/s 34 of the Act.

6. On the second contention Counsel cites Sarat Kumar Roy v. Corporation of Calcutta 34 Cal. 443 : (11 C.W.N. 306) and Parker, Games and Co. v. Turpi (1918) 1 K.B. 35 : (87 L.J.K.B. 357). In Sarat Kumar Roy v. Corporation of Calcutta 34 Cal. 443 : (11 C.W.N. 306), the suit was instituted on 11-9-1906, Defendant was served with the summons on 12-11-1906. On 30-11-1906, the Defendant Corporation took out summons for an order that they might have further time to file their written statement and on the same day sent a letter to the Plaintiff's attorney in the following terms:

I beg to inform you that before filing the written statement herein an application will be made to the Court for an order for reference to arbitration in terms of the contract herewith and for a stay of proceedings in this suit.

Upon those facts Woodroffe J., said:

By Section 19 it was, I think, intended to fix a definite limit a terminus a quo from which an application of this nature could not be entertained viz., the date of the filing of a written statement or taking any steps in the suit. Nor can I find any authority or sound reason for the second ground that, if an act does constitute a step in the proceedings, it is not a bar, if it is done under protest or accompanied by an expression of intention to arbitrate.

Now, the facts in Sarat Kumar Roy v. Corporation of Calcutta, 34 Cal. 443.(11 C.W.N. 306) were different from those of the present, case. In the present case an application u/s 34 of the Act was made before the written statement was filed or before the Defendant took any steps in the proceedings whereas in Sarat Kumar Roy v. Corporation of Calcutta 34 Cal. 443 : (11 C.W.N. 306) the Defendant Corporation took steps in the proceedings before filing an application u/s 19 of the Act IX(9) of 1899. In any case Sarat Kumar Roy v. Corporation of Calcutta 34 Cal, 443 : (11 C.W.N. 306) is no authority for the proposition that it

was not open to the trial Court in the present case to call upon the Defendant to put in a written statement before deciding the petition u/s 34 of the Act.

7. In *Parkar Games and Co., Ltd. v. Turpin* (1918) 1 K.B 358 : (87 L.J.K.B. 857), the facts were that a party to a written contract containing an agreement to refer disputes to arbitration was sued for breach of the contract-Defendant was however unaware that the contract contained an agreement to refer to arbitration. The Plaintiffs in the action took out and summons for discovery. The Defendant asked for discovery also, and an order for mutual discovery was made. The Defendant then became aware of the agreement to refer to arbitration and applied u/s 4 Arbitration Act, 1889, for a stay of proceedings in the action. On those facts, Lawrence J. (Shearman J. concurring) said:

The words in their natural meaning indicate that if a party takes a step in the proceedings he cannot after that stay the action and proceed to arbitration.

Section 4, Arbitration Act 1889, corresponds to Section 34 of the Act. In *Parker, Games and Co., Ltd. v. Turpin* (1918) 1KB 358 : (87 L.J.K.B. 857), the Defendant had taken steps in the proceedings before he applied for the stay of proceedings and it was held that having taken Steps in the proceedings Defendant could not after that stay the action and proceed to arbitration. No objection can be taken to the rule laid down in *Sarat Kumar v. Corporation of Calcutta* 34 Cal 443 : (11 C.W.N. 306 and *Parkar Games and Co., Ltd. v. Turpin* (1918) 1 K.B. 358 : (87 L.J.K.B 357), for it is settled law that an application for stay within Section 34 of the Act has to be made before the Defendant applicant filed the written statement or takes any other steps in the proceedings That this is so is clear from the provisions of Section 34 of the Act itself.

8. Now in order to enable a party to obtain a stay order u/s 34 of the Act the following conditions must be complied with: (i) there must be an arbitration agreement in existence; (ii) legal proceedings must have been started after the agreement to refer; (iii) legal proceedings must have been started (a) by a party to the agreement or any person claiming under it, and (b) against any other party or any person claiming under it; (iv) proceedings must be with respect to the matter agreed to be referred to arbitration; (v) application for stay must have been filed before filing the written statement or taking any other steps in the proceedings; and (vi) the party asking for stay must be ready and willing to do all things necessary to the proper conduct of a arbitration. Clearly, Section 34 of the Act fixed a definite limit from which application u/s 34 of the Act cannot be entertained, namely, the date of the filing of the written statement or taking any other steps in the suit. Section 34, however, does not prohibit the filing of a written statement pending the decision of the application for stay of proceedings under that Section.

9. No other point was pressed before me in these proceedings. In the result, the petition fails and is dismissed with costs. I direct the parties to appear in the trial Court on 21-8-1950.