
(1988) 12 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3511 of 1987

The Punjab State Co-Operative Supply and Marketing
Federation, Limited

APPELLANT

Vs

M/s. Panchsheel Rice Traders and others

RESPONDENT

Date of Decision : 06-12-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5

Citation : (1988) 12 P&H CK 0022

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : B.S. Shant, for the Appellant; Vinod Sharma, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This revision petition is directed against the order of the Subordinate Judge, First Class, Patiala dated September 18, 1987, whereby the application filed by the Petitioner under Order XXXVIII, Rule 5 of the Code of Civil Procedure, (hereinafter called the Code), was dismissed.

2. The Petitioner filed an application u/s 20 of the Arbitration Act, on September 11, 1987. Along with that application the Petitioner also moved an application under Order XXXVIII Rule 5 of the Code for the attachment of the property of the Respondents. However, the main petition u/s 20 of the Arbitration Act, was ultimately allowed and the matter was referred to the Arbitrator. The application under Order XXXVIII Rule 5 of the Code was contested by the Respondents, which was dismissed on the ground that from the provisions of Schedule II to the Arbitration Act, it was clear that the application for attachment before judgment is not covered under the provisions of the said Schedule. Further, the provisions of the Code have been made applicable to the proceedings under the Arbitration Act subject to the provisions of the Arbitration Act and the rules framed thereunder. According to the provisions of Order XXXVIII Rule 5 of the Code could not be applied to the property sought to be attached. Dissatisfied with the

same, the Petitioner has filed this revision petition in this Court.

3. During the pendency of this revision petition, this Court vide order dated May 17, 1988, directed Respondents Nos. 2 and 3 to furnish security in the sum of Rs. 2,60,424/- and Rs. 2,23,382/- respectively to produce and place at the disposal of this Court when required the property mentioned in paragraphs Nos. 3 and 4 of the application or value of the same and further to appear and show cause why they should not furnish the security. In the meanwhile, conditional attachment of the land belonging to Respondents Nos. 2 and 3 was also directed.

4. The learned Counsel for the Petitioner submitted that the view taken by the learned Subordinate Judge in this behalf was wrong. The provisions of the Code as such were applicable including the provisions of Order XXXVIII Rule 5 of the Code. In support of the contention, the learned Counsel relied upon *M/S Ram Chander Arjan Dass v. M/S National Textiles Corporation* (1983) 85 P.L.R. 199, and *Debendra Nath Singha and Others Vs. Dwijendra Nath Singha and Others*, .

5. In *M/S Ram Chander Arjan Dass's* case (supra), the question involved was whether the Arbitrator had the power of review or not. It was held by this Court that the provisions of the Code are applicable to the proceedings under the Arbitration Act and there was no provision in the Act which takes the power of review from the court under the Arbitration Act and therefore, the Court was competent to review its orders.

6. In *Debendra Nath's* case (supra), the question was as regards the powers and jurisdiction to appoint receiver or to pass interim injunction during the pendency of the arbitration proceedings. It was held that u/s 41 (b) of the Arbitration Act, the Court was competent to appoint a receiver. The learned Counsel for the Respondents submitted that Section 4 (b) is to be read with Schedule II of the said Act. Since in the Schedule there is no provision for attachment under Order XXXVIII Rule 5 of the Code; hence the view taken by the learned Subordinate Judge was correct.

7. Section 41 (b) of the Arbitration Act reads as under:-

Procedure and powers of Court,-Subject to the provisions of this Act and of rules made there under: -

(a) the provisions of the CPC 1908 (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 Second Schedule 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.

In the present case, the application was filed in the Court along with the petition u/s 20 of the Arbitration Act. That being so, u/s 41 (b), the Court was competent even to pass orders under Order XXXVIII Rule 5 of the Code as the provisions of the Code were to apply to all the proceedings before the Court. Clause (b) of Section 41 is attracted when the proceedings are pending before the arbitrator. Though during the pendency of the application under Order XXXVIII Rule 5 of the Code, matters have been referred to the arbitrator and are pending before him but since the application was filed earlier, the same was to be decided accordingly. In this view of the matter, the view taken by the learned Subordinate Judge was wrong

8. Consequently, this revision petition succeeds and is allowed. The impugned order is set aside and the case is sent back to the Sub- ordinate Judge for passing the appropriate orders safeguarding the interests of the Petitioner during the pendency of the arbitration proceedings before the arbitrator. Till any further order is passed by the Subordinate Judge, the order passed by this Court dated May 17, 1988 will continue. The parties have been directed to appear in his Court on 9.1.1989.