

(1930) 12 CAL CK 0006
In the Calcutta High Court

The Singaran Coal Syndicate Ltd.

APPELLANT

Vs

Balmakund Marwari and Others

RESPONDENT

Date of Decision : 22-12-1930

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 18

Citation : AIR 1931 Cal 772

Judgement

1. The plaintiffs instituted the suit to recover minimum royalty and rent due under three leases, dated 1912, 1919 and 1914 in respect of three pieces of coal lands. The defendants, amongst other pleas, took the plea that according to the terms of the contract between the parties all disputes and differences between them were to be referred to arbitration and they prayed for an order u/s 18, Schedule 11, Civil P.C., staying the suit and directing the parties to refer the claim to arbitration. The Subordinate Judge has made that order and the plaintiff's have preferred this appeal.

2. The first contention urged in the appeal is that a part of the claim is based upon the lease of 1914, but that lease contains no stipulation as to arbitration and consequently the order should not have been made. To this the respondents answer is that the lease of 1914 properly construed does contain a stipulation as to arbitration, referring as it does to the earlier lease of 1912 by which it was intended that the parties were to be governed, and further that, in any case, the claim arising under that lease is but an insignificant one when compared to the total claim in the suit, and there could be no objection to that part of the claim being separated from the rest and retained in Court for adjudication. The lease of 1914 has not been produced before us and we do not know its terms: it also appears that in the objection which the plaintiffs filed in answer to the defendants' application for stay the Court below was not invited to construe the lease and hold that the claim arising under it could not be referred to arbitration. We are therefore not inclined to entertain this objection.

3. On the footing that the lease of 1914 bears the interpretation that the

plaintiffs seek to put on it, a question would arise as to whether the claim may be split up or not. The learned Advocate-General appearing on behalf of the appellants had relied on the case of *Turnock v. Sartoris* [1890] 43 Ch.D. 150 in which Cotton, L.J., observed thus:

Then it was contended that "at all events the question arising under the lease was the principal matter in dispute and that it ought to be referred leaving the action to proceed only as to matters not arising under the lease. I think that such a course would not be right. It could not be right to cut up this litigation into two actions one to be tried before the arbitrator, and the other to be tried elsewhere.

4. But the special features of the case with reference to which these observations were made have been pointed out in later decisions. In *Iyes & Barkar v. Williams* [1894] 2 Ch.D. 478 it was held that the fact that a small portion of the relief claimed is not within the scope of the arbitration clause is not in itself a sufficient reason for refusing to stay proceedings where the main subject of the action is within the arbitration clause. In that case Lindley, L.J. said:

"The language is" The Court, if satisfied that there is no sufficient reason why the matter should not be referred, may make an order to stay proceedings." It is said that inasmuch as you cannot refer the whole action there is no power to refer any part of it. It is all or none, and the ease which was referred to of *Turnock v. Sartoris* [1890] 43 Ch.D. 150 it is said, goes to support that view. Now the matters which are to be referred u/s 4 (the words of which have been quoted above) are matters which are agreed to be referred are mixed up in an action with matters not agreed to be referred there is no reason why the fourth section should not be applied to those matters which have been agreed to be referred, leaving the action "to go on as to the other matters. But I quite see that if the matters agreed to be referred were not the main matters in dispute, but were of a subordinate and trifling nature, and if the matters not agreed to be referred were the main matters in dispute, it would be very inconvenient, to say the least of it, to refer that small part and let the action go on as to the large part. That was the case in *Turnock v. Sartoris* (1).

5. In *Rowe Bros, & Co. Ltd. v. Grossley Bros. Ltd.* [1913] 108 L.T. 11 Hamilton, L.J. observed:

Turnock v. Sartoris, as I know by experience, is a case one constantly quoted in the hope of preventing a case being stayed on the ground that there is something in it outside the arbitration clause, and the ease which is constantly quoted unsuccessfully because of the mere addition to any writ of a separate cause of action is not of itself sufficient to prevent the rest of the action being stayed if it is within the arbitration clause. You must within *Turnock v. Sartoris* and the case before Swinfen Eady, J., of *Bonnin v. Neame* [1910] 1 Ch. 732 have a matter outside the arbitration clause and yet substantially raising the same faces and rights as would fall to be determined within the arbitration clause. And then, of course, the fact that some part of the action cannot be referred is very

good reason for saying, though it is a matter for discretion, that the rest of the action which would involve the same matter ought not to be referred.

6. The case of *Wade Grey v. Morrison* [1878] 37 L.T. 270. was one in which there were two contemporaneous agreements, one of which contained and the other did not contain a stipulation to refer to arbitration. It was held in that case that the two agreements must be treated as together forming one agreement and that therefore the clause as to reference which was found only in one of the two parts of that agreement was to apply to matters arising under either of the documents which, taken together, made up the agreement. If the appellants had put the lease of 1914 before the Court below or before us and had shown that the claim arising under it was not covered by any submission clause, it would have been necessary for us to examine the question from the points of view of the decisions quoted above in order to see whether the claim should be allowed to be split up. But, as already observed, no such thing was done. It may be mentioned here that the claim under the lease of 1914 was for Rs. 35-13-6 only out of a total of Rs. 6,999-2-8.

7. The next contention urged is that as a question of *res judicata* will arise the Court below should have in the exercise of its discretion refused the application for stay of the suit. On this question there is a long course of judicial authority and it has been repeatedly held that when parties had deliberately made contracts with an arbitration clause and thus had chosen to select their own forum there is a *prima facie* duty upon the Court to respect the agreement: *Scott v. Avery* 5 H.L.C. 811. *Scott v. Mercantile Accident*] and *Guarantee Insurance Co.* [1892] 66 L.T. 811. *Trainor v. Phoenix Fire Insurance Co.* [1892] 8 T.L.R. 37. *Spuerrior v. La Cloche* [1902] A.C. 446. *Rowe Bros. & Co. Ltd. v. Crossley Bros. Ltd.* and *Lock v. Army, Navy and General Assurance Association Ltd.* [1915] 31 T.L.R. 297. It is true that if difficult questions of law are likely to arise, such as would inevitably entail a special case being prepared and reference to the Court made by an arbitrator, the Court may in the exercise of its discretion refuse the stay : *Bristol Corporation v. John Aird & Co.* [1913] A.C. 241 and *Clugh v. County Live Stock Insurance Association Ltd.* [1916] 85 L.J.K.B. 1185. So also if a question of law would arise which is clearly outside the purview of the arbitration clause and other questions, though within it, are so intimately connected with: the former question that a mere convenient course would be to try the whole action in Court a stay may be refused : *Printing Machinery Co. Ltd. v. Linotype and Machinery Ltd.* [1912] 1 Ch. 566. The question has been elaborately considered and the authorities bearing on it have been fully discussed in the case of *Metropolitan Tunnel and Public Works v. London Electric Ry.* [1926] 1 Ch. 371 in which the importance of upholding the bargain between the parties has been emphasized. Lord Hanworth, M.R., relying on the following, observations of Moulton, L.J., in *Bristol Corporation v. John Aird & Co.*:

On the other hand for many years it has been recognized that there are cases in which a well selected domestic tribunal, in which a Judge is one with a special

acquaintance either with the facts of the case or with the subjects to which the litigation relates, may give more complete or speedier justice than the more elaborate procedure of the Courts of law (based as it is on the principle of complete independence of the parties and the case itself), is ever in a condition to render.

8. It should be noted that in the case of Metropolitan Tunnel and Public Works Ltd v. London Electric Ry. Co., the sole question which arose was a question of law. As observed by the Judicial Committee in the case of Ghulam Jilani v. Mahomed Hassan [1902] 29 Cal. 167:

arbitrators may be judges of law as well as judges of fact and an error in law certainly does] not vitiate an award.

9. The result is that in our opinion the appellants have failed to make out a case for refusal to stay.

10. The appeal is dismissed with costs, five gold mohurs.