

(1982) 05 CAL CK 0004
In the Calcutta High Court
Case No : A.O.D. No. 123 of 1974

Union of India

APPELLANT

Vs

Bengal Stores and Supply Agency

RESPONDENT

Date of Decision : 05-05-1982

Acts Referred:

Arbitration Act, 1940 — Section 20, 39

Citation : 86 CWN 1070

Hon'ble Judges : Sharma, J;Chittatosh Mookherjee, J

Bench : Division Bench

Advocate : Ajoy Kumar Basu, for the Appellant; Debaprasad Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Chittatosh Mookerjee, J.—The Union of India representing South Eastern Railway Administration preferred this appeal against the order dated 31st March, 1973 of the learned Chief Judge, City Civil Court, Calcutta u/s 20 of the Arbitration Act, 1940. The learned Judge of the court below by the said order directed the defendant, Union of India, to file within a fortnight the agreement in question and also directed the parties to appoint an Arbitrator In terms of the said agreement between them made in May, 1960. At the outset, it is necessary to point out that the Memorandum of Appeal was wrongly classified as an Appeal from Original Decree Instead of an Appeal from Original Order. An Order passed u/s 20 of the Arbitration Act, 1940. is not a decree but u/s 39 of the said Act an appeal lies against an order for filing or refusing to file an arbitration agreement In the facts of this case when both parties have already appeared and we have heard them at length on merits, it would have been an exercise in futility to set down this appeal for hearing under Order 41 Rule 11 of the Civil Procedure Code. The learned advocate for the respondent has not objected to the final disposal of this appeal on merits. Therefore, we proceed to decide the appeal. We also direct the office to classify this appeal as an Appeal from Original order and to make

necessary note in the Memorandum of Appeal. The short point in this appeal is whether or not the said application u/s 20 of the Arbitration Act, 1940 filed by the respondent on 30th March, 1971 was barred by limitation. The learned Chief Judge distinguished the decision of M.M Dutt, J. in Ram Kumar Kajaris v. Messars Chandra Engineering (India) Ltd. 76 CWN 426 and held that Article 137 of the Limitation Act, 1963 had no manner of application to the said application u/s of the Limitation Act.

2. The respondent in paragraph (4) of his application u/s 20 of the Arbitration Act, 1940 mentioned the alleged Disputes and differences which had arisen between the parties out of and in connection with an agreement between them made in May, 1960. He averred in paragraph (5) of the said application that by notice dated 14th March, 1963 written to the General Manager, South Eastern Railway, he had demanded reference to the said disputes to arbitration. He however, did not mention the precise date on which the defendant, Railway Administration had failed and neglected or refused to refer the said disputes to arbitration. According to the plaintiff-respondent, the said refusal was wrongful and illegal. Copies of relevant correspondence annexed to the application and collectively marked with the letter "A" however, contained one undated letter of the Deputy F. A. and C.A.O. (Arb) for General Manager, South Eastern Railway. With reference to the respondent's letter dated 14th March, 1963 Informing the latter that the matter could not be referred to arbitration for the reasons contained in the said letter. Again, on 29th August, 1966 the General Manager, South Eastern Railway wrote a letter to the respondent stating :-

The claims and disputes raised by you have been carefully scrutinized and it is found that the same are covered by the provisions of clause 22(5) of the General Conditions of Contract and fall within the purview of "Excepted matter. It is therefore regretted that your request for referring the claims/disputes to arbitration cannot be agreed to.

Thus, atleast on 29th August, 1966 a difference had arisen and the respondent had cause of action for applying to a court having jurisdiction in the matter for filing u/s 20 of the said Act the aforesaid arbitration agreement. But, as already stated, only on 30th of March, 1971 the respondent had filed in the court below the said application u/s 20 of the Act.

3. In our view, the learned Chief Judge was not right In applying the ratio of the decision of the Supreme Court in the Sha Mulchand and Co. Ltd. (In Liquidation) Vs. Jawahar Mills Ltd., With reference to an application for rectification of register under a section 38 of the Companies Act, 1913. the Supreme Court had held that Articles 48 and 49 of the Limitation Act were not attracted as the claim involved was not for return of share scripts. Their Lordships further held that Article 181 of the Limitation Act, 1908 applied to applications under the CPC and, therefore, the same was also in applicable to the case before them. Alternatively, it was held that even if Article 181 apply, the application was within time either under the said article or under article 120 of the Limitation Act, 1908.

4. In the present case the question is whether Article 137 of the Limitation Act, 1963 would be applicable to an application u/s 20 of the Arbitration Act, 1940. The Supreme Court in the *The Vulcan Insurance Co. Ltd. Vs. Maharaj Singh and Another*, at pages 293-94, paragraph 23 did not decide whether the action commenced by the respondent No. 1 u/s 20 of the Arbitration Act was barred under clause 19 of the insurance Policy in question. Their Lordships proceeded to observe that there was no limitation prescribed for filing of an application u/s 20 of the Arbitration Act under the Limitation Act 1908 or the Limitation Act 1963. According to the Lordships, Article 18 of the former did not govern such an application. At the same time, their Lordships expressed the view that the period of three years prescribed in Article 137 of the Act of 1963 may be applicable to an application u/s 20. Their Lordships added that an application u/s 20 of the Act could be dismissed on the ground that the claim would not ultimately succeed either in fact or in law,

5. The Supreme Court in their later decision in the *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, however, has authoritatively laid down that Article 137 of 1963 Limitation Act will apply to any petition or application filed under any Act to a civil Court and Article 137 of the Limitation Act 1963, was not confined to applications contemplated by or under the Civil Procedure Code. The petition considered in the said case before the Supreme Court was u/s 16(3) of the Telegraph Act which claimed before the District Judge enhanced compensation and, therefore the Supreme Court held that the same was an application falling within the scope of Article 137 of the Limitation Act, 1963.

6. The learned advocates have also drawn our attention to the recent decisions of this Court in *Jiwani Engineering Works Pvt. Ltd. Vs. Union of India (UOI)*, and in *V.G. Ghawda Pvt. Ltd. Vs. Union of India (UOI)*, which also took the view that Article 137 of the Limitation Act, 1963 would be attracted to an application u/s 20 of the Arbitration Act, 1940.

7. Mr. Bhattacharyya, appearing on behalf of the respondent, has fairly conceded that the instant petition u/s 20 of the Arbitration Act was filed more than three years after the date of accrual of cause of action pleaded in paragraph 5 of the said petition and Article 137 of the Limitation Act being attracted the petition was bound to fail on ground of limitation. We accordingly allow that appeal set-aside the judgment and order of the court below and dismiss the petition of the respondent u/s 20 of the Arbitration Act. In the circumstances of the case, both parties will bear their respective costs throughout.