
(1977) 09 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Revision No. 154 of 1977

Union of India (UOI) and Others

APPELLANT

Vs

Bankatlal

RESPONDENT

Date of Decision : 20-09-1977

Acts Referred:

Arbitration Act, 1940 — Section 34
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1977) RLW 427 : (1977) WLN 491

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Judgement

D.P. Gupta, J.—An interesting question of law arises in this case. The non-applicant instituted a suit for ejectment and for damages against the applicants in the Court of the Munsif, Jodhpur District. On the first date of hearing the defendants submitted at application u/s 34 of the Arbitration Act. hereinafter referred to as the Act", praying that the proceedings in the suit be stayed and the parties be directed to take recourse to arbitration, since the defendant-applicants were and are always ready and willing to get the dispute between the parties settled in accordance with the provisions contained in the arbitration agreement. The trial court allowed the application and directed that the proceedings in the suit be stayed pending arbitration. An appeal was preferred by the plaintiff-landlord against the aforesaid order which was accepted by the learned District Judge, Jodhpur, by his order dated May13, 1977, and the application u/s 34 of the Act was rejected. The order passed by the learned District Judge has been challenged by the defendants in the present proceedings.

2. Mr. Kapoor appearing for the plaintiff non-applicant, has low-ever, raised a preliminary objection to the entertainment of the revision application on the ground that after the disposal of the appeal by the learned District Judge, the defendant-applicants sought adjournments twice in the trial court for filing their written statement and that in view of the aforesaid Step taken by the defendant in the proceedings in the suit the bar of Section 34 of the Act can no longer

apply. The contention of Mr. Lodha, learned Counsel for the defendant-applicants, on the other hand, is that the filing of the written statement or taking any other steps in the proceedings in the suit can only debate stay of proceeding in case such steps are taken before the application u/s 34 of the Act is filed, but the same principle can no longer be extended even after the decision of the application u/s 34 of the Act, either by the trial court or by the appellate court. learned Counsel for the applicants placed reliance on a decision of the Punjab High Court in the Hanuman Chamber of Commerce Ltd. v. Parmesh Lal Company Etc. AIR 1951 Sim 173 in support of his submission.

3. I have considered the rival contentions. Section 34 of the Arbitration Act runs as under:

34. Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceeding and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may, make and order staying the proceedings.

One of the conditions, which must be complied with in order to enable a party to obtain an order of stay of proceedings u/s 34 of the Act, is that such application should have been filed before filing the written statement or taking any other steps in the suit or proceedings. It is settled law that if a defendant asks for an adjournment seeking time to file a written statement then such a conduct on his part amounts to taking a step in the proceedings. It cannot be disputed that the words "taking any other steps in the proceedings" are words of general character and wide import and they refer to doing any thing by a party in and of the progress of the suit or proceedings. In the *The State of Uttar Pradesh and Another Vs. Janki Saran Kailash Chandra and Another*, an application for adjournment for filing the written statement was presented by a District Government Counsel, who purported to act on behalf of the State Government. It was held by their Lordship that in view of the application for adjournment for the purpose of filing a written statement, there could be no question of the exercise of discretion with regard to the stay of proceedings u/s 34 of the Act. It was observed by their Lordships of the Supreme Court in the aforesaid case:

The legal position with respect to the scope and meaning of Section 34 of the Arbitration Act admits of little doubt, the language of this section being quite plain. When a party to an arbitration agreement commences any legal proceedings against any other party to the said agreement with respect to the subject-matter thereof, then the other party is entitled to ask for such

proceedings to be stayed so as to enable the arbitration agreement to be carried out. It is however, to be clearly understood that the mere existence of an arbitration clause in an agreement does not by itself operate as a bar to a suit in the Court. It does not by itself impose any obligation on the Court to stay the suit or to give any opportunity to the defendant to consider the question of enforcing the arbitration agreement. The right to institute a suit in some Court is conferred on a person having a grievance of a civil nature, under the general law. It is a fundamental principle of law that where there is a right there is a remedy. Section 9 of the CPC confers this general right of suit on aggrieved person except where the cognizance of the suit is barred either expressly or impliedly. A party seeking to curtail this general right of suit has to discharge the onus of establishing his right to do so and the law curtailing such general right has to be strictly complied with. To enable a defendant to obtain an order staying the suit, apart from other conditions mentioned in Section 34 of the Arbitration Act, he is required to present his application praying for stay before filing his written statement or taking any other step in the suit proceedings. In the present case the written statement was indisputably not filed before the application for stay was presented. The question is whether any other step was taken in the proceedings as contemplated by Section 34 and it is this point with which we are directly concerned in the present case. Taking other steps in the suit proceedings connotes the idea of doing something in aid of the progress of the suit or submitting to the jurisdiction of the court for the purpose of adjudication of the merits of the controversy in the suit.

4. Now the further question is as to whether the conduct of the party in taking any other steps in the proceedings, as for example, seeking time to file a written statement even after the rejection of the application u/s 34 of the Act, would still disentitle such party from taking benefit of the provisions of Section 34 of the Act. In the case of the Hanuman Chamber of Commerce Ltd. (Supra), which has been relied upon by the learned Counsel for the appellant, the trial court had ordered that without prejudice to the decision of the defendant's application u/s 34 of the Act, the defendant should file his written statement as also the list of the documents and the list of reliances. The defendant contended that the written statement should not be directed to be filed as it would affect his rights u/s 34 of the Act, but this contention of the defendant was also negated by the trial court. In these circumstances it was held by a learned Judge of the Punjab High Court that Section 34 did not prohibit the filing of the written statement under the direction of the Court, pending the decision of the application for stay of proceedings. The decision in that case is clearly distinguishable as in that case there was a specific direction by the trial court for filing a written statement, without prejudice to the decision of the defendant's application u/s 34 of the Act. It cannot be held as a general rule that after filing an application u/s 34 of the Act the parties can go on taking steps in the suit or proceedings, but in case the court gave a specific direction to the defendant to file a written statement, without prejudice to his rights in respect of the application u/s 34 of the Act, it

cannot be held that the written statement was filed by the defendant voluntarily or that the defendant had taken any other steps in furtherance of the proceedings in the suit of his own accord. In such circumstances, the defendant did not display an unequivocal intention to take further proceeding in the suit on his own initiative, but the party did so in compliance with the orders of the Court.

5. However, in the present case after the decision of the appeal by the learned District Judge on May 13, 1977, the parties appeared before the trial Court on 27-5-77 & a routine Order was passed by the trial Court that Since the appeal has been decided the case may be fixed on July 5, 1977 for filing the written statement. It Was on July 5, 1977 that the learned Counsel for the defendants appeared and sought an adjournment for the specific purpose of filing the written Statement and August 19, 1977 was fixed for that purposes. On August 19, 1977 again the learned Counsel for the defendants sought another adjournment for filing the written statement. It was open to the learned Counsel for the defendants, when the record of the case was returned to the trial court to ask for an adjournment on the ground that the defendants intended to file a revision application before this Court challenging the order passed by the learned District Judged but instead of doing so the defendants deliberately made a prayer before the trial court for adjournment for the specific purpose of filing a written statement. This conduct on the part the defendants was definitely a step in and of further progress of the proceeding in the suit. It must be emphasized that u/s 34 of the Act there must be readiness & willingness to go to arbitration not only at the time of the commencement of the proceedings, but such readiness and willingness must continue at all subsequent stages as will. In the present case, after the learned District Judge disposed of the appeal rejecting the prayer of the defendants for the stay of proceedings u/s 34 of the Act, the defendants did not ask for stay of proceedings or adjournment before the trial court for filing a revision application but instead there of they look steps in the Suit, namely, took adjournments for the purpose of filing the written statement on july 5, 1977 and again on August 19, 1977. This conduct on the part of the defendants clearly shows their intention to go on with the proceeding in the suit. In Asiatic Shipping Co. (Private) Ltd. v. P.N. Djakarta Lloyd and Anr. (3) after the trial court had rejected the application of the defendants u/s 34 of the Act the defendants made a prayer for liberty to file a written statement and asked for and obtained directions for the discovery and inspection of documents. In these circumstances it was held that the bar u/s 34 of the Act was removed on account of the conduct of the defendants in taking Steps in the proceedings in the suit and the appeal against the order refusing to stay the suit u/s 34 of the Act was not entertained I am in respectful agreement with the view taken by the Calcutta High Court in Asiatic Shipping Co."s case (Supra). As a similar situation arises in the present case the bar u/s 34 of the Act is removed by the conduct of the defendants in seeking adjournment for the specific purpose of filing their written statement on May 5, 1977, and again on August 19, 1977.

6. In view of the aforesaid discussion, I uphold the preliminary objection and

dismiss the revision petition as not maintainable. The parties are, however left to bear their own costs.