

(1952) 10 AHC CK 0029
In the Allahabad High Court
Case No : Application No. 61 of 1951

Union of India (UOI)

APPELLANT

Vs

Girish Chandra and Others

RESPONDENT

Date of Decision : 10-10-1952

Acts Referred:

Arbitration Act, 1940 — Section 34

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : AIR 1953 All 149

Hon'ble Judges : Kaul, J

Bench : Single Bench

Advocate : B.N. Roy, for the Appellant; Hyder Husain, Ganesh Prasad and A.N. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Kaul, J.—This is an application for revision of an order passed by the learned Judge, Small Cause Court, Lucknow. The material-facts lie within a short compass :

2. A suit for recovery of rent for certain premises was instituted by Shekhar Chandra Jain against the Union of India, Defence Department. Shekhar Chandra Jain died during the pendency of the suit and the names of his legal representatives were substituted in his place on the record. The suit was instituted on 13th May 1950. 18th August 1950 was fixed for final disposal of the case. On that day the Additional Government Pleader for the U. P. Government appeared before the Court and prayed for an adjournment. The application made by him stated that as he had not received a copy of the plaint or other papers from the office concerned, he might be granted two months' time for filing the written statement. This application was allowed and time was granted till 13th October 1950. On that day an application was made by the plaintiff inviting the Court's attention to Section 34 of the Arbitration Act 10 of 1940. It was contended that as the application for adjournment of the case to enable the

defendant to file a written statement made on 18th August 1950, was a step in the proceedings the suit could not be stayed. The matter was argued before the learned Judge. Relying on two cases of this Court, -- United Provinces Government Vs. Sri Har Nath, and -- Roop Kishore Vs. United Provinces Government, he held that the proceedings could not be stayed. Dissatisfied with this decision, the present revision application has been filed.

3. It was contended by the learned counsel for the Union of India that it was held by their Lordships, Dar and Sinha JJ. in -- Roop Kishore Vs. United Provinces Government, that it was possible to hold in some cases that an application for adjournment of a case to enable the defendant to file a written statement was not a step in the proceedings within the meaning of Section 34 of the Act and his case was one of that kind. He invited my attention to the statement made by the Government Pleader in his application of 18th August 1950, that he had not received a copy of the plaint and other papers from the office concerned. It was contended that in view of this clear statement the Government Pleader could not be in a position to say what defence would be taken and it should not be taken that by making that application he had acquiesced in the case being decided by the Court and not being referred to arbitration.

4. Having heard the learned Counsel for the parties, I am of opinion that the case is covered by the later decision of this Court in -- United Provinces Government Vs. Sri Har Nath, . Malik C. J. and Mushtaq Ahmad J. referred to a number of cases including that of -- "Prem Nath Pran Nath v. Amba Parshad" AIR 1941 Lah 64. Their Lordships observed :

"The Lahore High Court appears to have been reluctant to accept this view and seems to have indicated that an application for extension of time to file a written statement is not such a "step in proceedings" as contemplated by those words of Section 34, Arbitration Act. In the first place that case is in our opinion distinguishable from the present one, inasmuch as there the defendants had not received a copy of the plaint filed in Court. That being so, he was not in a position to know anything about the nature of the suit filed, so as to realise that the suit related to a matter about which there had been an agreement for arbitration between the parties."

They further observed:

"In any case we feel that the preponderance of authority is in favour of the view taken by this Court in -- Roop Kishore Vs. United Provinces Government,

5. This is a Bench decision of our Court and is binding upon me. I may further add, if I may say so without disrespect, that it is based on sound reasoning. Ordinarily disputes between parties as to their rights are decided by the Courts of the Country and it is open to either party to the dispute to approach the appropriate Court for a decision. There may, however, be cases where the parties agree, when entering into a contract, that, all or any particular dispute relating to that contract shall be referred to arbitration, and thus exclude the jurisdiction

of ordinary courts. Section 34 provides that if in such a case one of the parties institutes a suit or other legal proceedings then it is open to the other party to apply to the judicial authority before which the proceeding is pending to stay the proceeding. But such an application can be made only before the written statement is filed or "any other steps in the proceedings" are taken. Once any step is taken in the proceedings, the right to apply for stay of proceedings is lost. The principle seems to be that the parties having agreed to exclude the jurisdiction of the Court are entitled to have that agreement enforced provided as soon as any party institutes a legal proceeding there is a refusal by the other party to have a decision from a Court of law and an indication on his part that he wants to rely on the agreement to refer the dispute to arbitration. If any step whatsoever is taken by such party in the proceeding in Court his right to apply for stay of proceedings and to take advantage of the reference to arbitration clause is lost. The words used, in the section are unqualified -- "before filing a written statement or "taking any other steps in the proceedings"". Accordingly once an application is made for time to file a written statement there is a step taken in the proceedings.

6. Mr. Haider Husain, learned counsel for the opposite parties, invited my attention to the observations made by the author in Shambhu Dayal Singh's Law of Arbitration in India. In paragraph 585 at page 361 of his book, he says:

"According to the practice in the Sind Chief Court, when a suit is pending on the original side of that Court, an application u/s 34 for stay of the suit should be filed by way of a separate proceeding and not to file the application in the suit."

Possibly the Sind Court takes the view that even if an application u/s 34 for stay of the suit is filed in the proceeding, the making of the application would come within the purview of the words "any other steps in the proceedings" as used in that section and the intention to exclude any such objection has given rise to the practice referred to by the author. I hold therefore that the view taken by the learned Judge in the Court below cannot be said to be erroneous.

7. Mr. Haider Husain further contended that the determination whether the proceedings shall or shall not be stayed on an application u/s 34 was a matter for the discretion of the judicial authority before whom the application was made. In the present case the judicial authority concerned was the Judge Small Cause Court, Lucknow, and according to the well established practice of this Court, that in a matter where discretion is exercised by a Court of Small Causes, a revision application u/s 25 of the Provincial Small Cause Courts Act shall not be entertained. The argument is not without substance, and on this ground also this application must be dismissed.

8. The application is dismissed with costs. The stay order is vacated.