
(2009) 09 MAD CK 0206

In the Madras High Court

Case No : C.R.P. (P.D.) No's. 1919 to 1921 of 2009

V. Pundarikakshudu Sons

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 37(2)
Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2009) 09 MAD CK 0206

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : C. Chinna Samy for E. Sampath Kumar, for the Appellant; A. Muralidharun, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—These three revision petitions are directed against the Order dated 06.04.2009 in I.A. No. 4/2009, 5/2009, 6/2009 in A.O.P. No. 32/2008, 33/2008, 34/2008, respectively on the file of the learned District Judge, Nilgiris at Ooty, whereby and whereunder, the applications preferred by the first respondent to permit them to file a reply statement invoking Section 151 CPC were allowed.

2. The facts in all these revisions are identical and as such, the factual matrix as contained in C.R.P.(PD) No. 1919/2009 is taken for the purpose of narrating the background facts.

The facts:

C.R.P.(PD) No. 1919/2009:

3. The proceedings in A.O.P. No. 32/2008 was initiated by the first respondent u/s 34(2)(a)(IV) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, "the Act"). The prayer in the Arbitration Original petition was to set aside the award passed by the second respondent.

4. In the original petition, the first respondent has detailed the reasons which according to them would be sufficient to set aside the award passed by the second respondent.

5. The original petition was contested by the revision petitioner by filing counter. The petitioner has countered each and every ground taken in the original petition and explained as to why the award of the Arbitrator was not liable to be set aside.

6. While the matters stood thus, the first respondent filed an application in I.A. No. 4/2008 u/s 151 CPC seeking the leave of the Court to file a reply statement.

7. In the affidavit filed in support of the application in I.A. No. 4/2008, it was the contention of the first respondent that the revision petitioner in their counter statement raised serious contentions for which, necessarily, a reply has to be filed which necessitated them in filing the application u/s 151 CPC.

8. The application was resisted by the revision petitioner by filing counter. According to the petitioner, the application u/s 151 CPC was clearly not maintainable. It was further contended that in case the provisions of CPC was applicable to a proceeding before the court u/s 34 of the Act, the first respondent should have filed an application under Order 8 Rule 9 CPC. It was their further contention that under the guise of reply statement, the first respondent has raised new grounds and by way of those grounds, the award was sought to be set aside, which was not permissible in law.

The decision of the Judge:

9. The learned Trial Judge was of the view that there was no specific provision in the Act to file counter in the Arbitration Original Petition. However, the petitioner was permitted to file counter and in the same way, the first respondent should also be permitted to file reply statement for the purpose of denying the averments as contained in the counter. The learned Trial Judge was also of the view that in case the revision petitioner was aggrieved on account of new grounds being taken in the reply statement, the remedy was only to challenge them in the arbitration proceeding. Accordingly, the application was allowed. Aggrieved by the said Order, the unsuccessful first respondent is before this Court.

Submissions:

10. The learned Senior Counsel appearing on behalf of revision petitioner contended that the first respondent was not entitled to raise additional grounds by way of rejoinder except by way of taking leave from the Court as provided under Order 8 Rule 9 CPC. According to the learned Senior Counsel, the trial Court proceeded on the basis that CPC was not applicable to a proceeding under the provisions of the Act. Therefore, the question of invoking the inherent jurisdiction u/s 151 CPC does not arise.

11. The learned Counsel for the first respondent contended that the learned

District Judge was having jurisdiction to allow the parties to file subsequent pleadings. According to the learned Counsel, when the Court has got jurisdiction to receive additional pleadings, there was no question of rejection of such pleadings, on the ground of quoting wrong provision. The learned Counsel further contended that the Court was having inherent jurisdiction to permit the first respondent to file additional pleadings subsequent to the written statement.

The issue:

12. The only question which arises for consideration in the present revision is whether the provisions of CPC was applicable to a proceeding before the court dealing with an application u/s 34 of the Act and if so, whether the first respondent was entitled to file pleadings subsequent to the written statement without seeking leave under Order 8 Rule 9 CPC?

Statutory materials:

13. The Arbitration and Conciliation Act is a self contained Code dealing with the procedure relating to resolution of disputes through arbitration, conduct of arbitration before the Arbitrator as well as the challenge to the Arbitral Award before the Court. It is true that the Court was not expected to interfere in the proceedings before the Arbitrator during the pendency of the proceeding. However Section 9 of the Act is an exception as it would enable the Civil Court to exercise its jurisdiction before the commencement of the process of arbitration, during the pendency of such proceeding and finally, after passing the award.

14. Section 34 of the Act provides for filing an application before the Court to set aside the award. Jurisdiction is vested only with the Court. Court is not termed as *persona designata*. Therefore, Court has got all the characteristics of a Civil Court.

15. The Arbitration and Conciliation Act defines Civil Court as per Section 2(e) thus:

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

Principles regarding Civil Court jurisdiction:

16. The Court would normally lean in favour of right to institute a civil suit. Therefore, the question would be whether Civil Court jurisdiction was excluded expressly or impliedly.

17. It is also true that exclusion of jurisdiction of civil court must be provided expressly. In certain cases, there would be implied bar on account of the machinery provided for the resolution of disputes and the finality given to such

proceedings. However, there was nothing in the Act to indicate that the provisions of CPC was not applicable to a proceeding before the Court in matters pertaining to the Arbitration Award.

18. When the matter is before the Civil Court and there is no procedural provision contained in the Act with regard to the conduct of proceeding before the Court, necessarily, procedure applicable to the Civil Court in its normal judicial function has to be followed.

The law:

19. In *I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd.*, , the principal question before the Supreme Court was whether a revision u/s 115 CPC would lie to the High Court against the order passed by the Civil Court in an appeal preferred u/s 37 of the Arbitration Act. The Supreme Court held that a revision would lie before the High Court as the proceeding u/s 37 before the Court was a civil proceeding and the Sub Court was subordinate to the High Court within the meaning of Section 115 CPC. While deciding the said issue, the Supreme Court indicated the application of CPC to the proceedings under the Arbitration Act thus:

10. ...It is true in the present Act application of the Code is not specifically provided for but what is to be noted is: Is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a Civil Court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable.

11. It has been held by this Court in more than one case that the jurisdiction of the Civil Court to which a right to decide a lis between the parties has been conferred can only be taken by a statute in specific terms and such exclusion of right cannot be easily inferred because there is always a strong presumption that the Civil Courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference, the same should be in favour of the jurisdiction of the Court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except of the extent stated in Section 37(2), we cannot draw an inference that merely because the Act has not provided the CPC to be applicable, by inference it should be held that the Code is inapplicable.

20. In *Siemens case*, (cited *supra*), Supreme Court followed the judgment delivered by a three Judge Bench in *Bhatia International v. Bulk Trading S.A.* AIR SCW 1285. The relevant paragraph would read thus:

While examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion.

21. Therefore, it is clear that the provisions of CPC is applicable to a proceeding before the Court u/s 34 of the Act.

22. As per Order 8 Rule 9 CPC, no pleading subsequent to the written statement of a defendant other than by way of defence shall be permitted except with the leave of the Court. Therefore, the first respondent was obliged to take leave to file a reply statement as it was a pleading subsequent to the counter statement filed by the revision petitioner. According to the petitioner, the reply statement contains new grounds and untenable claims were sought to be made by way of such reply. However, the application to file the reply statement was only u/s 151 CPC.

Wrong mentioning of legal provision:

23. It is trite that quoting a wrong provision of law is immaterial if the Court had the jurisdiction and the pleadings contain ingredients of the correct legal provision. In such cases, the Court was not expected to reject the application solely on account of quoting wrong provision.

24. In *T. Nagappa Vs. Y.R. Muralidhar*, , the Supreme Court has reiterated the legal position with respect to wrong mentioning of correct provision of law thus:

11. ...It is now a well settled principle of law that non-mentioning or wrong mentioning of provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order.

25. In the case on hand, it was not mere non-mentioning the correct provision. There is an express provision in the CPC to obtain the leave of the Court for the purpose of filing subsequent pleadings. Rule 9 of Order 8 CPC bars subsequent pleadings except by way of leave. Therefore, the said provision operates as a legal bar and the first respondent cannot be permitted to by-pass the statutory prohibition by taking recourse to Section 151 CPC.

Inherent power:

26. The question of invoking the jurisdiction u/s 151 CPC would arise only in the absence of an express provision. The parties cannot be permitted to invoke the inherent jurisdiction to overcome the statutory bar.

Legal position:

27. In *Padam Sen and Another Vs. The State of Uttar Pradesh*, , the issue before the Supreme Court was regarding the exercise of inherent power u/s 151 CPC for the purpose of appointing Advocate Commissioner. Supreme Court held that it was permissible to issue a commission in exercise of jurisdiction u/s 151 CPC. However, it was made clear that inherent power cannot be used in violation of an express provision. The relevant paragraph would read thus:

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers

and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.

28. The Hon''ble Supreme Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, , followed the judgment in Padam Sen's case and held that the inherent power has not been conferred upon the Court and it is a power inherent in the Court by virtue of its duty to do justice between the parties before it.

29. The power inherent in the Court cannot be used in a routine manner. It must be used only for doing substantial justice. There is no question of exercise of such inherent jurisdiction in case of availability of an express provision. Since CPC was applicable to a proceeding u/s 34 of the Act, necessarily, statement and counter statement could only be under the said Act. Therefore, it was not permissible to invoke the inherent jurisdiction to overcome the express bar.

30. The learned Judge appears to have proceeded on the basis that the CPC was not applicable to a proceeding u/s 34 of the Act. The learned District Judge allowed the application mainly on the ground that the revision petitioner was permitted to file counter statement without a provision in the Act and as such, necessarily, the first respondent should also be permitted to file a reply statement. This is an indication that the learned Judge proceeded on the basis that CPC was not strictly applicable to a proceeding u/s 34 of the Act. Such a view is legally incorrect.

31. The reply statement filed by the first respondent with an application u/s 151 CPC was in the nature of a subsequent pleading as the petitioner has already filed their counter statement. Admittedly, first respondent has not taken the leave of the Court, invoking Order 8 Rule 9 CPC. Therefore, the impugned Order is liable to be set aside and accordingly, the same is set aside.

Disposal:

32. The first respondent is permitted to file an application under Order 8 Rule 9 CPC for the purpose of obtaining leave to file subsequent pleadings and in the event of filing any such application within three weeks from the date of receipt of a copy of this Order, the same shall be considered and disposed of by the learned District Judge on merits and as per law.

33. The Civil Revision Petitions are allowed as indicated above. No costs.