
(2003) 02 GAU CK 0013
In the Gauhati High Court
Case No : CRP No. 406 of 2002

West Bengal State Electricity Board and Others	APPELLANT
Vs	
Shanti Conductors Private Ltd.	RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 89, 89(1)

Citation : AIR 2004 Guw 70 : (2004) 2 ARBLR 159 : (2003) 2 GLR 76

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : S.R. Bhattacharjee, for the Appellant; S.P. Roy, for the Respondent

Judgement

I.A. Ansari, J.—This revision originally arose out of order, dated 11.11.2002, passed by learned Civil Judge (Sr. Divn.) No. 1, Kamrup, Guwahati, in Title Suit No. 101/97, rejecting the application made by the revision petitioners defendants u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act of 1996). When the present revision was pending, the petitioners have, with the help of an amendment petition, also challenged, in this revision, the order, dated 6.1.2003, passed in the said suit, whereby an application made by the petitioners praying for invoking the provisions of Section 89 CPC was declined by the learned trial Court.

2. In order to appreciate the relevant provisions of law involved in the present revision and the challenges made to the orders impugned in this revision, let me state, in a nutshell, the material facts, which have led to this revision.

3. Title Suit No. 101/96 aforementioned, instituted by the opposite party as plaintiffs, was decreed ex parte on 15.12.1999. The revision petitioners, as defendants, filed, inter alia, application for vacating the said ex parte decree. This ex-parte decree was vacated subject to certain conditions by order, dated 19.8.2000, passed in Misc. (J) Case No. 117/2000. Thereafter, the petitioners, as defendants, file their written statement, on 22.9.2000, indicating in their written

statement to the effect that the dispute, which had arisen between the parties and led to the institution of the suit, was covered by arbitration clause of the agreement, which had been entered into between the parties concerned. After having, thus, submitted their written statement, the petitioners filed an application, on 7.11.2000, in the learned Court below, praying for referring the dispute between the parties to arbitration in terms of sections of the said Act of 1996. By the order, dated 11.11.2000, aforementioned, this prayer was declined, whereupon the petitioners made another application praying before the learned trial Court to invoke the provisions of compromise contained in Section 89 CPC. This prayer too was declined by the order, dated 6.1.2003, aforementioned.

4. I have heard Mr. S.R. Bhattacharjee, learned counsel for the petitioners. I have also heard Mr. S.P. Roy, learned counsel appearing on behalf of the opposite party, and perused the materials on record including the impugned orders.

5. It has been submitted, inter alia, on behalf of the petitioners, that in the plaint itself, the plaintiffs have admitted the existence of the arbitration clause and the written statement of the defendants also indicated about the existence of the arbitration clause in the agreement, which had given rise to the suit, but the learned Court below, under a misconceived view of its jurisdiction, declined to exercise the powers u/s 8 of the said Act.

6. Controverting the above submissions made on behalf of the petitioners, Mr. Roy has pointed out that the learned trial Court was wholly justified in declining to refer the matter to arbitration on the ground that the written statement had already been submitted in the suit by the defendants before making their application for referring the matter to arbitration.

7. The rival submissions made before me, on behalf of the parties, makes me closely examine the provisions of Section 8 of the said Act. For the sake of brevity, Section 8 is quoted hereinbelow :

"8. Power to refer parties to arbitration where there is an arbitration agreement.
- (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in Sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

8. A bare reading of Section 8 shows that for enabling a Court to invoke the provisions of Section 8, the application seeking to get the dispute referred to arbitration must be filed before the written statement is submitted.

9. In the case at hand, the application u/s 8 was made by the defendants after the written statement stood submitted. Hence, this application was not maintainable. The fact that the existence of the arbitration clause was admitted in the plaint or asserted in the written statement is immaterial inasmuch as the Court, u/s 8, can refer for arbitration a dispute pending in a civil suit only when the party or parties concerned make application for getting the dispute referred to arbitration. If despite existence of arbitration clause, the parties choose to contest the suit, the powers u/s 8 cannot be invoked.

10. In the above view of the matter, the learned trial Court was, to my mind, fully justified in declining to get the matter referred to arbitration by its order, dated 11.11.2002, aforementioned. This impugned order therefore, needs no interference.

11. Coming to the contention raised on behalf of the petitioners that the learned trial Court ought to have invoked its power u/s 89 CPC, it is apposite to quote the Sub-section (1) of Section 89, which is relevant for the purpose of disposal of this revision. Section 89(1) runs as follows :

"89. Settlement of disputes outside the Court. - (1) Where it appears to the Court that there exist elements of settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for-

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation."

12. It has been submitted by Mr. Bhattacharjee that it is the duty of the Court u/s 89 to, first, determine if there is existence of element of settlement and if it appears to the Court that an element of settlement exists, the Court has to embark upon the question as to whether the elements of settlement, as appear to the Court, are acceptable to the parties concerned.

13. Repelling the submissions made on behalf of the petitioner, Mr. S.P. Roy has pointed out that a close reading of the impugned order, dated 6.1.2003, will show that the learned counsel for the plaintiff had clearly submitted before the learned trial Court that the plaintiffs were not agreeable to settlement outside the Court and in the face of such a clear submission made on behalf of the plaintiffs, it was obvious that no element of compromise existed and, hence, the learned trial Court was wholly justified in passing the order, dated 6.1.2003.

14. On a fair reading of the order, dated 6.1.2003, it clearly transpires, I notice, that it was submitted before the learned trial Court, on behalf of the defendants,

that the matter may be settled outside the Court by arbitration and conciliation, but the learned counsel for the plaintiffs submitted before the Court that the plaintiffs were not agreeable to any settlement outside the Court.

15. Thus, in the face of what have been stated in the impugned order, dated 6.1.2003, it is abundantly clear that when the plaintiffs had declined to make even an endeavour for settlement outside the Court, the learned trial Court had nothing before it to show that any element of compromise existed particularly, when it is not the case of the petitioners that the stand taken by the learned counsel for the plaintiffs before the learned trial Court was incorrect and/or that the plaintiffs were willing to compromise. Foundation of Section 89 rests on compromise, which needs agreement between the contesting parties. A compromise cannot be one-sided. If a defendant offers to compromise the suit and the plaintiff outright rejects the offer, no compromise can be reached; in such a situation if the trial Court declines to delay disposal of the suit by resorting to efforts of compromise, it cannot be said to have failed to exercise its jurisdiction u/s 89.

16. In other words, if a defendant appears in a suit and offers to compromise the claim raised by the plaintiff, one can say that an element of compromise exists; but if the plaintiff, reacting to such offer, right away rejects the offer of compromise and if he wants a decision in the suit on merit, the element of compromise can no longer be said to exist/survive. The present one is one of such cases. In such a situation, if the Court makes no further efforts to make the parties reach an amicable settlement of their dispute, the Court cannot be said to have failed to exercise its jurisdiction u/s 89. In a situation of this kind, the Court, which is in seisin of the matter, is the best judge of the matter and even if the revisional Court happens to think that the trial Court should have pursued the offer of compromise, notwithstanding the resistance offered, the revisional Court will be slow to interfere, for, it is trite that if two equally reasonable views are possible, the revisional Court will be slow to substitute its views in place of the views of the trial Court.

17. In the face of the facts and circumstances of the case at hand, the learned trial Court has not, to my mind, acted contrary to the provisions of Section 89 and hence, such an order cannot be, interfered with.

18. Considering, therefore, the matter in its entirety, I am firmly of the view that the orders impugned in the present revision do not suffer from any infirmity of law and/or call for interference by this Court in exercise of its revisional jurisdiction.

19. In the result and for the reasons discussed above, this revision fails and the same shall stands disposed of accordingly.

20. No order as to costs.