

K. Premananda Pai Vs. K. Gopalakrishna Pai

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Court : Karnataka

Decided On : Sep-14-1993

Reported in : ILR1993KAR3284; 1994(1)KarLJ138

Judge : S. Rajendra Babu, J.

Appeal No. : C.R.P. No. 1595 and 2310 of 1993

Appellant : K. Premananda Pai

Respondent : K. Gopalakrishna Pai

Advocate for Def. : U.L. Narayana Rao, Sr. Adv. and ;O.S. Bhat, Adv.

Advocate for Pet/Ap. : K.R.D. Karanath, Adv.

Judgement :

ORDER

S. Rajendra Babu, J.

1. These petitions arise out of common order made on applications filed by the petitioner, one under Order 39, Rules 1 and 2 of the Code of Civil Procedure seeking for grant of a temporary injunction restraining the respondent from exhibiting films in a particular theatre, and other under Order 40, Rule 1 read with Section 41 of the Arbitration Act praying for appointment of a receiver to take possession of all the assets of dissolved firm M/s. Vittaldas Pai and Sons, situate

at New Chitra Talkies, Basavanagudi, Mangalore, and to seal the same and deposit the proceeds in a bank, in Arbitration Case 4 of 1993 on the file of the Principal Civil Judge, Mangalore. The arbitration proceedings arose out of an application filed under Section 8 of the Arbitration Act for appointment of an arbitrator.

The trial court rejected the applications holding that the court would exercise powers under Section 41(b) of the Arbitration Act only after reference to arbitration is made and not before reference to arbitration and under Section 8 of the Arbitration Act the court does not consider the dispute between the parties and it is only in a matter arising under Section 20 of the Arbitration Act, the court has to consider such disputes to be referred to arbitration. The trial court was of the view that under Section 8 of the Arbitration Act, court has power only to refer the matter to the arbitrator as agreed by the party or the court can consider the prayer of the party and may appoint a suitable arbitrator to resolve the dispute and in this context relied upon certain decisions of various courts.

2. Learned counsel for the petitioner agreed that an application filed under Section 8 of the Arbitration Act is for the purpose of or in relation to the arbitration proceedings. Though such an application is anterior to the reference, would lead to a reference and such an application is undoubtedly an application in the matter of a reference as held by the Supreme Court in *Union of India v. Surjeet Singh Atwal* : [1970]1SCR351 . He also drew my attention to a decision of this court in *Jayaraj Ballal v. Kinniamma* (1981 (2) KLJ (SN) 12), in support of this proposition. This court in *Jayaraj Ballal's* case, after referring to the decision of the Supreme Court in *Union of India v. Surjeet Singh Atwal* (supra), stated that an application under Section 8 of the Arbitration Act is a proceeding in the matter of reference inasmuch as it leads to appointment of an arbitrator or arbitrators and that a proceeding under Section 8 of the Arbitration Act is an important step in the matter of a reference to arbitration and enables the court to remove the deadlock created in the arbitration.

3. The question that arises for consideration is whether a proceeding arising under Section 8 of the Arbitration Act is an arbitration proceeding as contemplated under

Section 41 thereof and for the purpose of and in relation to that Act an order of temporary injunction could be granted. Indeed, this aspect of the matter arose for consideration before the Madhya Pradesh High Court in *Daulat Ram Phoolchand v. Shriram and others* (AIR 1964 MP Kar 2340), wherein the history of the legislation was noticed. The expression 'arbitration proceedings' was substituted in Section 41(b) of the Arbitration Act for the words 'a reference' in order to cover the various kinds of proceedings under the Arbitration Act. The intention of the legislature in effecting the amendment was to include within the scope of Section 41(b) all those proceedings which are held in pursuance of an arbitration agreement, with or without the intervention of the court. If this is the true meaning to be attributed to Section 41(b) of the Arbitration Act, I do not think the trial court was justified in refusing to consider the application filed by the petitioner.

4. However, Shri Narayana Rao, learned senior counsel appearing for the respondent, drew my attention to the decision of this court in *Managing Director, Karnataka State Co-operative Marketing Federation Ltd. v. K. Muniswamy Raju* : ILR 1993 KAR666 , that it is only after the commencement of the arbitration proceedings, or in a pending proceedings before the arbitrator, powers under Section 41(b) of the Arbitration Act can be exercised by this court. In that case, the point that arose for consideration was when a reference, was made to the arbitrator under Section 34 of the Arbitration Act, whether any power could be exercised under Section 41(b) thereof. This question is squarely answered by the Supreme Court in the decision in *Union of India v. Surjeet Singh Atwal*, wherein it is stated that proceeding under Section 34 of the Arbitration Act would not be a proceeding in arbitration at all. In view of this categorical finding recorded by the Supreme Court, I do not think the question could have been answered in the manner as has been done in the case cited by the learned senior counsel for the respondent. Therefore, that decision cannot be of any assistance for a decision in this case. Indeed, the view expressed by this court in *Jayaraj Ballal's case* has been reiterated in *R.K. Associates v. Channappa* : ILR 1992 KAR2340 , wherein it was clearly stated that in a proceeding arising under Section 8 of the Arbitration Act, an application filed under Section 41(1)(b) was maintainable. So far as this court is concerned, at any rate, the position is clear that in cases arising under Sections 8 and 20 of the Arbitration Act, certainly the powers conferred upon the

court under Section 41(b) of the Arbitration Act can be exercised. It is unnecessary to refer to the various decisions that have been relied upon by the trial court, for, it is apparent that the decisions of this court have not been brought to its notice at all. The decision in *M/s. M. M. K. Ansari and Co. v. Union of India* : [1983]3SCR607 , has no bearing at all on the issue on hand and the trial court unnecessarily referred to the same and went at a tangent.

5. The true scope of Section 41(b) of the Arbitration Act being, as explained earlier, that it covers all situations including a proceedings arising under Section 8 of the Arbitration Act and therefore it is certainly permissible for the trial court to exercise the powers. In this view of the matter, the orders made by the trial court shall stand set aside and the matter stands remitted to the trial court for fresh consideration merits. Petitions allowed. No order as to costs.

6. Petition allowed, Matter remanded.

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