

Subhoda Shetty Vs. Bottoms Up Windes and Others

Subhoda Shetty Vs. Bottoms Up Windes and Others

SooperKanoon Citation : sooperkanoon.com/375598

Court : Karnataka

Decided On : Aug-29-2000

Reported in : ILR2000KAR4714; 2001(2)KarLJ321

Judge : Chandrashekaraiah, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 9, 21 and 36

Appeal No. : Miscellaneous First Appeal No. 525 of 1998

Appellant : Subhoda Shetty

Respondent : Bottoms Up Windes and Others

Advocate for Def. : Sri Udaya Holla, Adv.

Advocate for Pet/Ap. : Sri K.C. Shivasubramanian, Adv.

Judgement :

Chandrashekaraiah, J.

1. This appeal is by the plaintiff in Arbitration Case No. 3 of 1997 against the order dated 12-1-1998 passed by the Principal District Judge, Mysore.

2. The parties in this appeal are referred to as arrayed in the District Court. The plaintiff and defendants 3 and 4 are partners of the first respondent-firm. The partnership deed provides for arbitration in the event of dispute among the partners

in relation to the business carried on by the partnership firm. In view of this clause the plaintiff has made an application for appointment of receiver in respect of the business carried on in the schedule premises under Section 9 of the [Arbitration and Conciliation Act, 1996](#) (for short 'Act'). Before making that application for an interim order the plaintiff had issued a notice dated 2-9-1997 to the respondents seeking for arbitration. The said application was resisted by the defendants on the ground of maintainability of the application filed by the plaintiff. The contention of the defendants before the District Judge is that the application filed under Section 9 of the Act even before initiation of the arbitration proceedings is not maintainable in law. On the pleadings of the parties the learned District Judge has raised a point for consideration which reads as follows.--

'Whether the present petition is maintainable'.

The learned District Judge answered this point in the negative. This order is under challenge in this appeal.

3. The point that arises for consideration in this appeal is whether the District Judge is justified in holding that the application filed by the plaintiff under Section 9 of the Act is not maintainable in law?

In order to consider this point it is useful to refer to Section 9 of the Act.

Section 9. Interim measures etc. by Court.--A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36 apply to a Court.--

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely.--

(a) the preservation, interim custody or sale of any goods which are the Subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter or the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any sample to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court and the Court shall have the same power for making orders as it has for the purpose of and in relation to any proceedings before it.

The word party as defined under Section 2(h) of the Act reads as follows.--

' 'Party' means a party to an arbitration agreement'.

From the reading of Section 9 it is clear that it contemplates 3 stages.--

(i) before; or

(ii) during arbitrary proceeding; or

(iii) at any time after the making arbitral award but, before it is enforced in accordance with Section 36 of the Act.

From the facts it is seen that the plaintiff had issued a notice to the respondents requesting for arbitration. If that is so, as required under Section 21 of the Act the arbitral proceedings in respect of a dispute have commenced. Even assuming if no notice has been issued expressing intention for arbitration or making a request for arbitral proceedings, it is open for a party to the arbitration agreement to file an application even before initiation of the proceedings under Section 9 of the Act. In the instant case admittedly the plaintiff and defendants are parties to arbitration agreement. Any other view other than the view taken above would defeat the intention of legislation and it would be inconsistent with Section 9 of the Act. The power under Section 9 of the Act is an independent power conferred on the Court to grant an interim relief even before initiation of the proceedings provided there is

a valid agreement for arbitration between the parties.

4. The learned Counsel for the defendants relying upon a decision in the case of Dr. Anand David Saldanha V Dr. K. Rathnaraj Ballal, contended that the learned District Judge is right in holding that the application is not maintainable as it has been filed even before initiation of the proceedings for arbitration. This judgment is impliedly overruled by the decision of the Supreme Court in the case of Sundaram Finance Limited v N.E.P.C. India Limited. The Supreme Court in the above said decision has clearly held that an application filed under Section 9 of the Act even before initiation of the proceedings for an interim order is maintainable in law. Therefore, the order passed by the learned District Judge holding that the application filed before initiation of the proceedings for arbitration under Section 9 of the Act is not maintainable is liable to be set aside.

5. Learned Counsel appearing for the parties submitted that during the pendency of this appeal, the dispute between the parties had already been referred for arbitration and therefore, irrespective of the order passed by the learned District Judge which is impugned in this appeal, it is open for the parties to move the Arbitrator for an appropriate interim relief. In view of this statement I find it unnecessary to remit this matter to the District Judge for reconsideration in the light of the findings recorded by me above.

6. In the result, I pass the following order.-

(i) Appeal is allowed;

(ii) Impugned order is set aside;

(iii) Parties to bear their own costs.