

Chaman Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-05-1980

Reported in : AIR1980All308

Judge : R.S. Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 37(1) and 37(5); [Limitation Act, 1963](#) - Sections 14

Appeal No. : Second Appeal No. 1682 of 1972

Appellant : Chaman Lal

Respondent : State of U.P.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : K.N. Tripathi and ;K.L. Gaur, Advs.

Disposition : Appeal allowed

Judgement :

R.S. Singh, J.

1. This is the plaintiff's appeal against the decree and judgment dated 30-3-1972 passed by the IInd Additional District Judge, Kanpur affirming the decree of the trial Court and dismissing the plaintiff's suit.

2. The plaintiff had filed a suit for recovery of Rs. 14,347. The plaintiff appellant is a recognized contractor in the U. P. P. W. p., Kanpur. In the year 1953, the plaintiff obtained a contract from the defendant for constructing culverts at Chaubeypur, Bela Road, G. T. Road, Kanpur vide contract bond No. 60/SE dated 27-2-1953 (hereinafter referred to as first contract). Value of the contract was Rs. 1,86,515. Later on, the plaintiff got another contract from the defendant for constructing two roomed labour quarters at Jajmau, Kanpur vide contract bond No. CB 27/EE dated 2-3-1963 (hereinafter referred to as the second contract). The plaintiff completed the work of second contract by 31st Dec., 1963 and the final measurement of work was also done in the month of Sept., 1964. In making payment of first running bill, in respect of the second contract, the defendant illegally deducted a sum of Rs. 10,408/- on the ground that the plaintiff had not performed the work of the first contract properly and in time. The plaintiff claimed a decree for the above amount along with interest. It was alleged by the plaintiff-appellant that he had performed the work of the first contract regarding construction of culverts on Chaubeypur Bela Road satisfactorily. The amount of Rs. 10,408/- was illegally deducted by the defendant-respondent from the amount due for performing the second contract. It was alleged by the plaintiff-appellant that he had never owed any sum to the defendant in connection with the first contract and deduction of Rs. 10,408/- was totally unauthorised and illegal. The plaintiff moved an application under Section 20, Arbitration Act before the Civil Judge, Kanpur, which was registered as Suit No. 96 of 1960. The suit was contested by the State of Uttar Pradesh on the ground that the claim arising out of the said contract had become barred by time. The said suit was dismissed but in spite of dismissal of the suit, the defendant had no right to deduct the above amount unilaterally without having any recourse to a Court of law. In the year 1965, the plaintiff served the defendant with a notice under Section 80, C. P. C. He also filed an application under Section 20, Arbitration Act in the Court of IInd Civil Judge, Kanpur as the agreement was contained on Arbitration clause. The application was filed on 24-8-1965 and it was registered as Misc. Case No. 102 of 1965. The application was contested by the defendant, but it was allowed on 26-2-1966 and the dispute was referred to the Superintending Engineer, which was named arbitrator in the Arbitration clause. The Arbitrator entered into a reference proceedings continued before him and the

hearing of the arbitration proceedings were adjourned from time to time. On 3-7-68 the Arbitrator directed the plaintiff to obtain extension for filing award. In pursuance of the direction, the plaintiff moved an application under Section 28 of the Indian Arbitration Act on 11-7-1968. The Arbitrator fixed 19-7-1968 in the Arbitration proceedings. On that date, the plaintiff informed the arbitrator that he had made a motion for extension of time to make an award, but in spite of this, the arbitrator dropped the proceedings on an application, in which the defendant had prayed that the proceedings be dropped as it had been held by the Hon'ble High Court that clause 23 of form GPW 9 of the contract bond was not arbitration clause and on that account the arbitrator had no jurisdiction in the matter. Accordingly, the reference made by the Civil Judge, Kanpur to the arbitrator became infructuous and thus, the plaintiff was compelled to claim his remedy from the Court of Law and he served another notice under Section 80, C. P. C. on the defendant on 12-9-1968, claiming interest as well. It was further claimed that the time spent by the plaintiff in the arbitration proceeding from 24-8-1965 to 19-7-1968 has to be excluded while computing the period of limitation and as such the suit for recovery of the plaintiff for this amount along with interest was within time.

3. The suit was contested by the defendant and it was pleaded that work of the plaintiff in respect of the first contract was found defective and poor and its progress was not also in accordance with the terms of the contracts. So after the inspection of the work done by the plaintiff in respect of that contract, on 4-6-1953, the Executive Engineer sent him a letter dated 6-6-53 informing him that the work done by him was not in accordance with the terms of the contract and as such he had rendered himself liable to pay as compensation an amount equal to 1% of the estimated cost of the whole work, for every day the work had been behind the schedule, and the total compensation would be 10 % of the estimated cost of the work as shown in the contract bond. The Executive Engineer, therefore, took action under Clause 3 (a) of the conditions of the contract and rescinded the agreement with effect from 6-6-1953 and forfeited the security deposit to the Govt. Consequently, according to the terms of the said agreement the plaintiff became liable to pay compensation for the breach of the contract. Thus a sum of Rs. 10,408/- became payable by him to the defendant. In this manner Rs. 18,683 was the amount of penalty and Rs. 8,274/- was due to the plaintiff leaving a balance of

Rs. 10,408/-which was deducted from the plaintiff's claim regarding 2nd contract. The validity of the notice under Section 80, C. P. C. was challenged and the bar of limitation was also challenged. The suit was dismissed by the trial Court, which was affirmed by the lower Appellate Court.

4. It has been contended by the learned counsel for the appellant that the question of limitation has been wrongly decided by the Courts below. According to him, he is entitled to get benefit of Section 14 of Limitation Act and the period between 24-8-1965 and 19-7-1968, during which period he was bona fide litigating before the Civil Court, should be excluded from computing the limitation to see whether the suit has been filed within time or not. It was further contended by the learned counsel for the appellant that Section 37, Sub-clause (5) of the Arbitration Act is not applicable to the facts of the present case and the Courts below have illegally rejected the claim of the appellant holding it to be time barred under Section 37, Sub-clause (5) of the Arbitration Act.

5. It has been contended by the learned counsel for the respondents that Section 14 of the Limitation Act is not applicable where Section 37(5) of the Arbitration Act is applicable and the Courts below have rightly dismissed the plaintiff's suit. Therefore, in this case, it is necessary to consider Section 14 of the Limitation Act as well as Section 37(5) of the Arbitration Act.

6. There is no dispute about the fact that where Section 37(5) of the Arbitration Act is applicable, Section 14 of the Limitation Act will not be attracted. Therefore, it is necessary to consider, first of all, about the applicability of Section 37(5) of the Arbitration Act in this case. Section 37(5) of the Arbitration Act is as follows:--

'Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908 (9 of 1908) for the commencement of the proceedings (including arbitration) with respect to the difference referred.'

7. According to the contention of the learned counsel for the respondents, the case is covered by Section 37(5) of the Arbitration Act. He placed reliance upon the decision reported in *Purshottamdas Hassaram Sabnani v. Impex (India) Ltd.*, : AIR1954 Bom309 , wherein it has been held that;

'Undoubtedly, the time taken up in arbitration proceedings can be excluded, but that time can be excluded not under Section 14, Limitation Act but under Section 37(5), Arbitration Act, and in order to exclude time taken up in arbitration proceedings the tests laid down by the Legislature in Section 37(5) must be applied and satisfied.'

This case was covered by provision of Section 37(5) of the Arbitration Act. which is applicable in two conditions. Where the Court orders that an award be set aside or orders, after the commencement of the arbitration that the arbitration agreement shall cease to have effect with respect to the difference referred. But the fact of the present case is altogether different. Neither of the above conditions exists in the present case. Therefore, Section 37(5) of the Arbitration Act is not attracted in this case. In a case, where Clause (5) of Section 37 of the Arbitration Act is not applicable, all the provisions of Indian Limitation Act shall apply to arbitration as they apply to any proceeding of Court by virtue of Clause (1) of Section 37 of the Arbitration Act., Clause (5) of Section 37 of the Arbitration Act is special law and the Indian Limitation Act is a general law. Therefore, Section 14 of the Limitation Act will be applicable to the facts of the present case.

8. It was next contended by the learned counsel for the respondents that Section 14 applies where in computing the period of limitation for any application, the time during which the applicant had been prosecuting with due diligence, another civil proceeding in good faith. But the arbitration proceeding is not a civil proceeding and, therefore, Section 14 of the Limitation Act will not apply. He made reference to *Commr. of Sales Tax, Uttar Pradesh, Lucknow v. M/s, Parson Tools & Plants, Kanpur* : [1975]3SCR743 , wherein it was held that:

'The appellate authority and the Judge (Revisions) under the U.P. Sales Tax Act are not 'Courts' but merely administrative Tribunals. Section 14(2) of the Limitation Act does not in terms apply to proceedings before them.'

The provisions of the Limitation Act are not applicable to the cases under the U. P. Sales Tax Act. Therefore, it was held that the provisions of Limitation Act cannot be imported into the U. P. Sales Tax Act even by analogy.

9. It was contested by the learned counsel for the appellant that Section 37 Sub-clause (5) of the Arbitration Act is not applicable to the facts of the instant case. Therefore, the Indian Limitation Act will be applicable in view of Section 37(1) of the Arbitration Act and the proceeding before the Arbitrator is also civil proceeding. He placed reliance, in support of his contentions, to the cases reported in *Firm Behari Lal Baij Nath Prasad v. Punjab Sugar Mills Co. Ltd.* : AIR1943 All162 and *Mohammad Maqsood Ah Khan v. Hoshier Singh* : AIR1945 All377 ,

10. In : AIR1943 All162 (supra), it has been held that:

'Proceedings before arbitrator appointed by the parties are civil proceedings in a Court within the meaning of Section 14 and therefore, time spent in those proceedings must be excluded in computing limitation in subsequent suit or proceedings in the Civil Court.'

In : AIR1945 All377 (supra) it has been held that :

'The operation of Section 14 should not be restricted. Its principle should be followed in suitable cases even in proceedings which cannot strictly be called proceedings in a Court of law. If the conduct of the person claiming its benefits has been bona fide, that is, he has established his good faith, if he has been prosecuting with due diligence another civil proceeding, he is entitled to its benefits. If any of these elements is lacking, he cannot take advantages of it.'

There is no dispute in this case about the fact that the plaintiff-appellant was prosecuting his case with due diligence and in good faith in the arbitration proceeding. Therefore, I am of the opinion that he is entitled to get the benefit of Section 14 of the Limitation Act. Therefore, the finding of the lower Appellate Court that the plaintiff's suit is barred by limitation, is erroneous in law and cannot be maintained.

11. As regards the other findings recorded by the lower Appellate Court, the learned counsel for the appellant has not seriously challenged the same. The findings recorded by the lower Appellate Court are based on appraisal of evidence on record, which are correct and I uphold the same.

12. In view of the fact that I have disagreed with the finding of the lower Appellate Court on the question of limitation, I am of the view that the question of limitation was wrongly decided by the lower Appellate Court and the suit was erroneously dismissed. After the reversal of the finding on the point of limitation, the suit is liable to be decreed, but it requires determination of correct amount for which the suit is to be decreed. Therefore, the case has to go back before the lower Appellate Court.

13. In the result, I allow this appeal and set aside the decree of the lower Appellate Court dated 30th March, 1972. I also remand the case to the lower Appellate Court with the direction to decide the appeal according to law and in the light of the observations made above. Parties will, however, bear their own costs.

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