

Bansidhar Narayanji Vs. E.B. Sukhia

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Court : Madhya Pradesh

Decided On : Dec-01-1956

Reported in : AIR1957MP24

Judge : Dixit, J.

Acts : [Arbitration Act, 1940](#) - Sections 34

Appeal No. : Civil Revn. No. 263 of 1953

Appellant : Bansidhar Narayanji

Respondent : E.B. Sukhia

Advocate for Def. : J.D. Patel, Adv.

Advocate for Pet/Ap. : Malgava, Adv.

Disposition : Revision petition accepted

Judgement :

ORDER

Dixit, J.

1. This is a petition to Revise the decision of the Additional District Judge, Indore, reversing in appeal an order of the Additional City Civil Judge of Indore refusing to stay, under Section 34 of the Arbitration Act, a suit filed by the plaintiff applicant for

recovery of damages on account of breach of contract. The learned Additional District Judge stayed the suit under Section 34, Arbitration Act, for a period of four months.

2. The undisputed facts are that the suit was filed on 26th April, 1952. On 23rd June 1952 Mr. Patel filed his Vakalatnama on behalf of the defendant praying that as the defendant resided outside the State, further time may be granted for filing his reply. This prayer was allowed by the trial Court fixing 26th August, 1952, as the date for the filing of defendant's reply. On this date the defendant non-applicant presented an application under Section 34, Arbitration Act, for the stay of the suit stating that one of the terms of the contract between the parties was that all matters, claims and disputes arising in respect of the terms and the conditions thereof, were to be settled by parties in Indore by reference to the sole arbitration of the Indian Motion Pictures Distributors' Association, Bombay, and that any award made by the arbitrator would be final and binding on the parties. The plaintiff opposed the stay of the suit. The trial Judge rejected the petition for the stay of the suit on the ground that the application was not made by the defendant 'before taking any step in the proceedings' and that the defendant's act on 23rd June, 1952, in asking for time to file his written statement amounted to his taking step in the proceedings.

3. The question that arises for determination in this case is whether the defendant took a step in the proceedings when he applied on 23rd June, 1952, for time to file his reply. It is well settled by authorities that taking any step in the proceedings means.

'some step which indicates an Intention on the part of a party to the proceedings that he desires that the action should proceed and has no desire that the matter should be referred to arbitration,'

(See *Austin and Whiteley Ltd. v. S. Bowley and Son* (1913) 108 LT 921 (A); *Subal Chandra Bhur v. Md. Ibrahim*, ATR 1943 Cal 484 (B); and *Abdul Quddoos v. Abdul Gam*, AIR 1954 Nag 332 (C)). In the instant case the order that was passed by the trial Court on 23rd June, 1952, granting time to the defendant ran as follows:--

izfroknh rsQsZ fe- iVsy dk odhy i= is'k gqokAfu- dh n[ky fe- iVsy us tkghj dh;k fd
izfroknh ckgj xkao dk gksus ls tckc is'kdjus dks le; pkgrs gSa] le; fn;k x;kA izfroknh
ds tckc nkos ij 26&8&52A

This order and the words ^{^^}izfroknh ds tckc nkos ij** unmistakably show that time was granted to the defendant to file a written statement in answer to the plaintiff's claim. There is nothing on record to show that on 23rd June, 1952, while asking for time counsel appearing for the defendant made it very clear to the Court that the defendant intended, to apply for the stay of the suit under Section 34 of the Arbitration Act and that on the adjourned hearing he would file a reply taking the objection that the plaintiff's suit should be stayed in view of a term in the contract about the settlement of disputes between the parties by reference to arbitration.

The petition for the stay of the suit was heard by the very Judge who had granted time to the defendant on 23rd June, 1952, and he has stated in his order refusing the stay that on 23rd June, 1952, the defendant was granted time distinctly for the purpose of filing the written statement. In these circumstances, there could be no doubt that by asking for time on 23rd June, 1952, to file the written statement, the defendant displayed an unequivocal intention to proceed with the suit and had no desire that the matter should be referred to arbitration.

The learned Additional District Judge stayed the suit taking the view that the words ^{^^}izfroknh ds tckc nkos ij** occurring in the order dated 23rd June, 1952, of the trial Judge were inserted in 'routine course' and that, therefore, the order granting time could not be read as indicating that the defendant intended to proceed with the suit and gave up his right to have the matter disposed of by arbitration. In my judgment, the learned Additional District Judge was not justified in so reading the words ^{^^}izfroknh ds tckc nkos ij** when there was nothing on record to show that on 23rd June, 1952, the defendant had declared his intention for applying for stay under Section 34 of the Arbitration Act and when the trial Judge himself stated that time was granted to the defendant distinctly for the purpose of filing a written statement.

The learned Additional District Judge has not referred to the circumstances on which he formed the opinion that the words ^{^^}izfroknh ds tckc nkos ij** were

written out in the routine course and had not the ordinary meaning and significance attached to them. It seems to me clear that in the present case the defendant obtained time on 23rd June, 1952, to file a written statement and to proceed with the suit. This clearly amounted to taking a step in the proceedings and thereafter the defendant could not apply for the stay of the suit under Section 34 of the Arbitration Act. So far as this Court is concerned, it has been held in AIR 1954 Nag. 332 (C), that making even an oral application for time to file a written statement is taking a step in the proceedings.

4. Mr. Patel, learned counsel for the non-applicant relying on *Roop Kishore v. United Provinces Government*, Lucknow, AIR 1945 All 24 (D), submitted that an application for adjournment of a case to enable a defendant to file a written statement would not be a step in the proceedings within the meaning of Section 34 of the Arbitration Act in every case & the question whether it did or did not amount to a step in the proceedings would depend on the facts and circumstances of each case. This is no doubt true. But, here there are on record no facts and circumstances which negative the prima facie inference deducible from the order passed on 23rd June, 1952, granting time to the defendant to file a written statement,

The learned Judges of the Allahabad High Court in AIR 1945 All 24 (D) themselves pointed out that an application for adjournment of a case to enable the defendant to file written statement would prima facie be treated as a step in the proceedings within the meaning of Section 34 of the Arbitration Act and the whole burden would rest upon the defendant to establish the circumstances leading to the result that effect should not be given to the prima facie meaning of the application. Learned counsel for the non-applicant was unable to point out such circumstances except that on the adjourned hearing the defendant in his application for stay under Section 34 of the Arbitration Act stated that on 23rd June, 1952, itself he intended to apply for the stay but that for some reason he could not do so. This is only a statement that the defendant had such intention and not a circumstance proving the intention.

5. For all these reasons, this revision petition is accepted, the decision of the Additional District Judge is set aside and the order of the trial Judge rejecting the defendant's application under Section 34 of the Arbitration Act is restored. Costs of these proceedings in all the Courts shall abide the result of the suit.

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