

Darshan Singh Vs. Forward India Finance (P) Ltd. and ors.

Darshan Singh Vs. Forward India Finance (P) Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/683466

Court : Delhi

Decided On : May-24-1983

Reported in : AIR1984Delhi140; 24(1983)DLT261; 1984(6)DRJ18; 1984RLR236

Judge : D.K. Kapur and; S. Ranganathan, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 17; [Stamp Act, 1899](#) - Article 12; [Registration Act, 1908](#) - Sections 17

Appeal No. : First Appeal No. 43 of 1979

Appellant : Darshan Singh

Respondent : Forward India Finance (P) Ltd. and ors.

Advocate for Pet/Ap. : Anoop Singh and; J.L. Puri, Advs

Judgement :

D.K. Kapur, J.

(1) ON an application under Sections 17 and 20 of the [Arbitration Act, 1940](#), an award made by Shri Bakshi Man Singh, as sole Arbitrator was filed on the Original Side, of this Court and the proceedings were registered as Suit No. 436-A/75. Two sets of objections were filed by Shri Darshan Singh, present appellant to this award ; they were numbered as T.A. Nos. 1592 and 1593 of 1975. The learned Single Judge, who dealt with these objections, treated the second set as

superfluous and dealt only with the first objection petition.

(2) THE facts of the case need to be explained betdi A some detail. There was a hire-purchase agreement,dated 18th January, 1956, between the appellant and M/s. Forward India Finance (P) Ltd. The said agreement contained an arbitration clause which appointed Shri Bal Mukand Gupta, Advocate as the sole arbitrator. It appears that the Finance Company had invoked this arbitration clause in order to have the disputes arising from the said hire-purchase agreement which related to Dodge Truck No. DLD 5081 referred to the named Arbitrator. The appellant filed a petition under Section 33 of the Arbitration Act before the Subordinate Judge which was Suit No. 33 of 1957. According to the appellant's case, there was no agreement and none had been executed by him and he claimed that there was a fraud. The application was dismissed by Shri B.K. Agnihotri Subordinate Judge, by order dt. 30th September, 1961.

(3) THERE after the appellant filed a Revision Petition in the Circuit Bench of the Punjab High Court at Delhi, which was decided by D.K. Mahajan J., on 3rd December, 1962. This was Civil Revision No. 513-D of 1961. It was held that in terms of the compromise recorded that day, Mr. Jindra Lal, Bar-at-Law, Advocate be appointed as Sole Arbitrator in the dispute regarding Dodge Truck No. DLD 5081. Thus, a reference was made to Mr. Jindra Lal (as he then was) as Sole .Arbitrator. Later, on Mr. Jindra Lal becoming a Judge of the Punjab High Court, an application was made to appoint a new arbitrator. This application was decided by Harbans Singh J. (as he then was) who appointed Bakshi Man Singh as the sole arbitrator by order dated 17th May, 1963. Eventually, Bakshi Man Singh have an award dated 8th September, 1974, by which an amount has been awarded in favor of M/s. Forward India Finance (P) Ltd. These are the facts as far as they are relevant for this case.

(4) A preliminary objection regarding jurisdiction was framed by thb Court which waS decided by the order of M.S.Joshi J., dt. 23rd March, 1976. It was there held principally ori the basis of a judgment of the Supreme Court, State of MadhyaPradesh v. Mls.Saith& Skelton (P) Ltd , : [1972]3SCR233 , that that award could bd filed iti the appellate Court. As in this case, the initial reference was made

by the Revisional Court\$ i.e., the Punjab High Court and the subsequent arbitrator wds also appointed by the Revisional Court, the inevitable result had to be that the High Court was the Court which was dealing with these arbitration proceedings having appointed the arbitrator on the basis of a compromise and also appointed a new arbitrator.

(5) BY a subsequent judgment on the merits dated 12th January, 1979, M.S. Joshi, J., held that on the merits there was no ground for setting aside the award, and hence, it was made a rule of the Court.

(6) ON the merits, the main point urged for the objector was that there had been inadequate opportunity given to 'the objector (present appellant) to conduct the proceedings. The contention was that Shri Bunda Singh, the Advocate of Shri Darshan Singh had met with an accident which prevented him from going before the:arbitrator but, the arbitrator had gone on with the case and even noted that arguments bad been heard when, no counsel was present for Shri Darshan Singh. The learned Single Judge concluded that the arguments must have been addressed by the parties themselves. As will be apparent from the dates set out earlier' the date of the award was 8th September, 1974, whereas the reference was made to Bakshi Mafa Singh on 17th May, 1963. The proceedings were, thereforee, pending before the arbitrator for about eleven years. We have got the arbitration record before us and also the record of the proceedings taken by Bakshi Man Singh. Keeping in view the nature of the dispute and the type of claim raised, it does seem to us that more that adequate opportunity had been given to the parties. This was by no means such a complicated dispute as to involve protracted proceedings taking so much time. We are, thereforee, satisfied that the Award cannot be set aside on the ground of any misconduct and we fully endorse the view of the learned Single Judge on this aspect.

(7) THE main contention raised against the award by learned counsel is, however,a different one. It is urged that the award is written on an unstamped paper and hence is not admissible in evidence.

(8) LEARNED counsel urged that as it was an un-stamped Award which had been admitted into evidence, we should revise the decision under Section 61 of the

[Stamp Act, 1899](#), and should order impounding of the document. No doubt, Section 61 gives this power, but before exercising this power we have to determine whether the document requires a stamp and if so, what stamp is necessary? In other words, we must discover whether the document requires any stamp, and if so, of what denomination.

(9) THE appropriate Article regarding the stamp necessary for an 'Award' is Article 12 of the [Stamp Act, 1899](#). It fixes the rate of duty, but the definition of the document shows that it is not every award which is to be on stamped paper, but only some awards. The exact language is as follows :-

'AWARD, that is to say any decision in writing: by an arbitrator or umpire, not being an award directing a partition, on a reference made otherwise than by an order of the Court is the course of a suit.....'

If the award is to be stamped under this Article, then we would have to find out how much the stamp is. However, the language clearly indicates that an award on a reference made by an order of the Court in the course of a suit is not to be stamped. The question is, when is an award made on a reference made by the Court?

(10) THE facts of the case have been detailed above by us. The reference was made by D.K. Mahajan J., sitting as a Revisional Court under the Code of Civil Procedure. It was made as a result of a revision concerning an application under Section 33 of the Arbitration Act. The proceedings thus started with an application before the Subordinate Judge which was dismissed and this was followed by a revision to the High Court. The reference was, therefore, made by a Court and not by the parties. Of course, the reference was made by the parties in the sense that they compromised the matter before the High Court sitting in revision. 'The written agreement between the parties, being the hire-purchase agreement, contained the name of Shri Bal Mukand Gupta, Advocate as the sole arbitrator. There was no written agreement to refer the matter to Mr. Jindra Lal, Bar-at-Law (as he then was). This reference was the result of the Court's order. We have now to see whether an award resulting from such a reference requires to be stamped. The plain language of Article 12 indicates that if a reference is made by

the Court, then the award is not to be stamped. It may well be said that this is a reference not made during the suit; it is one made in revision. For this purpose, it is sufficient to say that the initial proceedings before Shri B.K. Agnihotri, which were under Section 33 of the Arbitration Act, were numbered as a suit. It would, therefore, appear that the reference was made during a suit. There are Rules under the Arbitration Act which require that a proceedings there under should be registered as a suit. Thus, the provisions of Article 12 of the [Stamp Act, 1899](#) are satisfied.

(11) THERE is a Single Judge judgment of the Karnataka High Court which has taken the same view under Article II of the Karnataka Stamp Act. This is V. Govindaswamy and another v. V. Lakkanna and others 1974 (2) Kar LJ 41.

(12) ONE of the points urged before the Karnataka High Court was that a proceeding under Section 20 of the Arbitration Act was not really a suit, it was only deemed to be a suit by fiction of law. The learned Judge dealt with this by holding that if you have to take certain assumed facts to exist, then you must go to the conclusion that follows. Reliance was placed on the Judgment of Lord Asquith in East End Dwellings Co. Ltd. v. Finbury Borough Council 1952 A.C. 109. The observations of Lord Asquith can also be reproduced here with advantage :-

'IF you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it..... The statute says that you must imagine a certain state of affairs ; it does not say that .having done so, you must cause or permit your imagination .to boggle when it comes to the inevitable corollaries of that state of affairs.'

Applying this test to the circumstances of the present case, one has first to assume that the proceedings under Section 33 of the Arbitration Act are a suit, though in fact they are not. If you assume that they are a suit, then the Article is satisfied.

(13) THE judgment of the Karnataka High Court was given under Section 20 of the Arbitration Act, where an application was made to the Court for a reference to arbitration. We would not like to decide this case on the basis of the Karnataka High Court judgment because this point may arise in some future case. However, there are some features of the case present which are unique on the facts. Normally, one would not expect an application under Section 33 of the Arbitration Act to result in a reference to arbitration. One would not also expect a new arbitrator to be appointed in such proceedings. It is, therefore, a case of a unique series of events occurring during quite a separate proceeding.

(14) THE reference to arbitration had already been made to Shri Bal Mukand Gupta when the application under Section 33 was made to challenge the existence of the arbitration agreement. The challenge was that this document, i.e., the hire-purchase agreement had not been executed by Shri Darshan Singh. In the course of these proceedings, the Court chose to make a reference to arbitration on a compromise between the parties. The agreement was, therefore, clearly one entered into in Court and the reference was also made by the High Court and not by any other Court. We would, therefore, have to hold that this was a reference made to arbitration by a Court and, the fact that the Article means that the reference should be made in a 'Suit' is not of much importance in the construction of the Article.

(15) A reference to arbitration can normally be made by a Court either under Section 20 of the Arbitration Act or during the course of any suit. However, if a reference is made in some other proceedings, such as say, a Company Petition or a Writ Petition or some other kind of a reference, there should be no difference in the application of the Article. What the Article visualises is a reference made by the Court and the words 'in a suit' are merely explanatory and do not control the operation of the Article.

(16) IN our view the way the Article is to be understood is that if the reference is made through a Court in a suit or in some other proceedings, then the award does not require to be stamped. If the award is made on the private reference, i.e., without the intervention of the Court, then the award is to be stamped.

(17) WE may mention here per curiam that a similar position arises qua the registration of awards under the Registration Act. In Satish Kumar and others v. Swinder Kumar and others, : [1969]2SCR244 the Supreme Court over ruled the Full Bench decision of the Patna and Punjab and Haryana High Courts holding that a private award effecting partition of immoveable property worth more than Rs. 100.00 did not require registration. It was there observed that an award even though not made a rule of the Court required compulsory registration, and was otherwise inadmissible in evidence. In another judgment of the Supreme Court, Kashinathasa Yamosa Kabadi, etc. v. Narisinga Bhaskarsa Kabadi, etc. : [1961]3SCR792 , it was also observed that a no testamentary instrument purporting or operating to create, declare, assign, limit or extinguish any right, title or interest in immoveable property worth more than Rs. 100.00 was compulsorily registerable under Section 17 of the Registration Act and was not to be admissible in evidence without registration. This observation was made in relation to the decision of some arbitrators (Panchas). However, if an arbitration is through the Court, then the award is not effective till made the rule of the Court, and hence, no registration is necessary. The clear distinction between an award made on a private reference and a reference made through the Court is indicated in this judgment of the Supreme Court.

(18) WE accordingly hold that as far as the facts of this case are concerned, the reference was made through the Court and hence the award did not require to be stamped.

(19) THERE is no reference at all in the judgment under appeal to the question of stamp on the award but, as this is a purely legal question and open to the appellant in view of Section 61 of the Stamp Act, we have permitted the same to be urged. As in our view the award did not require to be written on a stamp-paper, we dismiss the appeal. In view of the nature of the points arising in the appeal, we leave the parties to bear their own costs.