

Anil Kumar Vs. Upender Nath

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Court : Delhi

Decided On : Jul-28-1980

Reported in : 19(1981)DLT46; 1981RLR20

Judge : Sultan Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 34; Code of Civil Procedure (CPC) - Sections 115

Appeal No. : Civil Revision Appeal No. 21 of 1980

Appellant : Anil Kumar

Respondent : Upender Nath

Advocate for Pet/Ap. : C.L. Sachdev and; D.K. Sayal, Advs

Judgement :

Sultan Singh, J.

(1) Respdt was allotted a plot in Chitranjan Park. He entered into an agreement for its construction with petitioner 1 and executed a Power of Attorney (POW) in favor of his wife on 21.8.71. On 16.2.71, he gave a notice of cancellation and then by a Regd. deed revoked Pow on 15.2.77. He then filed a suit for declaration seeking 2 declarations one about the agreement and the other about POW. Petitioner made an application u/s 34 of Arbitration Act on the ground that agreement contained an

arbitration clause and that Deft. No. 2 was not a necessary party. Trial Court allowed the application. But Adj in appeal reversed the order. The Defts. filed revision. Plaintiff opposed it on the ground that revision was not maintainable. High Court agreed with Adj that Deft. No, 2 was not an unnecessary party and hence suit was not liable to be stayed u/s 34] On maintainability of revision, it stated in para 5 on words :

(2) S. 115 applies only to cases in which no appeal lies, and where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial court, right or wrong, shall be final. The section empowers the High Court to satisfy itself upon three matters : (a) that the order of the subordinate court is within its jurisdiction ; (b) that the case is one in which the court ought to exercise jurisdiction ; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied upon those three matters, it has no power to interfere even if there are errors of fact or law. Under the proviso now added by Act 104 of 1976 further conditions have been laid down. The High Court is not to interfere unless there is a failure of justice and it causes irreparable injury to the party against whom it was made. In view of clause (b) of the proviso to S. 115(1) of the Code the petitioner has also to satisfy that there was failure of justice or that the impugned order would cause irreparable injury to him. The Supreme Court in a number of cases has further held that while exercising jurisdiction u/s 115 it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the court to try the dispute itself. It has also been held that the words 'illegally' and 'with material irregularity' as used in clause (c) do not cover either errors of fact or of law ; they do not refer to the decision arrived at but merely to the manner in which it is reached. (See : M/s D.L.F. Vs . Sarup Singh, : [1970]2SCR368 and The Managing Director Vs . Ajit Prasad, : (1972)ILLJ170SC

(3) The trial court stayed the suit u/s 34 of Arbitration Act which order was appealable u/s 39(1)(v) of Arbitration Act Thus the Adj had Jurisdiction to hear the appeal. The Adj rightly held that the suit was not liable to be stayed as defendant

No. 2 was not a party to the arbitration agreement. There is thus no error of jurisdiction. Moreover, there is no illegality or irregularity in the exercise of jurisdiction by the ADJ. In *Asian Asphalt Vs . Shalinar Tar*, 0065/1978 : AIR1978 Cal305 it has been held that an order granting stay of suit being appealable u/s 39(1)(v) of the Arbitration Act, the appellate court has the undoubted jurisdiction to decide the matter rightly or wrongly. Thus, if the appellate court sets aside the order of the trial court in the facts and circumstances of the case it cannot be said that it has exercised a jurisdiction illegally or with material irregularity. I am, therefore, of the view that no revision u/s 115 of the Code is maintainable against the impugned order. On facts also there is no merit in the revision petition. It is dismissed with costs.

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