

Sushila Devi Vs. Nathu Devi and ors.

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Court : Delhi

Decided On : Dec-14-1990

Reported in : II(1991)BC385; 43(1991)DLT300

Judge : S.N. Sapra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115; [Arbitration Act, 1940](#) - Sections 20

Appeal No. : Civil Revision Appeal No. 29 of 1984

Appellant : Sushila Devi

Respondent : Nathu Devi and ors.

Advocate for Pet/Ap. : H.L. Sehgal, Adv

Judgement :

S.N. Sapra, J.

(1) This revision petition is directed against the order dated August 22, 1983, passed by the learned additional district Judge, whereby, the suit of petitioner, was adjourned sine die.

(2) Briefly stated, the facts giving rise to the present case, are, petitioner, filed a suit for recovery of Rs. 47,500.00 , on the basis of the mortgage, in respect of

property No 3939, Ward No. Xiv, Basti Imli, Sadar Bazar, Delhi, and also prayed that the decretal amount, be realised by sale of the mortgaged property.

(3) Petitioner alleged that respondent no. 1 (defendant no. 1 in suit also) had borrowed a sum of Rs. 25.000.00 , on December 2, 1969, from petitioner, and in consideration thereof, executed a mortgage deed, on the same day, in respect of the aforesaid property. The Mortgage Deed was duly registered on December 8, 1969. Respondent no. 2, who is husband of respondent no. 1, stood surety.

(4) The Mortgage Deed, contained an arbitration clause. According to petitioner, disputes having arisen between the parties, a petition under Section 20 of the [Arbitration Act, 1940](#), was filed by petitioner, in the year 1972, for reference of disputes to the sole arbitration of Shri Sri Ram, the named arbitrator. Vide order dated September 26, 1972, the court of Shri S.P. Sabharwal, Sub Judge 1st Class, Delhi, appointed Bakshi Shri Rang Singh, Advocate, as the sole arbitrator, to decide the disputes between the parties.

(5) It is further alleged, that as no award was given by the above named arbitrator, within the statutory period, and moreover, the order passed by the learned Sub Judge, thereby, appointing Bakshi Shri Rang Singh, as an arbitrator was without jurisdiction, so, a second application, under Section 20 of the Arbitration Act, was filed-before the District Judge Delhi.

(6) Vide judgment dated February 15, 1982, Shri Jaspal Singh, Additional District Judge, (as his Lordship then was) dismissed the petition, on the short ground, that in earlier petition, being suit no. 121 of 1981, filed under Section 20 of the [Arbitration Act, 1940](#), the learned Sub Judge had already appointed Bakshi Shri Rang Singh, Advocate, so, the second petition was not maintainable.

(7) In their written statement, one of the preliminary objections, taken by respondents, was that the suit was not maintainable as, the disputes, had already been referred to Bakshi Shri Rang Singh, and that the proceedings before the arbitrator had also not been terminated.

(8) In replication, petitioner controverted, the allegations, as made by respondents in their written statement. Petitioner alleged that before the learned Additional District Judge, respondents had opposed the second petition, on the ground, that it was not maintainable. According to petitioner, the judgment passed by the learned Sub Judge, thereby, appointing the above named arbitrator, was beyond his jurisdiction, as, the value of the suit, for purposes of jurisdiction was Rs. 30,000.00 , an amount expected to be due. That was one of the reasons, that the second petition, under section 20 of the Arbitration Act, was filed.

(9) Following preliminary issue, was framed :

'Whether the present suit is maintainable, in view of the objections, contained in para 6 of the written statement ?'

(10) The learned Additional District Judge has held that the suit is not maintainable, on the ground, that pending the first reference before the arbitrator, suit on the same cause of action, cannot legally proceed, and has to be adjourned sine die.

(11) Petitioner, raised various questions, in support of her plea that the suit was maintainable. One of the contentions was that, the order passed by the learned Sub Judge on September 26, 1972, thereby, appointing Bakshi Shri Rang Singh, Advocate, as the arbitrator, was without jurisdiction, and, as such, a nullity. This was on the ground that the value, for purposes of jurisdiction in the petition, filed under Section 20 of the [Arbitration Act, 1940](#), was fixed at Rs. 30,000.00 , when the pecuniary jurisdiction of the learned Sub Judge was up to Rs. 25, 00.00 . This was the reason that the second petition, under Section 20 of the Arbitration Act, was filed. The other question, raised by petitioner, was, that no arbitration proceedings were pending before the arbitrator, since his appointment, and moreover, the time for making the award was never extended. The arbitration proceedings were abandoned.

(12) Petitioner, also alleged that it was realised by the arbitrator, after his appointment, that the learned Sub Judge had no jurisdiction to entertain the petition, so, no further date was fixed by the arbitrator.

(13) All these questions were questions of facts, which could be decided only after trial. In fact, the learned Additional District Judge, has not determined these questions. The preliminary issue, could be decided, only after giving the parties opportunity, to lead evidence.

(14) It may be observed that Bakshi Shri Rang Singh, Advocate, was appointed as an arbitrator on September 26, 1972. For the last 18 years, no proceedings have been held by him. No-doubt, that the authority of the arbitrator has not been revoked so far, by any court, but still the aforesaid questions could be decided, only after trial.

(15) It may be noticed that the alleged transaction took place on December 2, 1969, and there is a registered Mortgaged Deed. On March 30, 1990, Mahinder Narain, J. observed :

'I think it is a fit case in which money should be ordered to be deposited in Court, instead of going through any proceeding in arbitration, as before me, counsel for the respondent admits the execution of a mortgage deed, and the fact that the money was borrowed. Counsel seeks time to obtain instructions regarding deposit of money in this Court, and the time within which it is deposited. Counsel to make statement on the next date of hearing as to how much time he needs to make the deposit.'

(16) However, nothing happened thereafter, because counsel for respondents failed to appear on the subsequent hearings. Even, the Court Notice was served upon the learned counsel for respondents. In spite of this, there was no appearance, on behalf of respondents, it prima facie shows that respondents are delaying the proceedings.

(17) Now, coming to the present case, I am of the view, that the learned additional District Judge, could not decide the preliminary issue, without evidence and without considering the contentions as raised by petitioner.

(18) Under the circumstances, the impugned order is set aside and the case is remanded back to the learned trial court. The learned trial court shall now decide

the preliminary issue, after giving opportunity to the parties, to lead evidence, as expeditiously .as possible. The learned trial court may also frame any other issue or Issues, if it is deemed necessary to decide the matter in controversy.

(19) Revision Petitions allowed with costs.

(20) Records be sent back immediately. To be listed before the learned additional District Judge on 11th January, 1991.

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