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Court : Rajasthan

Decided On : Mar-10-1980

Reported in : AIR1980Raj255; 1980()WLN366

Judge : M.C. Jain, J.

Acts : Arbitration Act, 1940 - Sections 34

Appeal No. : Civil Misc. Appeal Nos. 48 and 49 of 1978

Appellant : Dhanraj

Respondent : Pratap and ors.

Advocate for Def. : Kewal Chand, Adv.

Advocate for Pet/Ap. : R.C. Maheshwari, Adv.

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. These two appeals arise out of the orders dated 19-5-78 passed by the Additional District Judge, Sirohi in Civil Suits Nos. 10/74 and 12/77, whereby the defendant-appellant's applications under Section 34 of the Arbitration Act were rejected and the defendant was directed to file written statement in both the suits.

As common questions are involved in both the appeals, so, I propose to dispose of both the appeals by this common judgment.

2. The facts giving rise to the present appeals may be noticed. There was a partnership between the plaintiffs and the defendant under the name and style of M/s. Bhagwati Iron and Steel Re-rolling Mills, Rani. The partnership came into existence on 13-11-66. The said partnership was dissolved with effect from 11-6-69 and a deed of dissolution was executed on 12-7-69, Under this deed of dissolution, the defendant Dhanraj was under an obligation to make payment of Rs. 27065.10 due to the firm carried on by the plaintiffs. The payment of this amount was to be made in yearly instalment of Rs. 4,000. According to the plaintiffs some payment was made by the defendant under this document and when some instalments became due, the plaintiffs first instituted a suit for recovery of Rs. 14,880, which is registered as Suit No. 10/74. When further instalments became due and remained unpaid, the plaintiff instituted another suit, which was registered as original Suit No. 12/77. In both these suits, the defendant made an application under Section 34 of the Arbitration Act. The defendant, inter alia, stated in his application under Section 34 that the deed of dissolution dated 12-7-69 was got executed by practising fraud and undue influence. It was also stated that the defendant had moved an application under Section 20 of the Arbitration Act on 1-6-74. This application was resisted by the plaintiff. The learned Additional District Judge after hearing both the sides, rejected the application under Section 34 by the orders under appeal. The learned Additional District Judge taking into consideration that the District Judge, Pali has rejected the application under Section 20 on 16-11-74 and he further expressed the view that as per the allegations in the plaint, the partnership was dissolved and a fresh agreement was entered into between the parties and under the fresh agreement. the defendant undertook to pay a sum of Rs. 27,065.10 and it is this question, which is involved in the present suits, So, on that basis, he dismissed the defendant's application under Section 34 of the Arbitration Act. Dissatisfied with the orders of the learned Additional District Judge, the defendant Dhanraj has preferred these appeals,

3. I have heard Shri R.C. Maheshwari, learned counsel for the defendant-appellant and Shri K.C. Samdaria, learned counsel for the plaintiffs-respondents.

4. Shri R.C. Maheshwari, learned counsel for the appellant submitted that the learned Additional District Judge was in error in observing that the deed of partnership containing the arbitration clause stands superseded and a fresh agreement has been arrived at and that application under Section 20 of the Arbitration Act has been dismissed by the District Judge, so, the proceedings in the suit cannot be stayed. He urged that the learned Additional District Judge ought to have made an enquiry into the plea regarding the validity of the deed of dissolution. Without trying this plea, it was wrong on the part of the learned Additional District Judge to have considered that a fresh agreement has been entered into between the parties and in view thereof, there is no justification for stay of proceedings in the suit. Shri Maheshwari submitted that the defendant preferred an appeal against the dismissal of the application under Section 20 though the appeal has been dismissed and it has been held that the application under Section 20 of the Arbitration Act is barred by time but this question has been left open and was not considered necessary to be decided by this Court as to whether the arbitration clause in the partnership agreement was superseded on account of the deed of dissolution and, therefore, the arbitration clause did not survive,

5. Shri Samdaria, on the other hand, urged that in the application under Section 34 of the Arbitration Act, the validity of the deed of dissolution cannot be enquired into. If the defendant so desired, he could have availed the remedy, which may have been available to him for seeking a declaration to the effect that the deed of dissolution is void on account of the fact that it was got executed by practising fraud or undue influence. He urged that prima facie, the deed of dissolution contains fresh agreement for payment of a sum of Rs. 27,065.10, to the partnership firm and so, necessarily the arbitration clause does not survive.

6. Having heard the learned counsel for the parties, I find force in this submission of the learned counsel for the respondents that the validity of the deed of dissolution cannot be gone into in an application under Section 34 of the Arbitration Act. The defendant ought to have sought a relief by way of declaration regarding the invalidity of the deed of dissolution and thereafter, only he can invoke the provision of Section 34 by asserting that the arbitration clause in the

partnership deed still subsists and under that arbitration clause, the dispute may be referred and proceedings in the suit may be stayed. Such a plea, challenging the validity of the deed of dissolution containing the fresh agreement, in my opinion, is not tenable in an application under Section 34 of the Arbitration Act I have not been referred to any case law that such a plea can be raised and can be enquired into in an application under Section 34. It may be pointed out that in the facts and circumstances of the case, it is within the discretion of the court to allow an application under Section 34 or not. The deed of dissolution dates back to 12-7-69. For the first time the application for enforcement of any right under the arbitration agreement was made by the defendant-appellant by moving an application under Section 20 of the Arbitration Act on 1-6-74, as stated in para 8 of the application under Section 34 and this application under Section 34 was filed on 13-8-74. The application under Section 20 has been dismissed being barred by limitation by this Court, In these circumstances, if application under Section 34 is rejected, then it cannot be said that the discretion under Section 34 has been wrongly exercised, more particularly, when existence of or subsistence of arbitration clause is de pendent on the invalidity of the deed of dissolution, for which no declaration has so far been sought. It is true that this Court did not consider it necessary to go into the question as to whether the arbitration clause was superseded on account of deed of dissolution but on account of the above consideration, the defendant has no right to get this question decided in an application under Section 34 of the Arbitration Act. The decision of the question would depend on examining the defendant's plea of invalidity of the deed of dissolution.

7. In the light of the above discussion, In my opinion, these appeals have no force and both the appeals are hereby dismissed with costs.

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