

Brimco Bricks and anr. Vs. Sitaram Agarwal and ors.

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SooperKanoon Citation : sooperkanoon.com/759158

Court : Rajasthan

Decided On : May-20-1997

Reported in : AIR1998Raj71; 1997(3)WLC78

Judge : Shiv Kumar Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rules 7 and 3; [Arbitration Act, 1940](#) - Sections 20 and 41 - Schedule - Rules 10A and 77

Appeal No. : S.B.C. Revision No. 370 of 1995

Appellant : Brimco Bricks and anr.

Respondent : Sitaram Agarwal and ors.

Advocate for Def. : Shyam Lal Sharma, Adv.

Advocate for Pet/Ap. : G.C. Garg, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Shiv Kumar Sharma, J.

1. Laws of procedure are designed to facilitate justice and not to trip people up, they are devised for advanced justice and not impeding the same. The framers of

the Code of Civil Procedure enacted the provisions for abatement of suit of appeal for expeditious disposal of cases in the interest of proper administration of justice and not to penalise the litigant.

2. The questions that fall for consideration in the instant case are (i) as to whether the provisions for abatement of suit are also applicable in the Arbitration proceedings? (ii) If provisions are applicable then under what circumstances, the Arbitration proceedings abate?

3. These questions emerge in the following circumstances.

(a) During the pendency of petition under Section 20 of the [Arbitration Act, 1940](#) (for short the Act 1940) non-petitioner Sita Ram on April 30, 1994 moved an application before the learned Court below under Order 22, Rule 3, C.P.C. stating therein that Smt. Chanda Devi, one of the non-applicant in the Arbitration proceedings, died on Aug. 14, 1993. As per legal representatives were not brought on record by the applicants M/s. Brimco Bricks and others, therefore petition under Section 20 of the Act 1940 abated.

(b) On May 20, 1994, the legal representation of Late Smt. Chanda Devi alongwith Partner of the firm Damodar Das, submitted another application requesting the learned Court below for bringing the legal representative of Smt. Chanda Devi on record. It was also averred in the application that provisions of Order 22, Rule 3, C.P.C. did not apply to Arbitration proceedings.

(c) The learned Court below vide order dated January 12, 1995 disposed of both the applications observing that right to sue did survive in the firm and the other partners of the firm therefore in not bringing the legal representatives of Late Smt. Chanda Devi, the entire Arbitration proceedings did not abate but abated to the extent of the rights of Smt. Chanda Devi.

(d) Against this order of the Court below that the action for filing the revision has been resorted to by the petitioners.

4. The first question for consideration is whether having regard to the provisions of the Act 1940 and Rules made thereunder, Order 22, C.P.C. can at all be applied to

arbitration proceedings.

5. An agreement between the parties is the foundation of 'arbitration proceedings'. From the beginning until the award is passed the proceedings take place before a Tribunal chosen by the parties subject to the control which has been vested in the Court under the Arbitration Act in certain circumstances. The arbitrator or arbitrators or even the umpire, as the case may be, ultimately embodies the decision in a document which is described as the award. The arbitrator or umpire becomes *functus officio* as soon as the award is made. Once the award is made, the duty of the arbitrator is to file the award. Once the award is duly filed the arbitrator disappears from the scene and the Court becomes active.

6. It is necessary at this juncture to refer R. 7 of Schedule I of the Arbitration Act which provides that the award shall be final and binding on the parties and persons claiming under them respectively.

7. Section 41 of the Arbitration Act, makes the provision of the Code of Civil Procedure, applicable to arbitration proceedings. Relevant provision Section 41 reads as under :--

'Subject to the provisions of this Act, and of rules made thereunder --

(a) the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the Court, and to all appeals under this Act.'

8. Clause (a) of Section 41 makes the provisions of C.P.C. applicable to all proceedings before the Court and to all appeals except where such application is expressly excluded by the Act or by any Rules framed by the High Court under Section 44. The words 'subject to the provisions of this Act' therein means that the Code is applicable only subject to the provisions (forbidding interference) with the reference and award save as provided for in the Act and to that extent only the C.P.C. is excluded. Therefore in view of Rule 7 of Schedule I of the Act 1940, which provides that award shall be final and binding on the parties and persons claiming under them respectively, the provisions contained in Order 22, C.P.C. have been impliedly excluded. The award shall be final and binding irrespective of

the death of any of the party, on the persons claiming under him even if they were not brought on record.

9. I, therefore subscribe the view expressed by the Calcutta High Court in *Ram Nibas v. Benarshi*, AIR 1968 Calcutta 314 wherein it was held that. 'The nature of an arbitration proceeding is no different in same essential features from a suit that Order 22, C.P.C. cannot be applied without violence to the provisions of Order 22 itself and the provisions of the Arbitration Act.'

10. Even if I hold that Order 22, C.P.C. is applicable in arbitration proceedings then also it was incumbent upon the counsel of the deceased Smt. Chanda Devi to inform the Court about her death under Rule 10A, which reads as under --

'10-A Duty of pleader to communicate to Court death of a party --

Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it and the Court shall thereupon give notice of such death to the other party, and for this purpose the contract between the pleader and the deceased party shall be deemed to subsist.'

This provision is inserted with a view, that, just delay in making substitution application within the limitation period, may not be taken as reference by the counsel for the otherwise. In the instant case no such information relating to death of Smt. Chanda Devi was communicated by her counsel to the Court therefore the application filed by the legal representatives of the Smt. Chanda Devi on May 20, 1994 ought to have been allowed.

11. I am of the considered view that the arbitration proceedings did not abate and the learned Court below committed jurisdictional error in observing that the proceedings did abate to the extent of the rights of Smt. Chanda Devi. If the order is allowed to stand it would occasion failure of justice.

12. In the result the revision succeeds and is hereby allowed. The impugned order so far as it relates to Smt. Chanda Devi stands set aside and application filed on May 20, 1994 by the legal representatives of Smt. Chanda Devi is accepted. They be impleaded as parties to the arbitration proceedings. Costs easy.

