SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Entedee Vs. Union of India (Uoi)

Entedee Vs. Union of India (Uoi)

SooperKanoon Citation : sooperkanoon.com/864168

Court : Kolkata

Decided On : Jan-31-2003

Reported in : 2003(2)ARBLR465(Cal)

Judge : Altamas Kabir and ;Alok Kumar Basu, JJ.

Acts : Arbitration Act, 1940 - Sections 28 and 39(1)

Appeal No. : G.A. No. 3784 of 2002, A.P.O.T. No. 714 of 2002 and A.P. No. 22 of 2002

Appellant : Entedee

Respondent : Union of India (Uoi)

Judgement :

1. There will be an order in terms of prayer (a).

2. This appeal raises an interesting question of law as to whether an appeal would lie from an order of the learned single Judge dismissing an application made under Section 28 of the Arbitration Act, 1940.

3. In the instant case such an application was made by the appellant herein and the same was dismissed by the learned single Judge by his order dated 21st August, 2002, which is the subject matter of the appeal.

4. From the reasons given by the learned Judge in dismissing the application filed by the appellant it appears that the learned Judge was swayed by the fact that the learned Arbitrator had delayed the arbitration proceedings inordinately and that 92 sittings had already been held before the application was made for extension of time.

5. Appearing in support of the appeal, Mr. Samaddar submitted that the very reasons given by the learned Judge in dismissing the application, ought to have prompted him to allow the application. According to Mr. Samaddar, the learned Judge ought to have held that it was not the fault of the parties that the arbitration proceedings had been delayed. Furthermore, the learned Judge also should have taken into consideration the fact that 92 sittings had already been held during which period the evidence of the respective parties had been concluded and only at the stage of arguments it transpired that certain documents were required to be sent for examination since the very defence taken by the respondent herein was based on such documents which appeared to the learned Arbitrator to have been tampered with.

6. According to Mr. Samaddar, the arbitration proceeding was almost at an end and since the decision taken by the learned Arbitrator to send the documents for the purpose of forensic examination did not suit the respondent, it chose at the very penultimate stage not to give consent for extension of the time for publishing of the award by the learned Arbitrator after having done so for about 4 years. As pointed out by Mr. Samaddar, in fact, ten extensions had been consented to and only in view of the facts as indicated hereinabove the respondent refused to give consent on the last occasion.

7. At this stage it may be mentioned that a point of demurrer had been taken on behalf of the respondent regarding the maintainability of the appeal. It was contended that the appeal was not maintainable since an order refusing to extend time under Section 28 of the Arbitration Act, 1940 did not come within the scope and ambit of Section 39 of the Act which provides for an appeal to be filed in the contingencies indicated therein. While meeting the aforesaid objection taken on behalf of the respondent, Mr. Samaddar submitted that an order refusing to extend

time under Section 28 of the above Act came squarely within the provisions of Section 39(1)(i) of the Arbitration Act, 1940, as had been held by a Division Bench of the Kerala High Court in the case of Edakkavil Karimbuvalappil Abdulkhader Haji v. Thalakkal Kunhammad and Ors., : AIR1986 Ker3 wherein the very same point had come up for consideration. Mr. Samaddar urged that amongst other issues raised in the matter before the Kerala High Court, it had been specifically held that an order refusing to enlarge time for making the award amounts to supersession of the arbitration which is the first ground enumerated in Section 39 enabling a party to prefer an appeal.

8. Mr. Samaddar submitted that while coming to the aforesaidconclusion, the Kerala High Court had occasion to consider a Single Benchdecision of the Orissa High Court in R.N. Rice Mills v. State of Orissa, : AIR1959 Ori4 wherein a contra-view had been taken and the Division Bench of the KeralaHigh Court thought it fit to differ from the said decision upon its ownreasonings.

9. In the aforesaid circumstances, Mr. Samaddar urged that the appealshould be allowed and the order of the learned single Judge was liable to beset aside.

10. Opposing the appeal, Mr. R.N. Bag, learned Advocate, firstly renewed his initial objection that the appeal was not maintainable since according to him an order refusing to enlarge the time for making an award, under Section 28 of the Arbitration Act, 1940, did not come within the scope and ambit of Section 39 thereof.

11. In support of his contention Mr, Bag firstly referred to a Division Bench decision of this Court in the case of Rebati Ranjan Chakravarti v. Suranjan Chakravarti and Ors., : AIR1963 Cal642 wherein it was held that when there was no provision for appeal under Section 39, an appeal would not lie under Clause 15 of the Letters Patent. The said decision was based on a decision of the Hon'ble Supreme Court in the case of The Union of India v. The Mohindra Supply Co., : [1962]3SCR497 wherein a similar question was decided by the Hon'ble Supreme Court in relation to Clause 10 of the Letters Patent pertaining to Punjab.

12. Mr. Bag sought to urge that the principle decided was that when there was a specific bar in a special Act regarding filing of appeals, recourse could not be taken to Clause 15 of the Letters Patent in urging that the appeal was maintainable under the said provision. Mr. Bag submitted that since an order refusing to enlarge time for making award under Section 28 of the 1940 Act did not come within the scope and ambit of Section 39 of the said Act, the decision of the Division Bench of the Kerala High Court cited by Mr. Samaddar could not really come to the aid of the appellant. On the other hand, Mr. Bag urged before us to take note of the reasoning of the learned single Judge of the Orissa High Court which had been dissented from by the Kerala High Court.

13. In support of his aforesaid submission Mr. Bag also referred to a Bench decision of the Delhi High Court in Union of India and Ors. v. N.K. Pvt. Ltd. and Anr., : AIR1972 Delhi202 where the same views have been expressed.

14. Mr. Bag then urged that the expression 'supersession' as used in Section 39(1)(i) of the 1940 Act could not be said to cover a situation where an application under Section 28 was dismissed. Mr. Bag specifically referred to Sections 12, 19 and 25 of the 1940 Act in support of his contention that the expression 'supersession' as used under Section 39 would have to be understood with reference to the use of the expression in the said sections referred to by him.

15. Mr. Bag urged that the appeal was not maintainable and it was also liable to be dismissed on merits. He referred to the fact that the Arbitrator had dragged on the proceedings unnecessarily for more than four years by holding sittings of only 15 to 20 minutes at a time and that the respondent had reached the end of its tether when a further request was made for extension of time in the month of August, 2001. Mr. Bag submitted that the respondent was not willing to incur any further expenditure in the arbitration and that the learned single Judge had rightly dismissed the appellant's application under Section 28 for the reasons supplied in the said order.

16. We have carefully considered the submissions made on behalf of the respective parties, having regard to the importance of the issue and since the question raised in this appeal does not appear to have fallen for consideration of

this Court earlier.

17. One cannot escape from the fact that an order refusing to enlarge time for publishing the award would have the effect of superseding the arbitration proceedings and as observed by the Division Bench of the Kerala High Court, would bring the arbitration proceedings to a grinding halt. Accordingly, although the order impugned in the appeal may not have directly superseded the arbitration, in effect the same object was achieved by dismissing the same.

18. We are, therefore, inclined to follow the reasoning of the Kerala High Court in holding that an order refusing to enlarge time under Section 28 of the Arbitration Act, 1940, would in effect amount to supersession of the arbitration which would bring it squarely within the ambit of Section 39(1)(i) of the 1940 Act. The decisions cited by Mr. Bag lay down a proposition which, in our view, do not apply to the facts of the instant case. There can be no quarrel with the ratio of the said decision which relates to the right of a party to file an appeal under Clause 15 of the Letters Patent, in the event of specific bar under a special Act, which is not so in the instant case. In our view the appeal is maintainable.

19. Now proceeding to the merits of the order passed by the learned single Judge, we are unable to appreciate the logic behind the dismissal of the application since after a period of 4 years when the arbitration proceeding was reaching finality, the proceeding was sought to be brought to an end. In our view, considering the fact that 92 sittings had already been held and the parties had already concluded their evidence and the arbitration proceeding was only awaiting the report of the forensic expert on the documents which came to light during the course of arguments, the learned single Judge ought to have allowed the application filed by the appellant herein and ought to have enlarged the time for publishing the award. Having regard to the view taken by us, we set aside the order passed by the learned single Judge on 21st August, 2002 and allow the appellant's application under Section 28 of the Arbitration Act, 1940. The time for making and publishing the award is extended by a period of 4 (four) months from date. The learned Arbitrator is directed not to delay the matter any further for whatever reason and to proceed to hear the parties and publish his award well within the extended period.

20. The appeal and the application both are disposed of by this order.

21. The prayer for stay made on behalf of the respondent is considered and refused having regard to the view taken by us.

22. Learned Arbitrator, the Department and all parties are to act on signed copy of the operative portion of this Judgment on the usual undertaking.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com