

Bashir Kiln and ors. Vs. Sham Lal

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Court : Jammu and Kashmir

Decided On : Apr-17-1995

Reported in : AIR1996J& K10

Judge : Bilal Nazki, J.

Acts : Jammu and Kashmir Arbitration Act, 2002 Smvt. - Sections 8 and 20; ;
[Arbitration Act, 1940](#) - Sections 8 and 20

Appeal No. : C.I.M.A. 139/92

Appellant : Bashir Kiln and ors.

Respondent : Sham Lal

Advocate for Def. : M.L. Gupta, Adv.

Advocate for Pet/Ap. : B.M. Gupta, Adv.

Judgement :

ORDER

Bilal Nazki, J.

1. A very small controversy is to be adjudicated upon in this revision petition.

2. An application under Section 20 of the Arbitration Act titled Sham Lal Gupta v. Bashir Kiln, came to be filed before the 1st Additional District Judge Jammu, who

passed an order dated 15-10-1988 whereby, he referred the dispute between the parties to an arbitrator namely Mr. V. B. Sudhan, Advocate for arbitration.

3. After the matter was referred to arbitration by the learned District Judge, an application came to be filed before him by the present petitioner seeking setting aside of the order of reference made under Section 20 of the Arbitration Act which had been passed by the learned District Judge after proceeding ex parte against the petitioners. This application was decided by the learned District Judge by an order dated 2-12-1992 and he dismissed the application on the ground that the provisions of Order 9, Rule 7, CPC which deal with setting aside of ex parte proceedings was not applicable to the application pending before him. The learned District Judge was of the opinion that after the matter had been referred to the Arbitrator, no proceedings were pending before him and the Court after making the reference had become functus officio and any application was not maintainable before the Court. The learned District Judge also did not agree that provisions of Order 9, Rule 13, C.P.C. was applicable, as no judgment had been passed by the Court which could be set aside by invoking of provisions of Order 9, Rule 13, C.P.C. The order passed by the learned District Judge, is challenged by this revision.

4. I have gone through the record and heard the arguments of the learned counsel for the parties.

5. Section 20 of the Arbitration Act gives the power to the Court of making a reference when the application is made to it in accordance with that provision. There are other provisions in the Arbitration Act which need to be mentioned in order to reach to a conclusion as to whether after the reference is made by the Court, the Court becomes functus officio. One of the powers vested in the Court is under Section 11, by which the Court can remove an arbitrator.

6. Under Section 28 of the Act, the Court has the power to extend the time in making an award. A bare reading of the above referred provisions show that the Court under specific provisions can exercise powers in the matter, even after making a reference. The nature of power given under Section 8 is such that it can only be exercised after the reference is made to the arbitrator. Similarly, under

Section 28, the nature of power is again such that it can only be exercised after reference has been made to the arbitrator.

6A. Since there are provisions in the Arbitration Act which give powers to the Court to pass orders in the matter even after making a reference, this Court has no hesitation in holding that after making a reference Under Section 20, the Court does not become functus officio. There is another reason also to hold this view, and that is after a reference is made Under Section 20 of the Act, the arbitrator after finalizing the award has again to approach the Court and the proceedings initiated on an application Under Section 20 come to an end after the Court accepts or rejects the award. Therefore, in my opinion, it is to be presumed that proceedings do not come to an end before the Court, when a reference is made. The proceedings remain pending before the Court from the time an application under Section 20 is made, till such time the Court finally disposes of the matter either by accepting the award and/or by setting aside the same. My view is further fortified by the judgment of this Court reported in AIR 1968 J & K 86.

7. In this view of the matter, the order passed by the learned District Judge needs to be set aside, and I set aside the same and direct the learned Additional District Judge to entertain the application moved by the petitioner, and pass an appropriate order on merits after hearing the parties. The file be sent back.

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