

Naraindas

Vs

Vallabhdas and Others

Civil Appeal No. 194 of 1967

(K.S. Hegde, H.R. Khanna JJ)

15.10.1971

JUDGMENT

KHANNA, J. -

1. This is an appeal on a certificate of fitness granted by the Madhya Pradesh High Court against the judgment of that Court whereby that Court in appeal set aside the order of the Additional District Judge, Jabalpur, dismissed the objections against an award directed that the award be made a rule of the Court.

2. Naraindas, appellant is the brother of Valabhdas and Durgaprasad, Respondents 1 and 2 and son of Smt. Sukharni, Respondent No. 3. There were some arbitration proceedings in 1932 between the appellant and Respondents 1 to 3 on one side and Pannalal and Smt. Dulari Bahu on the other side. Those proceedings related to partition of property and a claim for maintenance allowance by Dulari Bahu. An award was given in those proceedings and was made a rule of the court on December 13, 1933. According to the award, Dulari Bahu was to get a maintenance allowance of Rs. 12/- per mensem from the appellant and his brothers. A charge was created of the maintenance allowance on the house which fell as a result of a partition to the share of the appellant and Respondents 1 to 3. It was also provided that if the appellant and his brothers failed to pay monthly allowance, Dulari Bahu would be entitled to get the house sold. Out of the sale proceeds, Rs. 3,000/- were to be deposited in a bank on the condition that the amount of interest would be paid to Dulari Bahu but she would not be entitled to draw the principal amount. On Dulari Bahu's death, Rs. 2,000/- out of Rs. 3000/- would be paid to the appellant and his brothers and Rs. 1,000/- to Pannalal.

3. The amount of maintenance payable to Dulari Bahu was increased to Rs. 30/- per mensem in a suit brought by her decided on October 8, 1949.

4. As the appellant and his brothers did not pay the maintenance allowance to Dulari Bahu, she, in execution of her claim for maintenance allowance, got their houses situated at Jabalpur sold by court auction. The houses were purchased for Rs. 22,000/- by Sitaram and Laxminarain, Respondents 4 and 5. After obtaining the sale certificate, Respondents 4 and 5 took proceedings for obtaining possessions for the houses but they were resisted by respondent No. 1. The appellant and his brothers further claimed that they had deposited some amount with Respondents 4 and 5. The appellant and his brothers and mother on one side and Respondents 4 and 5 on the other side thereupon appointed four arbitrators, as per agreement, dated April 8, 1955. According to the agreement, Respondents 4 and 5 would have no claim in the houses purchased by them in court auction and the arbitrators would make award in respect of the amounts to be paid by either of the parties as well as regarding the maintenance allowance payable to Durga Bahu and Sukharni Bahu.

The arbitrators thereafter gave their award, dated October 20, 1956, wherein they made provision for the amounts payable to different parties. Regarding the amount of maintenance allowance payable to Dulari Bahu, the award provided that Rs. 3,000/- out of the sale proceeds would be withdrawn from the court and be deposited with Durgaprasad, respondent. Durgaprasad was made liable to pay the amount of Rs. 30/- per mensem as maintenance allowance to Dulari Bahu. The award further provided that out of the amount of Rs. 3,000/-, Rs. 1,000/- would be paid to Pannalal and Rs. 2,000/- to Durgaprasad on the death of Dulari Bahu. Dulari Bahu was also given a right of residence in a room and maintenance allowance of Rs. 30/- payable to her was made a charge on the house allotted to Durgaprasad.

5. After the award had been put in court, objections were filed against the award. Learned Additional District Judge set aside the award on the ground that the award affected the rights of Dulari Bahu and she had not been made a party to the arbitration agreement. The reference to arbitration as well as the award, according to the Additional District Judge, did not amount to an adjustment and were, therefore, invalid. It was also held that the award was in excess of the arbitration agreement. Some other grounds were also given but we are not concerned with them. On appeal, the High Court reversed the decision of the Additional District Judge and held that there was no infirmity in the arbitration proceedings or the award. In the result, the award was made a rule of the court.

6. Mr. Anand, on behalf of the appellant, has argued that Dulari Bahu was an interested party in the dispute relating to arbitration and as she did not join the arbitration agreement, the reference to arbitration and the subsequent award should be held to be invalid. There is, in our opinion, no force in this contention. The dispute which was referred to the arbitrators related to the houses in question which had been sold in court auction. The interest of Dulari Bahu pertained only to the recovery of her maintenance allowance. According to the earlier award which Dulari Bahu sought to enforce, she was to get the maintenance allowance from an amount of Rs. 3,000/- which was to be kept in deposit. The rights of Dulari Bahu in this respect remained intact and were in no way affected by the award, dated October 20, 1956. The maintenance allowance payable to her was also kept as a charge over the immovable property. The fact that Dulari Bahu did not sign the arbitration agreement as such would not vitiate the arbitration proceedings. The present is not a case wherein the arbitration proceedings are sought to be assailed by Dulari Bahu. On the contrary, it is the admitted case of the parties that Dulari Bahu did not raise any objection to the arbitration proceedings or the subsequent award on the ground that her rights had been prejudicially affected. This apart, we find that Dulari Bahu, according to the learned counsel, died about three years ago. In the circumstances, it would be purely academic to dilate upon the question as to whether the rights of Dulari Bahu were prejudicially affected by the award in question.

7. It is next argued by Mr. Anand that as the reference to arbitrators was made out of court and as all the parties to the arbitration agreement did not sign the award in token of their acceptance, the same could not be made a rule of the court. There is no substance, in our opinion, in the above contention. It is always open to parties to refer a dispute to arbitration without the intervention of the court. In case, a suit is pending in respect of the subject-matter of the dispute, there can be no valid reference during the pendency of the suit, to arbitration without the order of the court. The underlying reason for that is to avoid conflict of jurisdiction by both the court and the arbitrator dealing concurrently with the same dispute. An award given on a reference during the pendency of a suit relating to dispute which is the subject-matter of reference without obtaining the order of the court cannot be enforced. The only exception to this rule is provided by the proviso to Section 47 of the Arbitration Act (Act 10 of 1940) according to which "an arbitration award otherwise obtained may with the

consent of all the parties interested be taken into consideration as a compromise or adjustment of a suit by any court before which the suit is pending." In such an event, the award is enforced as a compromise or adjustment of the suit because all the interested parties give their consent to the award. Where, however, as in the present case, no suit is pending with respect to the subject-matter of dispute and the parties choose to refer a dispute to arbitrators, it is not essential that the parties should signify their consent to the award before the same can be enforced. Any other view would run counter to the entire scheme and object of arbitration for the settlement of disputes according to which, agreement and consent are imperative only at the stage of referring the dispute to arbitrators but not at the stage of the award. The decision of Bachawat, J. (as he then was) in *Jugaldas Damodar Modi and Co. v. Purshottam Umadbhai and Co.*, (AIR 1953 Cal 690 : 92 CLJ 181.) relied upon by the appellant has no bearing as the said case dealt with an arbitration reference during the pendency of a suit.

8. We are also not impressed by the contention raised on behalf of the appellant that because there had been earlier litigation about the house allotted to the appellant and his brothers, the same could not be the subject-matter of arbitration dispute. A dispute is referred to arbitration because the parties agreed to such a reference and the mere fact the property which is the subject-matter of dispute was also the subject-matter of an earlier litigation, cannot prevent the parties to refer the dispute about that property to arbitration. What is referred to arbitrators in such a case is the fresh dispute and although the finding of the court in the previous litigation may have a bearing on the dispute referred to the arbitrators, it would not stand in the way of reference of the fresh dispute to the arbitrators. It is not case of the appellant before us that the precise dispute which was the subject-matter of award, dated October 20, 1956, had been adjudicated upon earlier in a Civil Court.

The appeal consequently fails and is dismissed with costs.

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