Brij Gopal Mathur and Another

Vs

Kishan Gopal Mathur and Others

Civil Appeal No. 1606 of 1967

(J.M. Shelat, Y. V. Chandrachud JJ)

(A.N. Grover, K.K. Mathew JJ)

20.02.1973

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Allahabad High Court arising out of certain arbitration proceedings.

2. The following pedigree table will be of assistance in understanding the dispute between the parties :

Sri Gopal (deceased) | ---------- | | | | |Madan Gopal Kishan Gopal Bishan Gopal Brij Gopal Anand Gopal (died) | (died) (died)Smt. Prempiari | Smt. Narayana Smt. Durgesh (widow) | Piari Devi | (widow) (widow) | | | | | Bhagwan Gopal | | | ---------- ---------- | | | | Mahabir Raghuvansh | Gopal Gopal | ---------- | | | | Mahesh Brahma Raghubir Parmeshwar Gopal Gopal Gopal Gopal##

On April 18, 1944, a deed of reference was executed referring the dispute to certain arbitrators to effect the partition of the business and of the joint family properties of the following persons who were parties to the said deed of reference : (1) Sri Gopal; (2) Kishan Gopal and Brij Gopal his sons; (3) Narayana Piari widow of Bishan Gopal the third son of Sri Gopal acting for herself and as guardian of her minor sons Mahabir Gopal and Raghuvansh Gopal; (4) Smt. Durgesh Devi widow of Anand Gopal who was the fourth son of Sri Gopal acting for herself and as guardian of her minor son, Bhagwan Gopal. The arbitrators gave their award on August 18, 1954 and the same was duly got registered on December 21, 1944. One of the properties allotted to Brij Gopal was in the occupation of Kishan Gopal and according to the award he had to vacate that house and give possession of it to Brij Gopal and others mentioned in the award. The parties were also signatories to the award and it was stated under their signature that they were agreeable to the award and would abide by it.

3. In 1947, Brij Gopal and Sri Gopal filed a suit against Kishan Gopal for possession of the house mentioned before. That suit was dismissed on the short ground that the award not having been made a rule of the court the suit was barred under Section 32 of the Indian Arbitration Act, 1940, hereinafter called the "Act". The matter was taken in appeal to the High Court which was dismissed on the same ground in March, 1954. In November, 1954, Brij Gopal filed an application under Section 17 of the Act in the court of the Civil Judge, Agra, praying that the award, dated August 18,

1944, be filed and be made a rule of the court. On the pleadings of the parties a number of issues were framed. One of the issues was whether the application was barred by limitation. The trial Judge held that it was barred under Article 181 of the Indian Limitation Act, 1908. Brij Gopal filed an appeal against that order to the High Court. It seems that while the said appeal was pending in the High Court Brij Gopal was advised that it would be better if the original award was withdrawn from the record of the appeal in the High Court for being filed in an appropriate court by the arbitrators under Section 14 of the Act. On September 17, 1958, Brij Gopal applied to the High Court for permission to receive back the original award. He was permitted to take the award back and it was actually delivered to him in May, 1959. Thereafter two of the arbitrators (the third arbitrator had died in the meantime) filed an application in the court of the Civil Judge, Agra, under Section 14(2) of the Act. It was claimed that the parties had acted upon the award and that the same had been agreed to and accepted throughout. On August 28, 1959, Brij Gopal also filed an application that the award be made a rule of the court. Objections were filed on behalf of Respondents 1, 2 and 3 herein. On the pleadings of the parties the trial Judge framed five issues on which he recorded his findings. We need mention only those which are material. It was found that the arbitrators had become functus officio in 1944 when they had delivered the award to Brij Gopal - the present appellant No. 1 - for being filed in court and they had no jurisdiction to file the award afresh, on June 3, 1959. The application of the arbitrators was found to be barred by limitation.

4. Against that judgment the appellants filed an appeal to the High Court under Section 39(1)(vi) of the Act. Both the appeals, namely, First Appeal from Order No. 315/62 referred to above and First Appeal No. 606/66 which was already pending were heard together by the Division Bench of the High Court. These appeals were dismissed by a common judgment, dated April 2, 1965. We are concerned with the disposal of the First Appeal from Order No. 315/62 by the High Court.

5. The High Court held, inter alia, that Article 181 of the Limitation Act was not applicable to an application under Section 14(2) of the Act and that no period of limitation had been prescribed for filing of the award in court by the arbitrators. Further the filing of the award after the dismissal of the application of Brij Gopal appellant No. 1 filed under Section 17 of the Act was not barred. But the High Court was of the view that no appeal lay under Section 13(1)(vi) of the Act against the order made by the trial Judge, dated May 11, 1962. In that situation the learned counsel for the appellants prayed that the appeal be treated as a revision. The High Court acceded to that request. It, however, disposed of the matter as follows :

> "Shri Jagdish Swarup, therefore, requested us to treat the appeal as a revision. The request was allowed. Granting of relief in a revision is discretionary. In our opinion, no interference in revision is called for in the instant case. There must be finality to every proceeding. We have seen that the same award had been filed by Brij Gopal in Court and he made an application under Section 17 of the Act on December 9, 1954 and prayed that the award be made a rule of the Court. That application was rejected on August 14, 1956. If Brij Gopal failed in getting the award made a rule of the court, we cannot allow him to get a decree in his favour on the arbitrators filing the award in court after a lapse of 14 years. If Brij Gopal could not apply for a decree again, he certainly cannot get a decree on an action by the arbitrators. We do not think we will be justified in granting a decree in favour of Brij Gopal after it was refused in previous proceedings. The first appeal from order, therefore, also must be dismissed."

The above order of the High Court has been assailed before us mainly on the ground that the

discretion exercised was not a judicial discretion and the High Court ought to have set aside the order of the Trial Court and in view of its own findings directed that the award be made a rule of the court. It has been laid down by this Court in Major S. S. Khanna v. Brig. F. J. Dillon, ((1964) 4 SCR 409, 417 : AIR 1964 SC 497) that the exercise of the jurisdiction under Section 115, Civil Procedure Code, by the High Court is discretionary and that court is not bound to interfere merely because the conditions in clauses (a), (b) or (c) of that section are satisfied. The following observations of Shah, J., who delivered the judgment in the case may be reproduced with advantage :

> "The interlocutory character of the order, the existence of another remedy to an aggrieved party by way of an appeal from the ultimate order of decree in the proceeding or by a suit, and the general equities of the case being served by the order made are all matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract the jurisdiction exist should exercise its jurisdiction."

It follows that while exercising its discretion the High Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief. One of such relevant considerations would be whether the order sought to be revised has occasioned a substantial failure of justice. The facts set out in the order of the High Court under appeal were sufficient for coming to the conclusion that it was not a fit case for interference in revision. We are, therefore, unable to accede to the submission of the learned counsel for the appellants that the High Court did not exercise the discretion in accordance with the well-settled principles or that the exercise of discretion was such as would justify any interference.

6. In the result the appeal fails and it is dismissed but we make no orders as to costs. The parties have agreed to this in supersession of the order, dated January 9, 1973, as to costs.

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