

Raj Kumar Dey and Others

Vs

Tarapada Dey and Others

Civil Appeal No. 2224 of 1987

(Sabyasachi Mukharji, G. L. Oza JJ)

14.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Special leave granted.

2. This appeal is directed against the judgment and order of the High Court of Calcutta dated June 19, 1986 in Civil Order No. 2278 of 1985. On or about June 11, 1977 an unregistered deed of agreement between the four brothers being the appellants 1 to 4 and their eldest brother, respondent 1 was entered into regarding partition of joint movable and immovable properties and the same were referred to three arbitrators, namely, three appellants 5, 6 and 7 herein. On or about July 2, 1977 the same agreement was rewritten on a fresh stamp paper and the same was registered by which the above named arbitrators are given the option to take assistance of one, two or more persons. The dispute related to certain properties among the brothers in Chinsurah in the district of Hooghly in the State of West Bengal. The three arbitrators took the assistance of appellant 8 and he functioned and acted as one of the arbitrators.

3. On or about November 28, 1977 the arbitrators explained their award to the parties and made and signed the award. On or about December 1, 1977 the eldest brother filed an application under Section 11 of the Arbitration act, 1940 (hereinafter called 'the Act') before the learned Munsif, Arambagh being Misc. Case No. 74 of 1977. The appellants 1 to 4 file an application under Section 14 of the Act before the learned Sub-Judge, Hooghly at Chinsurah praying for a direction on the arbitrator to file the award in the court in Misc. Case No. 28 of 1977. The arbitrators filed the award before the learned Sub-Judge Hooghly at Chinsurah on January 28, 1978. On July 26, 1978 the learned Munsif, Arambagh ordered interim injunction on the parties including the arbitrators to maintain status quo till the disposal of misc. Case No. 74 of 1977 initiated by the appellant 1. On August 14, 1978 the arbitrators made an application before the leaned Sub-Judge, Hooghly at Chinsurah to return back the award to enable them to present the same before the Sub-Registrar for registration. On September 2, 1978, the Sub-Judge fixed the hearing of the arbitrators' application to return the award to them. In January 1980 the arbitrators' application was heard and the learned Sub-Judge ordered return of the award to the arbitrators to enable them to present the same for registration.

4. The High Court of Calcutta in Civil Rule No. 621 of 1980 on March 6, 1981 set aside the aforesaid order of the learned Sub-Judge holding that during the subsistence of the interim injunction order on the arbitrators to maintain status quo the arbitrators could not take back the award for presenting the same for registration. The High Court observed that the arbitrators'

application dated August 14, 1978 should be kept pending and be heard when the injunction order was vacated. On December 20, 1982 the learned Munsif, Arambagh dismissed Misc. Case No. 74 of 1977 and the interim injunction order ipso facto was discharged. The arbitrators, therefore, renewed their prayer before the learned Sub-Judge to return the award. On February 25, 1983 the learned Sub-Judge dismissed the arbitrators' application and did not direct return of the award holding that the limitation for the registration of the award had already expired. The High Court in Civil Order No. 589 of 1983 on September 19, 1983 directed the learned Sub-Judge to return back the award to the arbitrators holding that it was the Registrar and not the Sub-Judge who could determine the question of limitation for the purpose of registration of the award. The learned Sub-Judge, Hooghly at Chinsurah on November 23, 1983 ordered returning back of the award to the arbitrators. On November 24, 1983 the arbitrators got back the award from the court. On November 25, 1983 i.e., the very next day the arbitrators presented the award before the Sub-Registrar, Arambagh for registration. The Sub-Registrar, Arambagh on November 25, 1983 registered the award. The High Court in Civil Order No. 9696 (W) of 1984 on July 24, 1984 had sent back the award to the Sub-Registrar to reconsider the question of limitation and found that the award was presented within time as the period during which the judicial proceedings were pending, namely, January 28, 1978 to November 24, 1983 should be excluded in view of the principle laid down under Section 15 of the Limitation Act. On June 19, 1986 by the judgment and order impugned the High Court quashed the registration under Article 227 of the Constitution holding that the award had been presented for registration beyond time. It is the validity and propriety of that order which is under challenge in this appeal.

5. The limitation period for registration is four months from the date of its execution. The award was made on November 28, 1977 and it was presented for registration to the Sub-Registrar on November 25, 1983, Section 23 of the Registration Act, 1908 (hereinafter called 'the Registration Act') stipulates that the time for registration is four months from the date of its execution. Section 25(1) of the Registration Act provides that if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, is not presented for registration till after the expiration of the time hereinbefore prescribed, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration. Sub-section (2) of Section 25 provides that any application for such direction may be lodged with a Sub-Registrar, who shall forward the same to the Registrar. Therefor the cumulative effect of Sections 23 and 25 read together is that total period of eight months is available for registration if the conditions are fulfilled. The High Court had held that in this case the award has been registered after six years and as such was beyond time. It was held before the High Court that not registration was permissible beyond the period fixed under Section 25 read with Section 23 of the Registration Act and any registration beyond such period would be void. But in this case admittedly the award was in the court of the learned Munsif from January 28, 1978 to November 24, 1983. Therefore, this period, that is to say, from January 28, 1978 to to November 24, 1983 the award was in court and this was manifest from the order in Misc. Case No. 28 of 1977. The arbitrators had made an application on or about August 14, 1974 (sic 1978) for return of the award but that was not done. Furthermore, there was an injunction on July 16, 1978 while it was only vacated on December 20, 1982.

6. We have to bear in mind two maxims of equity which are well settled, namely, *actus curiae neminem gravabit* - An act of the Court shall prejudice no man. In Broom's Legal Maxims, 10th edition. 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim

should, however, be applied with caution. The other maxim is *lex non cogit ad impossibilia* (Broom's Legal Maxims - page 162) - The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

7. In this case indisputably during the period from July 26, 1978 to December 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, January 28, 1978 till the return of the award to the arbitrators on November 24, 1983, arbitrators or the parties could not have presented the award for its registration during that time. The award as we have noted before was made on November 28, 1977 and before the expiry of the four months from November 28, 1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey and order of the court and if in compliance or obedience with court of doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims - the law does not compel a man to do that which he cannot possibly perform and an act of the court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the awards we have noted before was presented before the Sub-Registrar, Arambagh on November 25, 1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant of the order of the High Court on June 24, 1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from January 28, 1978 to November 24, 1983 should be excluded in view of the principle laid down in Section 15 of the Limitation Act, 1963. The High Court, therefore, in our opinion, was wrong in holding that the only period which should be excluded was from July 26, 1978 till December 20, 1982. We are unable to accept this position. July 26, 1978 was the date of the order of the learned Munsif directing maintenance of status quo and December 20, 1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award which the court declined to give to them. The principles enunciated by this Court in *Nityananda M. Joshi v. Life Insurance Corporation of India* ((1970) 1SCR 396 : (1969) 2 SCC 199 : AIR 1970 SC 209) would have no application to the facts of this case.

8. It was urged before us that an award affecting the immovable -properties which was not registered and which was made outside the court could not form the basis of an award and an unregistered award, in other words could not form the basis of the award. We are unable to accept that position. There is no dispute to the proposition that an award affecting immovable properties as in the instant case should be registered. It is therefore, not necessary to discuss in detail the ratio of the decision of the Full Bench of the Andhra Pradesh High Court in *M. Venkataratnam v. M. Chelamayya* (AIR 1967 AP 257 : (1966) 2 Andh WR 361 : (1966) 2 Andh LT 300)

9. In the aforesaid view of the matter the judgment and order of the High Court cannot be sustained and are set aside. The appeal is allowed and the order of the Sub-Registrar, Arambagh dated June 24, 1985 is restored. In the facts and circumstances of the case, however, the parties are directed to

pay and bear their own costs.

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