

Vaidya Harishankar Laxmiram Rajyaguru of Rajkot

Vs

Pratapray Harishankar Rajyaguru of Rajkot

Special Leave Petition (Civil) No. 4783 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

13.04.1988

JUDGMENT

SABYASACHI MUKHARJI, -

1. This is an application for leave to appeal under Article 136 of the Constitution of India from the judgment and order of the High Court of Gujarat dated February 23, 1988. By the impugned judgment, the High Court has dismissed the civil revision application which challenged the award made in this case.

2. The petitioner is the father of the respondent. Both of them are established Vaidyas in Rajkot. They come from a well-to-do family. The petitioner is advanced in age and both the father and the son have been fighting between themselves since more than a decade. The High Court found that the petitioner and the respondent had referred their disputes to one Kantibhai Vaidya (Shri Kantilal Dayaram Jai) who had intervened between them with the good intention to bring their disputes to an end. He made an award. The award was produced. It appears that the award was endorsed and signed by both the parties. In the award, it was stated by the arbitrator that he had called both the father and the son at his residence on January 18, 1977. He had discussed the matter with both of them and had warned them that both of them would ruin themselves in the property disputes, if they did not solve the matter amicably. In the award, it was stated that the entire responsibility of solving the dispute was entrusted to him and the petitioner and the respondent had agreed to such entrustment. Accordingly, he made the award on January 18, 1977. Below the award, both the parties and the arbitrator had signed. The endorsement reads, when translated in English, as found by the High Court that the award is agreed to and binding upon the parties and that the entire responsibility of the arbitrator (sic arbitration) will lie on Shri Kantibhai Vaidya and that he has taken the responsibility. Thereafter followed a spell of litigation. The respondent applied on June 20, 1977 for setting aside the award and sought the judgment in terms of the award under Section 17 of the Arbitration Act, 1940 (hereinafter called 'the Act'). A notice consequent upon the filing of the award was issued to the petitioner. The application was converted into Special Civil Suit No. 84 of 1977. It was stated in the application to set aside the award, that the petitioner had torn off the award and, therefore, the respondent was compelled to rely upon a photocopy of the original award, which was produced with the application. The petitioner filed his objections to the application but did not file any application within the prescribed limitation of 30 days. The learned trial judge rejected the objections filed beyond the period of limitation and for the reasons that (1) the notice was already given to the party concerned about the filing of the award, (2) the time for making an application to set aside the award had expired and no such application was made, (3) the award was not set aside under Section 30, and (4) that the award was not remitted under Section 16(5) of the Act. The learned trial judge made a decree in terms of the award.

3. The petitioner preferred a civil first appeal against the judgment and decree passed in Special Civil Suit No. 84 of 1977 and had also preferred Civil Revision Application No. 655 of 1978. Both these legal proceedings were, however, withdrawn by the petitioner and thus the judgment of the trial court in Special Civil Suit No. 84 of 1977 became final. The High Court had recorded that the first appeal and civil revision application were withdrawn in pursuance of an agreement reached between the parties on or about August 14, 1978. A copy of the said agreement was also produced before the court as Ex. 40. It was signed by both the parties as well as their respective advocates. The agreement was in the form of a letter addressed to the arbitrator wherein it was stated that both of them had appointed him as an arbitrator to resolve the disputes between them and that he had given an award dated January 20, 1977 in respect of which award, there had been continued objections but now they have agreed that both of them should abide by the award dated January 20, 1977 and that its interpretation should be left to the arbitrator himself. It was also categorically mentioned therein that its interpretation by the arbitrator would be binding on both the parties. It was clear, therefore, that both of them had re-affirmed the acceptance of the award.

4. This letter of August 14, 1978 was replied in the form of a letter dated September 4, 1978 addressed to the petitioner by the arbitrator, that is Ex. 137. The petitioner thereafter filed a civil suit for setting aside the decree passed in Special Civil Suit No. 84 of 1977 and had also submitted an application to obtain interim orders. That application was decided against him, against which he preferred an appeal/revision but later on, he withdrew the said appeal/revision.

5. During the course of the execution proceedings, the petitioner preferred a civil revision application against the judgment and order passed by the Civil Judge raising practically all the disputes which had been raised by the petitioner in this civil revision application. The same was rejected summarily.

6. The main objection to the award is that there was no written agreement signed by both the parties to refer the disputes to arbitration. It is clear from the narration of facts that the parties had agreed to refer the dispute to the arbitrator. The award signed by both the parties, about which there is no factual dispute, reiterated the fact that the parties had agreed to refer the dispute to the arbitration of the said arbitrator and that he made an award. All these are in writing and signed by all the parties. This, in our opinion, in the light of the facts and circumstances of the case can certainly be construed to be proper arbitration agreement in terms of Section 2(a) of the Act. In this connection reference may be made to the observations of this Court in *Prasun Ray v. Calcutta Metropolitan Development Authority* [AIR 1988 SC 205 : (1987) 4 SCC 217], where all the relevant authorities on this point have been discussed. See also in this connection the decision of the Judicial Committee in *Chowdhri Murtaza Hossein v. Mst. Bibi Bechunnissa* [(1875-76) 3 IA 209, 220]. The observations in the said decision were made in different context. But in the present context, it is clear that the conduct of the parties that there was an arbitration agreement and by signing two award it could be said that the parties had agreed to refer the disputes in writing to the arbitration of the named arbitrator. This agreement was done twice, firstly by signing an endorsement below the award and secondly, by entering into an agreement in the form of a letter dated August 14, 1978 (Ex. 40).

7. In that view of the matter, we are in agreement with the High Court that on this aspect the petitioner is not entitled to challenge the award. The High Court has further held that the revision before the High Court suffered from *res judicata*. The High Court, in our opinion, was right in doing so. It was contended that the previous proceedings were without jurisdiction. We are unable to accept this contention. The civil court had jurisdiction to take cognizance of the award under

Sections 14 and 17 of the Act. This question had come up for consideration before the Judicial Committee in *Rajah Amir Hassan Khan v. Sheo Baksh Singh* [(1883-84) 11 IA 237]. The Judicial Committee held that they had perfect jurisdiction to decide the question which was before them (namely, whether the suit was barred as *res judicata*) and they did decide it. It was not relevant according to the Judicial Committee, whether they decided it rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.

8. Section 9 of the Civil Procedure Code provides that the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In this case, there was no such express or implied prohibition nor any inability of the judge concerned. In this connection, it may be useful to refer to the observations of this Court in *Seth Hiralal Patni v. Shri Kali Nath* [(1962) 2 SCR 747 : AIR 1962 SC 199], where this Court observed that the validity of a decree could be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seizing (*sic*) of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree was passed or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it. In this connection reference may be made to the observations of this Court in *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman* [(1971) 1 SCR 66 : (1970) 1 SCC 670 : AIR 1970 SC 1475].

9. Having regard to all these factors, we are of the view that the High Court was right in dismissing the application in the manner it did.

10. In *Guru Nanak Foundation v. M/s Rattan Singh and Sons* [(1982) 1 SCR 842 : (1981) 4 SCC 634 : AIR 1981 SC 2075], where this Court observed that interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act. However, the way in which the proceedings under the Act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. This Court further observed that experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. With respect, we could not agree more in the facts and the circumstances of this case.

11. In the view, however, we have taken of the matter indicated above, we decline to interfere with the order of the High Court. The special leave petition fails and is accordingly dismissed.

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