

Patel Kantibhai Ambalal and Another

Vs

Shambhubhai Chhotabhai Patel (Deceased) through Lrs and Others

Civil Appeal No. 2971 and 2972 of 1985

(M. H. Kania, N. M. Kasliwal JJ)

24.04.1990

JUDGMENT

KANIA, J. -

1. These two appeals are by special leave granted by this Court under Article 136 of Constitution. The firms in question in the two appeals are different but the facts are in pari materia. The respondents before us, except respondent 3, who was the arbitrator, were, along with the appellants, partners in two partnership firms, namely, Chhotabhai Shankerbhai Patel and Sons and Bhagyoday Construction Company, respectively. The accounts of these firms were not settled. All disputes in connection with accounts and the question of settling the accounts were referred by both the firms to the arbitration of respondent 3, for taking the accounts of the partnership firms to the determine the balances and to settle the accounts between the partners. Pursuant to the directions given in Special Civil Suit No. 42 of 1974, on February 13, 1974, respondent 3 filed his award in connection with these disputes in court. On July 10, 1974, the respondents entered their appearance in the award proceedings in the court where the award was filed, and applied for time to file their objections. On August 7, 1974, the respondents filed an application before the court for production of the books of accounts of the said firms in court. According to the appellants, the time to file objections against the award expired on August 10, 1974. On September 2, 1974, the appellants applied for making the award the rule of the court, that, is, for a decree in terms of the award. On September 3, 1974, the respondents filed some objections to the award but filed their detailed objections on September 24, 1974. In their application dated September 3, 1974, for filing the objections the contesting respondents contended that as no notice under Section 14(2) of the Arbitration Act, 1940 (hereinafter referred to as "the said Act") had been served on them, the limitation for filing the objections did not begin to run at all and hence, there was no delay in filing the objections and in the alternative, they pleaded that even assuming that there was some delay, it should be condoned as considerable time had been taken in producing the books of accounts. There applications were made in the Court of 2nd Joint Civil Judge (Senior Division), Vadodara on October 20, 1983. The learned Civil Judge rejected the contention that notice under sub-Section (2) of Section 14 of the said Act was invariably required for time to begin to run for the purposes of limitation and he also rejected the contention that a fresh notice of the filing of the award was required, in the circumstances of the case, under sub-Section (2) of Section 14 of the said Act. Coming to the question of the condonation of delay, he took the view that sufficient cause had been shown for condoning the delay in the filing of the objections, as the production of the books of accounts of the said firms had taken some time. He, therefore, condoned the delay in filing the objections and took them on record. From this decision of the learned Civil Judge the appellants preferred Civil Revision Applications Nos. 948-949 of 1984 in the High Court of Gujarat. These revision petitions were summarily rejected by the High Court. These appeals are directed against the said decisions of the High Court of Gujarat.

2. Although learned counsel for the respondents before us submitted that the learned Civil Judge was in error when he took the view that no fresh notice under Section 14(2) of the said Act was required in the facts and circumstances of the case and that the issue of such a notice was not necessary for limitation to begin to run, we do not want to consider the merits of these contentions as, in our opinion, even if we were to take the view that such a notice was not essential in the facts of the cases before us and that the issue of such a notice is not always a prerequisite for limitation to being to run, we are of the view that no interference is called for with the decision of the High Court.

3. As far as the question of condonation of delay is concerned, we find that the delay was by no means substantial, as the period of delay was for only about a month or so. It is an admitted fact that certain books of account were produced in court pursuant to the orders of the court. The contention of the respondents that some time was taken in inspecting all these books of accounts cannot be rejected merely on the ground that, ultimately, in the objections filed there is nothing said in connection with the books of accounts. Even if the inspection of the books of accounts did not furnish any specific ground for raising any objections to the award that cannot by itself lead to the conclusion that the respondents were not entitled to inspect the books at all. We must also remember that the trial court has a considerable measure of discretion in the question as to whether to condone the delay or not. In these circumstances, we cannot say that the High Court was in error in dismissing the revision petition summarily.

4. In the result, the appeals fail and are dismissed but with no order as to costs.

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