

Zamindara Engineering Company

Vs

Sunil Tractor Company

Civil Appeal No. 5822 of 1991

(L. M. Sharma, R. C. Patnaik JJ)

09.12.1991

### JUDGMENT

1. Heard the learned counsel for the parties. Special leave is granted.
2. The respondent made an application under S. 20 of the Arbitration Act in the Court of District Judge, Ganganagar. The appellant contended that in view of clause 11(ii) of the arbitration agreement in question, the Civil Court at Fazilka is the only Court entitled to entertain the application, and that Ganganagar Court has no jurisdiction to deal with the matter. The question relating to jurisdiction was taken up as a preliminary issue and decided in favour of the respondent, by an order, which was confirmed by the High Court. This decision is under challenge before us.
3. The provisions of clause 11(ii) relied upon by the appellant, are in the following terms:-

"11(ii)- Subject to the provisions of Arbitration hereafter detailed any legal proceedings arising out of or in connection with or rateable to this agreement or the subdealership in the terms hereof shall be filed before the Court of competent, Civil Jurisdiction at Fazilka and the jurisdiction of the other Courts to entertain and decide such proceedings is hereby expressly excluded."

The learned counsel has contended that in view of the clear and unambiguous language in clause 11(ii) there is no scope for upholding the jurisdiction of the Ganganagar Court to decide the case. In reply the learned counsel for the respondent has argued that the jurisdiction of the other Courts is saved by the expression "subject to the provisions of arbitration hereafter detailed" in the said subclause. It is stated that an application under S. 20 of the Arbitration Act cannot be treated to be a legal proceeding before the Civil Court, as the purpose of the application is to secure the remedy by arbitration.

4. We have examined the arbitration agreement and do not find any provision therein on the basis of which the term restricting the jurisdiction of the Court could be held to be inapplicable to petitions under S. 20 and it is not permissible to say that such an application is not a proceeding before a Court. Sub-section (2) of S.20 directs that such an application is to be treated as a suit; and the disputed issue has to be tried and the decision is to be pronounced by the Court in accordance with the law. The stand of the respondent, therefore, has to be rejected. The facts in *The Bahrein Petroleum Co. Ltd. v. P. J. Pappu*, (1966) 1 SCR 461: (AIR 1966 SC 634) relied upon by the appellant clearly indicate that the decision is not applicable to the present case.

5. For the reasons mentioned above we hold that Court at Fazilka alone had jurisdiction to entertain

the application under S. 20 of the Arbitration Act and set aside the impugned judgments of both the Courts below and remit the matter to the Court of the District Judge, Ganganagar, for being dealt with in accordance with law.

6. The learned counsel for the respondent suggested that since the application if filed before the Fazilka Court shall be apparently barred by limitation, some observations may be made by this Court on the question of condonation of delay. The learned counsel for the appellant replied that even ignoring the period during which the present proceeding has remained pending, such an application would be fit to be dismissed on account of limitation. We do not express any opinion on this aspect except observing that it will be open to the respondent to rely on Section 14 of the Limitation Act with respect to the period that has been spent in pursuing the present remedy.

7. The appeal is allowed, but there will be no order as to costs. Appeal allowed.

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