

Patel Motibhai Naranbhai and Another

Vs

Dinubhai Motibhai Patel and Others

Civil Appeal No. 1502 of 1996

(CJI A.M. Ahmadi, S.C. Sen JJ)

09.01.1996

JUDGEMENT

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SEN, J. :-

1. Leave granted.

2. This case arises out of a property dispute between Motibhai Naranbhai Patel and Chandrakant Motibhai Patel, the appellants herein, and Pravinbhai Ishwarbhai Patel, Mahendrakumar Ishwarbhai Patel and Jayantikumar Ishwarbhai Patel, the respondents.

3. The dispute, by mutual consent was referred to arbitration, Dinubhai Motibhai Patel, an Advocate was selected as Arbitrator by the parties. The dispute was referred to the Arbitrator on 21st May, 1985. The Arbitrator made his Award on 26th February, 1986 and gave intimation of the award to all the parties. Thereafter on 24-4-1986 Chabdrakant Dave, an Advocate wrote to the Arbitrator on behalf of the appellants:-

"You have recently given an award as an Arbitrator between my clients and the heirs of his deceased brother Shri Ishwarbhai Naranbhai Patel with regard to the properties and present distribution adhered in some of the representation made by our clients have not considered and thereby my clients hereby raise written objection against the award being filed and hence as an Arbitrator you should not initiate any steps to file."

4. Because of this letter or for some other reason, the Award was not filed in Court. Under the provisions of sub-section (2) of Section 14 of the Arbitration Act, 1940, it was open to any of the parties to the arbitration to request the Arbitrator to file the Award in Court . The parties could also apply to the Court for a direction upon the Arbitrator to file the Award. Neither of these two steps were taken by the appellants or the respondents. Under Article 119 of the Limitation Act, 1963, an application for filing the Award in Court could be made within a period of thirty days from the date of service of notice of the making of the Award. An application for setting aside of an Award could be made also within a period of thirty days from the date of service of the notice of the filing of the Award. Since the Award was not filed in Court , the question of applying for setting aside of the Award did not arise. But the right to apply to the Court for filing of the Award, expired after thirty days of the service of the notice of making of the Award. Neither of the two parties tried to enforce the Award. It has been contended on behalf of the respondents that the parties had come to a settlement in the meantime. But the letter written on 24th April, 1986 by the advocate on behalf of

the appellants does not indicate that any such settlement had been arrived at. On 31st January, 1992 Jayantibhai Ishawarbhair Patel, the fourth respondent herein, instituted a suit in the City Civil Court at Bombay in which one of the prayers was for permanent injunction upon the defendants from putting up any illegal or unauthorised construction on the suit property, viz., plot of land being S. No. 61, Hissa No. 5, Part, admeasuring 1932 sq. yards and industrial shed and also plot of land bearing S. No. 22, Hissa No. 1 Part, admeasuring 295 sq. yards situated at Valnai, Ramachandra Lane Extension, Malad (West), Bombay

5. The plaintiff claimed his right over the suit properties on the basis of the Award dated 26th February, 1986 passed by the Arbitrator. On 5th February, 1992, Motibhai Naranbhai Patel, appellant No. 1, filed his reply raising the point of the maintainability of the suit on the ground that the suit was in effect filed to enforce an Award which has neither been registered nor made the rule of the Court in accordance with law.

6. Promptly, thereafter, on 8th February, 1992, Jayantikumar Ishwarbhair Patel asked the Arbitrator to file the Award, passed on 26th February, 1986, in Court. After a long lapse of six years, the Arbitrator Dinubhai Motibhai Patel not only made an application for filing the Award in Court but also applied for a decree in terms of the Award and engaged a lawyer for this purpose. This action of the Arbitrator is incomprehensible. It appears that he had decided to shed the mantle of an arbitrator and join force with a party in the dispute. A decree, as prayed by the Arbitrator, was passed by the Court of Civil Judge (S.D.) at Anand on 5th October, 1994. It may be mentioned that Jayantikumar Ishwarbhair Patel had also applied for a decree in terms of the Award. Both the applications were disposed of by the aforesaid order passed on 5th October, 1994. The appeal against the decree was dismissed. The appellants have, therefore, come up on appeal before this Court.

7. The only question that falls for determination in this case is whether the Arbitrator could after a long lapse of nearly six years from the date of the Award file his Award and ask for a decree in terms of the Award, especially when neither of the two parties made any application for filing of the Award in Court even after receiving intimation of making of the Award. The question of making an application under Section 17 of the Arbitration Act for judgment according to the Award cannot arise until and unless the Award is filed in Court. There is no specific provisions in the Arbitration Act casting a duty upon the Arbitrator to file his Award in Court suo motu. Article 119 of the Limitation Act lays down a time limit for making an application for filing the Award in Court or for setting aside the Award or getting the Award remitted for reconsideration. In the instant case, the Arbitrator has not merely filed the Award in Court, he has also made an application (Miscellaneous Civil Application No. 19/1992) in the Court of Civil Judge (S. D.) Anand, under Section 14 of the Arbitration Act and has engaged a lawyer Shri G.B. Shah to obtain orders as prayed. It has been recorded in the judgment passed by the Civil Judge on 5th October, 1994 on the application made by the Arbitrator:-

"The brief facts of the applicant's case are as under:-

That the applicant was appointed as Sole Arbitrator in the dispute between non-applicants by reference dated 21-5-1985. That after giving an opportunity to the non-applicant, the applicant had declared his Award on 26-2-1986 and intimation of the Award were given to the non-applicants. That non-applicants No. 1&2 requested the applicant/arbitrator through their advocate Shri C. G. Dave by letter dtd. 24-4-86 not to file the award and non-applicant No. 5 by his letter dtd. 8-2-92 requested the

applicant/arbitrator to file the award. Hence this application has been preferred to file the award under the provisions of Sec. 14 of Arbitration Act, that it is prayed by the applicant that the non-applicant may be served with the notice of filing the award and decree may please be passed in terms of the award. In other words the award passed by the arbitrator may please be made the rule of the Court and decree in terms of the award may be passed."

8. It has also been recorded that the non-applicants No. 1 and 2 had also moved an application under Section 17 of the Arbitration Act and had contended that the applicant/Arbitrator had filed the present application under Section 14 of the Arbitration Act on 14th February, 1992 and the Award should be made the rule of the Court and that a decree in terms of the Award be passed. The Civil Judge ultimately passed the following order:

"Applications are allowed. Award is hereby declared and made the rule of the Court." In other words, the Civil Judge allowed the applications for filing of the Award and passed an order in terms of the Award.

9. Under Sub-section (2) of Section 14 a duty is cast upon the arbitrator to file the award or cause the award to be filed in the Court at the request of the party to the arbitration agreement or if so directed by the Court. There is no provision which requires the arbitrator to apply to the Court for filing of the award and pass a decree in terms of the award. An application for filing the award in Court has to be made within thirty days from the date of service of the notice of making of the award under Article 119 of the Limitation Act. Even if it is held that Article 119 will apply only to an application made by a party and not by the arbitrator, Article 137 will come in the way of the arbitrator's making any application beyond the period of three years from the date of making of the award.

10. Faced with the situation that an application for filing the Award in Court under Section 14 (2) of the Arbitration Act has become barred by limitation. Jayantikumar Ishwarbhai Patel induced the Arbitrator to make an application for filing of the Award and also for making the Award the rule of the Court. In other words. Jayantikumar Ishwarbhai Patel, a party to the dispute, with the help of the Arbitrator, did indirectly what he could not have done directly. We are of the view that law cannot be allowed to be circumvented in this fashion. The Court should have declined to entertain the application moved by the Arbitrator nearly six years after making of the Award. Without the application of the Arbitrator, the application made by Jayantikumar Ishwarbhai Patel under Section 14(2) could not survive. The Court should not come to the aid of a party where there has been unwarrantable delay in seeking the statutory remedy. Any remedy must be sought with reasonable promptitude having regard to the circumstances.

11. In our view, the respondents Nos. 3 to 5 cannot be allowed to circumvent the law with the help of the Arbitrator and obtain indirectly an order under Section 17 of the Arbitration Act, which they could not do directly.

12. The appeal is allowed. The order passed by the High Court on 30th September, 1994 and also the decree in terms of the Award passed by the Civil Judge (S.D.), Anand, on 5th October, 1994 are set aside. There will be no order as to costs.

Appeal allowed.