

SUPREME COURT OF INDIA

M/s Jupiter chit Fund (P) Ltd.

Versus

Shiv Narain Mehta (dead) by Lrs.

(S. Saghir Ahmad and S. N. Phukan, JJ.)

Civil Appeal No. 1288 of 1982.

10.02.2000

ORDER

S. Saghir Ahmad, J. - Appellant is a Chit Fund Private Limited Company. Respondent No. 1 subscribed to the appellant's chit fund scheme for the value of Rs. 1000\ - which was to be repaid in instalments. Respondent Nos. 2 and 3 were the sureties for Respondent No. 1. On a dispute having arisen between the parties for non-payment of instalments, the matter was referred by the appellant to the named arbitrator who passed an award. In proceedings for making the award a rule of the Court, it was held that the award was liable to be set aside on the ground that the reference to the arbitration was not proper as there could not be a unilateral reference without notice to the respondents.

On the award being set aside, the appellant filed a civil suit which was held to be barred by time.

2. Learned counsel for the appellant has placed reliance upon the provisions of Section 37 of the Arbitration Act, 1940 and has contended that the entire period taken by it is pursuing the matter before the arbitrator ought to be excluded under Section 14 of the Limitation Act which has been made applicable to the proceedings under the Arbitration Act. Relevant provisions of Section 37 are quoted below:-

"37. *Limitations.* - (1) All the provisions of the Indian Limitation Act, 1908 (9 of 1908), shall apply to arbitrations as they apply to proceedings in Court.

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(3) For the purposes of this section and of the Indian Limitation Act, 1908 (9 of 1908), an arbitration shall be deemed to be commenced when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator, or where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement requiring that the difference be submitted to the person so named or designated.

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(5) Where the Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the difference referred, the period between commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908 (9 of 1908), for the commencement of the proceedings (including arbitration) with respect to the difference referred."

3. In view of the provisions of Sub-section (5) extracted above, it is contended that for purposes of commencement of the proceedings in a civil suit for the recovery of the amount due from the respondents, the appellant was entitled to exclusion of the entire period from the date on which the arbitration commenced to the date when the award was set aside or when it was held that there could not have been an arbitration between the parties as the dispute in question was not covered by the arbitration agreement.

4. We are not prepared to accept this contention. Sub-section (5) and Sub-section (3) of Section 37 are to be read together to find out the period which is liable to be excluded in computing the time prescribed by the Indian Limitation Act, 1908. Sub-section (5) speaks of the period between "commencement of the arbitration" and the "date of the order of the Court" which is to be excluded in computing the period of limitation for initiating the proceedings in a Court with respect to the subject matter of "difference" which was referred to arbitration. The phrase "commencement of an arbitration", used in Sub-section (5), has been given a fictional meaning in Sub-section (3) which provides that for purposes of the Indian Limitation Act, 1908, an arbitration shall be "deemed to be commenced" when one party to the arbitration agreement serves on the other parties thereto a notice requiring the appointment of an arbitrator or where an arbitrator has already been named in the arbitration agreement, the notice should be for requiring the difference to be submitted to the named arbitrator.

5. Admittedly, in the instant case, notice was not issued by the appellant to the respondents for making a reference to arbitration. Thus, reference to arbitration itself was not proper as was held in the earlier proceedings which have become final between the parties and it was on that basis that the suit was held to be beyond time as the period taken by the appellant in pursuing its remedy before the arbitration was not excluded on the ground that the reference to arbitration itself was bad. We approve the decision of the Allahabad High Court in *Pandit Daya Shankar v. Sheo Ram, 1956 Allahabad Law Journal 40*, which was cited before us by the counsel for the respondents. We find no infirmity in the judgment passed by the High Court. The appeal is dismissed.

Appeal dismissed.