

ALLAHABAD HIGH COURT

L. Charan Das

Vs

L. Gur Saran Das Kapur

(Sinha, J.)

01.12.1944

JUDGMENT

Sinha, J.

1. One Gur Saran Das brought two suits against Charan Company, through Charan Das, in the Court of the Munsif of Cawnpore. The first suit was No. 249 of 1942 for recovery of Rs. 2100 and the second suit, No. 365 of 1942, was for recovery of Rs. 1641-8-0. In the first suit the plaintiff's case was that the defendant entered into contracts of sale or purchase of sugar crystals with the plaintiff. The plaintiff claimed the difference of price or damages. In this suit the plaintiff said that he and the defendant were both acting as principals. In the second suit No. 365 the case was that the plaintiff worked as an agent of the defendant at Bombay. In both these suits the defendant made an application praying for the stay of the suit on the ground that the parties were bound by an arbitration clause in the agreements entered into by them. The matter in controversy in Suit No. 249 should, according to the defendant, have been referred to the Sugar Merchants Association, Cawnpore, and that in the later suit to the Bombay Sugar Merchants Association. This application under Section 34, Arbitration Act, for the stay of proceedings was made before the written statement had been filed. The learned Munsif acceded to the defendant's prayer in Suit No. 365, but repelled it in Suit No. 249. Both parties challenged these orders. The plaintiff's appeal was No. 131 of 1943, whereas the defendant's appeal was No. 54 of 1943. The learned Temporary Civil and Sessions Judge accepted the plaintiff's case in both the cases, with the result that he dismissed appeal No. 54 of 1943 and allowed the appeal No. 131 of 1943. The defendant, aggrieved by the orders of the learned Temporary Civil and Sessions Judge has come in revision before us.

2. A preliminary objection has been taken to the hearing of these revisions by the learned Counsel for the opposite party. We shall take Civil Revision No. 98 of 1944, which arose out of Suit No. 249 and Appeal No. 54. It appears that the learned Munsif examined one Ram Sahai, the manager of the plaintiff's firm and also the defendant, Charan Das. To our mind, this procedure was unknown to the law. It must be borne in mind that the objection has to be taken by

the defendant before the filing of the written statement, that is, before he is allowed to place his cards on the table. The language of the section contemplates that the Court should look at the plaint and see for itself whether the arbitration clause applied to the dispute and, if it did, whether the nature of the dispute was such that the ends of justice would be better met by the decision of the Court than by that of a private forum. The material portion of the section reads thus:

Where any party to an arbitration agreement...commences any legal proceedings...any party...may apply...to stay the proceedings; and i satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement...such authority may make an order staying the proceedings. The language clearly implies that the arbitration clause should be respected and it is only when a clear case has been made out by the plaintiff and if difficult questions of law are likely to arise, such as would inevitably entail a special case being pre-pared and reference to the Court made by an arbitrator that the Court should enter upon an enquiry and decision of the case: vide ('31) 18 A.I.R. 1931 Cal. 772. In this case the judgment of the learned Munsif does not show that he had, when he entered upon an enquiry, this salutary principle of the law in mind. We, therefore, think that the learned Munsif acted at least with material irregularity in the exercise of his jurisdiction or powers under Section 34, Arbitration Act, when he did not accept the defendant's position that the case fell within the arbitration clause. And the same mistake vitiates the order of the learned Judge. The learned Judge in appeal has agreed with the learned Munsif, but has not assigned any particular reason for fortifying the position taken both by him and the learned Munsif. It has also been contended that Section 39, Clause (v), Arbitration Act, gives a right of appeal and not a further right of revision. Reliance has also been placed on Section 39, Clause (ii) read with Section 41, Arbitration Act, that no second appeal shall lie from an order passed in appeal under this section. Section 41 (a) provides that the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act.

3. It has been contended that this makes it clear that the revisional jurisdiction of this Court is ousted. It has been held in numerous cases by this Court that even in cases under enactments, which are self-contained, this Court is not deprived of its revisional powers., Indeed, their Lordships, in *The British India Corporation Ltd., Cawnpore v. Shatiti Narain* ('35) 22 A.I.R. 1935 All. 310, which was a case under the Companies Act and in which it was doubtful if the order of the Judge, which was under consideration in this Court, was a judicial order at all, went to the length of holding: There is nothing in the Companies Act, either expressly or impliedly ousting the revisional jurisdiction of this Court. In the absence of such a provision the limits of the revisional jurisdiction of this Court must be ascertained by reference to Section 115, Civil P.C.

4. We are, therefore, of opinion that there is nothing in Section 39 or Section 41 to deprive us of the powers conferred on us by Section 115, Civil P.C. Prima facie, we think that the matter in controversy seems to be covered by the arbitration clause and as the procedure adopted by the

learned Munsif was one which amounted at least to a material irregularity, we think that we should interfere in revision. We, therefore, allow this revision, set aside the order of the learned Temporary Civil and Sessions Judge and also of the learned Munsif. We, therefore, send the case back to the Court of first instance through the lower appellate Court with the direction to stay the proceedings in the suit and give effect to the arbitration clause. Costs on parties.