

ALLAHABAD HIGH COURT

Sayeed Ullah Khan

Vs.

Temporary Civil Judge of Sultanpur

Civil Misc. Writ No. 2704 of 1958

(Jagdish Sahai, J.)

26.10.1958

ORDER

Jagdish Sahai, J.

1. The petitioners and respondents Nos. 3 to 7 are tenure-holders in village Sidhyawan in the district of Sultanpur, where consolidation of holdings proceedings are going on. There was a dispute between them over proprietary rights of some plots which was referred to the Civil Judge, Sultanpur, for being referred to the arbitrator under the provisions of Section 12 of the U.P. Consolidation of Holdings Act.

The Arbitrator decided against the petitioners. They filed objections before the learned Civil Judge, Sultanpur, and prayed for the award of the arbitrator being set aside. The objections were dismissed by the learned Civil Judge on 23-7-58. Thereafter the present writ petition has been filed in this court. I am not inclined to issue notice in this case because I am of the opinion that the petitioner has got an alternative remedy of filing an appeal under Section 39 of the Arbitration Act. Section 39 of the Arbitration Act runs as follows :

"39. (1) An appeal shall lie from the following orders passed under this Act (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order -

An order –

- (1) Superseding an arbitration;
- (ii) on an award stated in the form of a special case;
- (iii) modifying or correcting an award;
- (iv) filing or refusing to file an arbitration agreement;
- (v) staying or refusing to stay legal proceeding where there is an arbitration agreement;

(vi) setting aside or refusing to set aside an award;

It cannot be denied that the order of the learned Civil Judge dated 23-7-58 is an order refusing to set aside an award and if the Arbitration Act applies to the proceedings under the U.P. Consolidation of Holdings Act, the petitioners would have a right of appeal under Section 39(1)(vi) of the Arbitration Act. As there is no decision of this court on the point I am giving my reasons in details for holding that an appeal lies in the present case. It would be remembered that before 1940 there was no uniform law dealing with arbitration. There were provisions of Schedule II of the Civil Procedure Code, which dealt with the matters relating to arbitration and there were the provisions of the Indian Arbitration Act, 1899. Both the second Schedule of the Civil Procedure Code and the Indian Arbitration Act, 1899, were repealed by the present Arbitration Act, 1940, Section 48 of the present Arbitration Act runs as follows :

"46. The provisions of this Act except Sub-Section (1) of Section 6 and Sections 7, 12 and 37 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as this Act is inconsistent with that Other enactment or with any rules made there under."

This section therefore clearly lays down that the provisions of the Arbitration Act except Sub-Section (i) of Section 6 and Sections 7, 12 and 37 shall apply to every arbitration. Section 39 is not one of those sections in respect of which exception has been created by Section 46 of the Arbitration Act. The arbitration which is the subject-matter of dispute in the present writ petition was made under the provisions of the U.P. Consolidation of Holdings Act and shall be covered by the expression "shall apply to every arbitration under any other enactment for the time being in force". Section 47 of the Arbitration Act runs as follows :

"47. Subject to the provisions of Section 46, and save in so far as is otherwise provided by any law for the time being in force the provisions of this Act shall apply to all arbitrations and to all proceedings there under."

(2) Section 47 of the Arbitration Act makes the provisions of the Arbitration Act with some exceptions applicable to all arbitrations. It must therefore be held that the provisions of the Arbitration Act would apply even to an arbitration under the provisions of the U.P. Consolidation of Holdings Act, unless there is something to contrary in the U.P. Consolidation of Holdings Act itself. Section 37 of the U.P. Consolidation of Holdings Act runs as follows :

"37. (1) Where any matter is by or under this Act directed to be referred to an Arbitrator for determination, the Arbitrator shall be appointed by the State Government from amongst Civil Judicial Officers or Assistant Collector of the 1st class of not less than five years' standing and in all other respects the matter shall be determined in accordance with the provisions of the Arbitration Act, 1940.

(2) The appointment of an Arbitrator under Sub-Section (1) may be made either generally or in respect of any particular case or class of cases or in respect of any specified area or areas."

It appears to me on a plain reading of the provisions of Section 37 of the U.P. Consolidation of Holdings Act that the provisions of the Indian Arbitration Act have been made applicable to the proceedings under the U.P. Consolidation of Holdings Act. It is true that under Section 12(8) of the U.P. Consolidation of Holdings Act, which runs as follows, the decision of the arbitrator under Sub-Section (4) has been given a finality:

"12. (6) The decision of the Arbitrator under Sub-Section shall be final."

To my mind what the words "The decision of the Arbitrator shall be final" mean is that it shall be final subject to the provisions of the Indian Arbitration Act which has been made applicable to an arbitration under the U.P. Consolidation of Holdings Act. Section 12(6) must be read along with Section 37 of the U.P. Consolidation of Holdings Act. It would be noticed that the decision given under Section 12(4) of the U.P. Consolidation of Holdings Act by itself cannot become operative unless it has been confirmed by the Civil Judge. Section 12(4) of the U.P. Consolidation of Holdings Act runs as follows:

"12. (4) Where the objection filed under Sub-Section (1) involves a question of title and such question has not already been determined by a competent court, the Consolidation Officer shall refer the question for determination to the Civil Judge having jurisdiction who shall thereupon refer it to the Arbitrator."

The provisions of this Sub-Section clearly lay down that no reference can be made to the Arbitrator directly. The "Consolidation Officer has to make a reference to the Civil Judge, who in his turn refers it to the Arbitrator. Rule 63 of the Rules framed under the U.P. Consolidation of Holdings Act runs follows :

"63 (1) When the objection filed under Sub-Section (1) of Section 13 or under Section 20 or 34 involves a question of title and the same, has not already been decided by a competent Court, the Assistant Consolidation Officer shall call upon the parties to file written statement about their respective claims as regards the subject-matter in dispute and also ascertain from parties, if any suit or proceedings is pending in any court of the first instance or in appeal.

2. If any suit or proceedings is pending in any Court of the first instance or in appeal, the Assistant Consolidation Officer shall ascertain full particulars of the suit or proceedings from parties and the name of the court where they are pending and intimate the same along with the reference to the Civil Judge having jurisdiction and transmit the record to him.

3. The Assistant Consolidation Officer shall require the parties to file such documentary evidence, including extracts from revenue papers, as they may like to produce in support of their respective claims. He shall thereafter intimate the date on which they should attend the court of the Civil Judge while transmitting the record to him.

4. On receipt of the record the Civil Judge shall frame such issues as may be necessary and refer them to the Arbitrator, appointed in accordance with the provisions of Section 37 for making the award within a specified period, and intimate the parties of the date on which they should appear before the Arbitrator and obtain their signatures or thumb impression as token of the information.

5. Where the Civil Judge receives information from the Assistant Consolidation Officer of the pendency of suit or proceeding before any Court in respect of the matter referred to him for Arbitration, he shall move the court concerned to stay the suit or proceeding in question.

6. On receipt of the reference, the Arbitrator shall afford the parties an opportunity to produce oral evidence and such further documentary evidence as may be necessary, before making the award.

7. Where the Arbitrator has made the award. He shall sign it and give notice in writing to the parties of the making and signing thereof. The record of the case shall thereafter be transmitted by him to the Civil Judge concerned and after giving intimation of the date on which the parties should appear before him.

8. On the date so fixed or any subsequent date to which the proceedings might be adjourned, the Civil Judge shall, with or without modifications, made by him in accordance with the provisions of Section 15 of the Indian Arbitration Act, 1940, pronounce judgment in terms of the award, where he does not consider it necessary to remit the award under Section 10 of the aforesaid Act." Clause (4) of the aforesaid rule requires that the civil Judge shall frame such issues as may be necessary and refer them to Arbitrator. Clauses (6) and (7) deal with the procedure that has to be followed by the arbitrator Clause (7) further lays down that after the arbitrator has given his award he shall transmit it to the Civil Judge concerned. Under clause (8) the Civil Judge has to consider whether he should remit the award under Section 16 of the Indian Arbitration Act, or set it aside under Section 80 of the said Act. If he remits the award to the arbitrator, the arbitrator is required to make a fresh award under clause (9) of the Rule and then to remit it back to the Civil Judge. The Civil Judge under clause (10) is required to issue direction to the Assistant Consolidation Officer concerned for making the corrections in the records. From the provisions of Section 12(4) and rule 63 it is clear that the decision of the arbitrator is final under Sub-Section (6) of Section 12 only after the award has been made a rule of the court.

I have already held that the provisions of the Indian Arbitration Act have been made applicable

to an award under the provisions of the U.P. Consolidation of Holdings Act both by virtue of Sections 46 and 47 of the Indian Arbitration Act and also by Section 37 of the U.P. Consolidation of Holdings Act. The provisions of Section 39 would also apply to a case of an award under the U.P. Consolidation of Holdings Act. It is true that a right of appeal is a substantive right and it must be expressly conferred by a Statute. It however appears to me that a right of appeal has been expressly conferred upon the petitioners by the provisions of the Indian Arbitration Act as also Section 37 of the U.P. Consolidation of Holdings Act. It is not necessary that there should have been separate section in the U.P. Consolidation of Holdings Act providing a right of appeal. That being so I am not inclined to admit this petition. The petition is accordingly rejected.
Petition rejected.