

ALLAHABAD HIGH COURT

Queens College Kanetra

Vs.

TheCollector

Civil Revn. No. 710 of 1972

(G.C. Mathur, J.)

15.02.1974

ORDER

G.C. Mathur, J.

1. The applicants filed a suit against the opposite parties in the court of the Civil Judge, Varanasi. On the application of the plaintiffs, an ex parte ad interim injunction was issued against the defendants. When the defendants appeared, they moved an application under Section 34 of the Arbitration Act for staying the hearing of the suit as there was a binding agreement between the parties to refer the dispute to arbitration. This application was allowed on January 14, 1972, Thereafter the defendants moved an application that the ex parte ad interim injunction be vacated. The plaintiffs raised an objection that, after the stay of the hearing of the suit under Section 34 of the Arbitration Act, the court had no jurisdiction to hear the injunction matter. By its order dated May 6, 1972, the trial Court held that the injunction matter could be disposed of by it and fixed May 20, 1972, for its disposal. Against this order, the plaintiffs filed a revision before the District Judge, Varanasi. The District Judge rejected the revision summarily, holding that the order of the trial court did not amount to a case decided and that the stay of a suit did not divest the trial court of its jurisdiction to dispose of interlocutory matters. The plaintiffs have now come up to this Court in revision.

2. The trial court has relied on certain decisions based on the provisions of Section 41 of the Arbitration Act in coming to the conclusion that it has jurisdiction to dispose of interlocutory matters, even though the hearing of the suit is stayed under Section 34. Some decided cases, in which Section 41 has been interpreted, were cited before me also. Section 41 reads thus :-

"41. Procedure and powers of Court - Subject to the provisions of this Act and of rules made there under -

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under this Act, and

(b) the Court shall have, for the purpose of and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court :

Provided that nothing in clause shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect to any of such matters."

In the second Schedule, which enumerates the powers of Court, clause (4) relates to interim injunctions and the appointment of Receivers. Thus, under Section 41, the Court can grant injunctions and appoint Receivers. But I think that Section 41 has no application to the present case. There are two types of cases in which the provisions of the Arbitration Act can be invoked. The first type is pending suits in which applications under certain provisions of the Arbitration Act can be made. Examples of such applications are applications under Section 21 for referring any matter in dispute in a suit to arbitration and applications under Section 34 for staying the hearing of a suit. The second class of cases is where no regular suit has been filed but proceedings are initiated in a court by an application made under the Arbitration Act. Instances of such cases are applications under Section 14 for filing an award in court and applications under Section 20 for filing an arbitration agreement in court. It is to this second class of cases that Section 41 applies, for, in the first class of cases, the court hearing a regular suit already has power under the Code of Civil Procedure to grant injunctions and to appoint receivers. The definition of the word 'court' in Section 2(c) also points to the same conclusion. 'Court' is defined to mean a civil court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit. The definition indicates that the word 'court' here does not mean the court before which a suit has actually been filed but it means a court which has jurisdiction to entertain a suit in respect of the subject-matter of the reference.

3. In the present case, since a regular suit had been filed before the trial' court, it had, under the Code of Civil Procedure, power to consider and dispose of applications for injunctions and for vacating, injunctions. There is no provision in the Arbitration Act which, in any way, prevents the court from disposing of such matters. A stay under Section 34 of the Arbitration Act does not affect the powers of the court which it possesses under the Code.

4. It was then contended by learned counsel for the applicants that if, before the hearing of the suit was stayed under Section 34, the defendants had sought to get the ex parte injunction vacated, they would have become disentitled to the stay, as such action would have been a step in the suit and they, having obtained a stay of the suit, are not now entitled to take the same step for vacating the injunction. I am unable to accept the contention that taking steps to set an ex parte injunction vacated amounts to taking such a step in the suit as would disentitle the defendants from applying for stay under Section 34. Under Section 34, an application may be made by the defendant "at any time before filing a written statement or taking any other steps in the proceedings". The true test for determining whether an act is "a step in the proceedings" is not so much the question as to whether it is an application but whether the act displays an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by arbitration. There must be submission to the jurisdiction of the court for adjudication of the claim in the suit itself. There can be no doubt that the act of the defendant to set an expert order of injunction vacated does not indicate an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by arbitration. The adjudication of the injunction matter does not amount to adjudication of the claim in the suit itself. I am, therefore, of opinion that the action of a defendant in a suit to have an injunction matter decided finally cannot amount to "a step in the proceedings", so as to disentitle him from successfully maintaining an application under Section 34 of the Arbitration Act. In this view, I am supported by a decision of a Division Bench of the Madhya Pradesh High Court in *Sansarchand Deshraj v. State of Madhya Pradesh*,¹ and by the decision of a learned Single Judge of the Punjab High Court in *M/s. Charan Das and Sons v. M/s. Harbhajan Singh Hardit Singh*,²

5. Thus, in the present case, if the defendants had, before obtaining the stay

under Section 34, moved to have the ex parte ad interim injunction vacated, their action would not have disentitled them from making an application under Section 34 and from obtaining the stay. That being so, there could be no objection to their doing so after they had obtained the stay. The Court, having jurisdiction under the Code of Civil Procedure to consider the matter, was fully, justified in holding that, the question could be gone into by it. I have no doubt that the trial court had jurisdiction to hear and decide the injunction matter.

6. The revision is without force and is hereby dismissed with costs. The stay order is vacated.

Revision dismissed.

Cases Referred.

1. AIR 1961 Ma Pra 322
2. AIR 1952 Pun 109