

CALCUTTA HIGH COURT

Britania Building and Iron Co Ltd

Vs

Gobinda Chandra Bhattacharjee

(Lahiri C.J.)

29.06.1959

JUDGEMENT

Lahiri C.J.

(1.) THIS is an application for the extension of time for making of an award by an umpire. The facts are not in dispute. The applicant Britania Building and Iron Co. Ltd., entered into an agreement with the respondent Gobinda Chandra Bhattacharjee on January 22, 1954 by which the parties agreed to carry on business in co-partnership under certain terms and conditions. The agreement was executed at Calcutta within the jurisdiction of this Court. It contained the following arbitration clauses :- "All disputes which shall arise between the parties and whether during or after determination of this agreement in relation to any matter whatsoever arising out of this agreement shall be referred to arbitration of a single arbitrator if agreed upon or two arbitrators due to be appointed by the party hereto of the first part and the other by the party hereto of the second part in the latter case the arbitrators before proceeding shall appoint an umpire. The proceedings of the arbitration shall be in accordance with and subject to the provisions of the Indian Arbitration Act I of 1899 or any statutory modification thereof for the time being in force."

(2.) DISPUTE and differences arose between the parties and the applicant filed a suit in this court against the respondent on June 25, 1957. The respondent made an application for stay of the suit under the provisions of section 34 of the Indian Arbitration Act. In the petition filed in this case the respondent stated that he had already appointed an arbitrator while the applicant had not appointed its arbitrator. By an order made on September 24, 1954, the suit was stayed. On the same day the applicant appointed his arbitrator. On September 18, 1957 the respondent made an application before the Subordinate Judge of Gauhati under section 20 of the Indian Arbitration Act for filing the arbitration agreement and for appointment of an arbitrator: the said application is still pending. The respondent also applied to the Gauhati Court for an injunction restraining the applicant from receiving and collecting certain payments. An objection was taken by the applicant that the Gauhati Court had no jurisdiction to go into the matter. This was overruled by the Subordinate Judge of Gauhati who dismissed the application of the respondent on its merits but came to the conclusion that the court at Gauhati alone had jurisdiction to deal with the matter. The arbitrators appointed by the parties did not meet, nor did they appoint an umpire. The

applicant made an application to this court for the appointment of an umpire, the respondent took the plea that this court had no jurisdiction to entertain the application. On June 16, 1958 Ray, J. made an order appointing Mr. D. R. Das, deceased, as an umpire. Mr. Das held a meeting of the umpire and gave directions for filing of the statement and counter statement of facts but before he could hold an effective meeting Mr. Das died on August 14, 1958 On August 25, the applicant made an application to this court for appointment of another umpire in place of Mr. D. R. Das, deceased. No affidavit-in-opposition was filed on behalf of the respondent. On September 4, 1958, Ray, J, made an order appointing Mr. B. Das, Barrister-at-Law, as an umpire, without any protest as to the jurisdiction of this court on the part of the respondent. Mr. Das held a meeting on September 18, 1958 and gave certain directions to the parties but the time to file his award expired on January 4, 1959 before the conclusion of the arbitration proceedings. The present application was moved on Master's summons dated February 11, 1959, the main prayer being that the time for making an award should be extended up to June 13, 1959. It does not appear that it suited the parties to move the application before May 27, and the only point taken by the respondent is that this court has no jurisdiction in the matter and ought not to deal with the arbitration agreement between the parties or make any order thereunder.

(3.) FOR the above contention reliance is placed on section 31 of the Indian Arbitration Act. In order however, to appreciate the point it is necessary to refer to a few of the provisions of the Act. Under section 2 of the Act "an agreement means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not" ; "Court" means 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, but does not, except for the purpose of arbitration proceedings under section 21, include a Small Cause Court "reference" means a reference to arbitration. Chapter II of the Act contains provisions with regard to appointment of arbitrators by the parties themselves and gives the court power to appoint arbitrators or umpires in certain cases. Provision is also made for judgment being given in terms of the award. Chapter III of the Act contains only one section, namely section 20 which provides as follows:- (1) "where any persons have entered into an arbitration agreement before the institution of any suit with respect to the subject-matter of the agreement or any part of it, and where a difference has arisen to which the agreement applies, they or any of them, instead of proceeding under Chapter II may apply to a Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court. (2) "The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs and the remainder as defendant or defendants, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants. (3) "On such application being made, the court shall direct notice thereof to be given to all parties to the agreement other than the applicants, requiring them to show cause within the time specified in the notice why the agreement should not be filed. (4) "Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed by the parties, whether in the agreement or otherwise, or, where the parties cannot agree upon an arbitrator, to an arbitrator appointed by the Court. (5) "Thereafter the arbitration shall proceed in accordance with and shall be governed by, the other provisions of this Act so far as they can be made applicable." By section 26 the provisions of Chapter V of the Act have been made applicable to all arbitrations except as otherwise provided

in the Act. Chapter V contains 13 sections, namely sections 26 to 38. Section 31 provides as follows: (1) "Subject to the provisions of this Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates. (2) "Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act, all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court. (3) "All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be filed, and to no other Court. (4) "Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court." Section 34 contains provisions for stay of legal proceedings where there is an arbitration agreement. Section 31 deals with the competency of Courts under the Act. Under sub-section (1) of the section an award may be filed in any Court having jurisdiction in the matter to which the reference relates. There is no dispute in this case that a suit in respect of disputes and differences between the parties herein can be filed either at Calcutta or at Gauhati, and a Civil Court at Calcutta as also a Civil Court at Gauhati would have jurisdiction under section 2(c) of the Act. It is contended by the respondent that in view of the application under section 20 of the Act the operation of sub-section (4) of section 31 excludes the jurisdiction of all courts other than the Gauhati Court over the arbitration proceedings and that subsequent applications arising out of the reference can only be made to that Court and to no other Court. On a plain reading of the section there does not appear to be any answer to this contention. Mr. Dev, learned counsel, for the applicant argued that by reason of the application for stay of the suit presented by the respondent under section 34 of the Act this Court alone has jurisdiction to entertain application arising out of the reference. I am unable to accept this contention because a party to an arbitration agreement may choose to file a suit in a Court which has no jurisdiction to go into the matter at all and merely because the defendant in such a suit has to make an application to that Court under section 34 of the Act for stay of the suit it cannot, be said that the Court which otherwise has no jurisdiction in the matter becomes a Court within the meaning of section 2 sub-section (c) of the Act. I was referred to the judgment of Mr. Justice Bachawat, in *Chotey Lal Shamlal-v-Cooch Behar Oil Mills Ltd¹*, in which the learned Judge has taken the same view. In *Basanti Cotton Mills-v-Dhingra Bros²*. (2) Das Gupta J. (as he then was) held that exercising jurisdiction to pass a stay order was not exercising jurisdiction over arbitration proceedings and where a suit was pending in a Small Cause Court it was that Court alone to whom an application for stay of a suit could be made although under the Act a Small Cause Court has no jurisdiction over arbitration proceedings. It is also noteworthy that the word "Court". does not occur in section 34 of the Act and the expression "judicial authority" is used instead. ;

Cases Referred.

11.L.R. (1954) 1 Cal page 418

2A.I.R. 1949 Cal page 648

