

## DELHI HIGH COURT

Chadha Motor Transport Co.

Vs.

R. N. Chopra. (Delhi)

Civil Revisions Nos. 319-D of 1964, 320-D of 1964 and 688-D of 1965  
(H. R. Khanna and H. Hardy, JJ.)

17.1.1967

### ORDER

**H. R. Khanna and H. Hardy, JJ.**

1. This judgment would dispose of Civil Revisions Nos. 319-D of 1964, No. 320-D of 1964 and No. 668-D of 1965, all of which have been filed by Chadha Motor Transport Company (Private) Limited.

2. Arguments have been addressed before us in Civil Revision No. 319-D of 1964 and it is stated by learned counsel for the parties that the decision in this case would also govern the other two cases because the matter involved is identical. In the circumstances, we may briefly refer to the facts of the case in Civil Revision No. 319-D of 1964. R.N. Chopra respondent in that revision brought a suit for recovery of Rs. 328.80 nP, on account of compensation for non-delivery of goods against the petitioner Transport Company in the Court of Additional Judge, Small Causes, Delhi. The petitioner-company made an application under Section 34 of the Arbitration Act 1940 (Act No. X of 1940) (hereinafter referred to as the Act) for stay of the suit on the ground that the plaintiff-respondent had entered into an agreement with the petitioner that all disputes in respect of the goods receipt, under which the goods in dispute were booked, would be referred to arbitrator. The respondent denied the existence of such an arbitration agreement and averred that there was no dispute between the parties falling within the purview of arbitration clause as printed on the reverse of the goods receipt. The learned Additional Judge Small Causes Court held that the Court of Small Causes had no Jurisdiction to stay the proceedings under Section 34 of the Act. In arriving at this conclusion the learned Additional Judge relied upon a judgment of Grover, J. in *Jai Perkash v. Managing Committee of the Minto Road Club, New Delhi*

. Civil Revn. No. 250-D of 1957, D/-29-2-1960 (Punj). The petitioner Company then came up in revision to this Court.

3. At the hearing of the present revision and the two connected revisions before Jindra Lal, J., the counsel for the petitioner challenged the correctness of the view of Grover, J. in Jai Perkash's case, CR No. 250-D of 1957 D/-29-2-1960 (Punj), and relied upon two decisions of Calcutta High Court. *Basanti Cotton Mills Ltd. v. M/s. Dhingra Brothers*, <sup>1</sup> and *Choteylal Shamlal v. Cooch Behar Oil Mills Ltd.* <sup>2</sup> Jindra Lal, J. expressed his doubt regarding the correctness of the view of Grover, J. and directed that the matter may be placed before my Lord the Chief Justice for constituting a larger Bench to hear the revisions. It is, in these circumstances, that the revisions have been posted for hearing before the Division Bench.

4. Section 34 of the Act, under which the petitioner Company applied to the Court below for stay of the suit, reads as under:-

"Where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time before riling a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceedings".

The above section deals with power to stay legal proceedings where there is an arbitration agreement. We are not concerned in the present case with the various aspects of the section, because the matter, which needs determination by us, lies within a narrow compass, and it is whether a Court of Small Causes can stay a suit under the above section if the other requirements are fulfilled. Plain reading of the above section shows that where any party to an arbitration agreement commences any legal proceedings in respect of any matter agreed to be referred against any other party to the agreement, any party to such legal proceedings may, at any time before filing a written statement or taking any other steps in the proceedings, apply to the judicial authority before which the proceedings are pending to stay the proceedings. It is further provided that if the aforesaid authority is satisfied that there is no sufficient

reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, the judicial authority referred to may make an order staying the proceedings. The significant words used in the section are "the judicial authority before which the proceedings are pending" and the power of staying proceedings, according to the language used in the section, is clearly vested in the aforesaid judicial authority. It can hardly be disputed that an Additional Judge of Small Causes Court constitutes judicial authority, and as the suit, which was sought to be stayed, was pending before the Additional Judge of Small Causes Court, he must, in our view, be held to be the "judicial authority before which the proceedings are pending". It would follow from the above that the Court below had the power and competence to stay the suit.

5. In the case of *Jai Perakash (supra)*, Grover, J., accepted the revision of the petitioner *ex parte* and held that a suit for recovery of money pending in the Court of Additional Judge, Small Causes, could not be stayed under Section 34 of the Act. In arriving at this conclusion the learned Judge referred to the definition of the word "Court" as given in Section 2(c) of the Act as well as to the provisions of Section 40 of the Act. The word "Court" has been defined in Section 2(c) of the Act as under:-

"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;" Section 40 of the Act runs thus :-

"A Small Cause Court shall have no jurisdiction over any arbitration proceedings or over any application arising thereout save an application made under Section 21."

The definition of the word "Court" as well as the provisions of Section 40 of the Act, in our view, do not militate against the conclusion at which we have arrived that a Court of Small Causes is competent to stay a suit under Section 34 of the Act. In the various sections of the Act there is provision about the powers of the Court and the making of applications to Court. For example. Section 8 deals with power of Court to appoint arbitrator or umpire. Section 11 relates to the power of Court to remove arbitrators or umpire in certain circumstances, while Section 12 relates to the power of Court where arbitrator is removed or his authority is revoked. Sections 15 to 18 deal with the power of Court to modify or remit award, to pass a judgment in terms of the

award, to pass interim orders and to supersede arbitration. Section 20 deals with an application to file an arbitration agreement in a Court. Section 28 gives a power to Court of enlarging time for making award, while Section 33 makes provision for an application to the Court to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined. According to Section 31, an award may be filed in any Court having jurisdiction in the matter to which reference relates. Section 36 of the Act deals with the powers of the Court in certain contingencies.

The Court, which is vested with the powers referred to above and to which the applications mentioned above can be made, in view of the definition of the word "Court", can only be the 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. It is also obvious that in view of the definition of the word "Court", a Court of Small Causes would not have jurisdiction to exercise any of the powers referred to above or to entertain the applications enumerated above. The only exception provided is in respect of arbitration proceedings under Section 21 of the Act according to which, where in any suit all the parties interested agree that any matter in difference between them in the suit shall be referred to arbitration, they may at any time before judgment is pronounced, apply in writing to the Court for an order of reference. Although the jurisdiction of the Court of Small Causes, except for a limited purpose, is excluded and it is not vested with the authority to exercise the power or entertain applications specified in the various sections of the Act referred to above, in our view, it does not follow there from that a Court of Small Causes cannot deal with an application under Section 34 of the Act' and grant a stay even though the other requirements of the section are fulfilled. The reason for that is that Section 34 of the Act does not talk of a "Court" but of "the judicial authority before which the proceedings are pending". The clear language of the section shows that the applications in respect of the judicial proceedings pending before a Court of Small Causes can only be made to that Court and it is that Court which is vested with the jurisdiction to stay the suit.

The language of Section 34 of the Act in this respect is at variance with that of Section 19 of the Indian Arbitration Act, 1899 (Act No. 9 of 1899), wherein the corresponding words were :

"May, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings."

The above change of language is not without significance and whatever might have been the limitation of a Court of Small Causes in the matter of granting stay under Section 19 of the Act of 1899, no such limitation is there in respect of exercise of such power under Section 34 of the Act of 1940. It would indeed be straining the language of Section 34, which is couched in plain and unambiguous terms, to read in the section an exclusion of the jurisdiction of a Court of Small Causes in the matter of granting stay. Such an exclusion is not warranted by the words used and it is not permissible to strain those words in order to spell out an inference of exclusion.

6. So far as Section 40 of the Act is concerned, it refers to "jurisdiction over any arbitration proceedings or over any application arising thereout". An application under Section 34 is only for stay of legal proceedings commenced before a judicial authority and the aforesaid authority by granting such a stay does not get jurisdiction over arbitration proceedings or over applications arising there out. Sections 34 and 40 deal, in our view, with two different and distinct matters. Section 34 is confined only to the matter of stay of legal proceedings, while Section 40 covers within its ambit arbitration proceedings and applications arising there out. An application for stay under Section 34 cannot be held to deal with the matters referred to in Section 40. It is a well-established canon of interpretation of statutes that the different provisions of an enactment have to be construed harmoniously. Keeping this principle in view, the power of granting stay given to a Court or mall Causes by the plain language of Section 34 cannot be held to have been taken away and set at naught by Section 40 of the Act.

7. The reported decisions support the conclusion at which we have arrived. AIR 1949 Calcutta 684 is a case decided by Das Gupta, J., as he then was. The head-note of that case, which is based upon observations in the body of the judgment, reads :

" Strictly interpreted, Section 40 only means this that the Small Cause Court shall have no jurisdiction over the proceedings of the arbitration which have started nor will have any jurisdiction for any application which may arise out of those proceedings. The stage at which the application for stay is made and the stay order is passed is not any part of the arbitration proceedings. This provision in law that the Small Cause Court has no jurisdiction over any arbitration proceedings can in no way affect the interpretation of law which will give the Small Cause Court jurisdiction to pass a stay order. For clearly, exercising jurisdiction to pass stay orders is not exercising jurisdiction over arbitration proceedings. Where, therefore, a suit is pending before a Small Cause Court,

the Small Cause Court is the authority to whom the application for stay of suit has to be made, and such authority may pass an order staying the suit."

In ILR (1954) 1 Cal 418, Bachawat J., as he then was, observed:

"Section 34 does not provide for an application to a Court as defined under Section 2(c). Section 34 provides for an application to the judicial authority before whom a legal proceeding is pending for stay of that proceeding.

The section purposely uses the expression 'judicial authority'. The application is made not to the Court but to the judicial authority before whom a proceeding is pending.

In my judgment, an application for stay made to a judicial authority under Section 34 of the Act is not an application under the Act in a reference in a Court competent to entertain it as contemplated by Section 31(4) of the Act.

An application for stay of a legal proceeding to the judicial authority before whom it is pending is always an application under the Act to a judicial authority competent to entertain it. The judicial authority, however, need not necessarily be a Court competent under Section 2(c) to decide the questions forming the subject-matter of the reference and it is impossible to hold that the judicial authority becomes the exclusive Arbitration Court on the making of the application for stay."

*Badri Narayan Lall v. Union of India*,<sup>3</sup> is a case decided by a Division Bench (Bachawat and Laifc, JJ.). In the aforesaid case the learned Judges dealt with the question as to whether a City Civil Court Judge has jurisdiction to pass an order under Section 34 of the Act staying a suit pending before him. According to Section 5(4) of the City Civil Court Act, 1953, the City Civil Court shall not have jurisdiction to try suits and proceedings of the description specified in the First Schedule. Item No. 11 of the First Schedule mentions suits and proceedings under the Arbitration Act, 1940, other than suits and proceedings under Chapter IV of that Act. Bachawat, J., observed :

"Now the application for stay of the pending suit under Section 34 P> of the Arbitration Act, 1940, is a proceeding in that suit. The City Civil Court is competent to try the suit and all proceedings in it. The ancillary proceeding in the suit for its stay under Section 34 of the Arbitration Act is not covered by the expression 'suits and proceedings under the Arbitration Act, 1940' in item No. 11 of the First Schedule of the City Civil Court Act, 1953, read with Sections 2(5) and 5(2) of the Act and die City Civil Court is not debarred from trying the

application.

Only the City Civil Court Judge before whom the suit is pending is competent to entertain the application for its stay under Section 34 of the Arbitration Act, 1940. No other judicial authority is competent to entertain the application. Section 5(4) of the City Civil Court Act, 1953, read with the First Schedule to the Act does not take away the jurisdiction of the City Civil Court Judge to entertain an application under Section 34 of the Arbitration Act, 1940, which can be made to him only and which no other judicial authority is competent to entertain and try."

Laik, J. also came to the same conclusion, and in doing so, he relied *inter alia* upon the decisions in the cases of Basanti Cotton Mills, AIR 1949 Calcutta 684, and Choteylal Shamlal, ILR (3954) 1 Cal 418 (supra).

8. We would, therefore, hold that the Court below was in error in rejecting the applications under Section 34 of the petitioner-Company on the short ground that it had no jurisdiction to grant stay under Section 34 of the Act. We, accordingly, accept the revision petitions, set aside the impugned orders and direct that the applications under Section 34 of the Act may be disposed of on their merits. The parties, in the circumstances of the case, are left to bear their own costs.

Revision petition accepted.

Cases Referred.

1. AIR 1949 Calcutta 684
2. ILR (1954) 1 Cal 418