

BOMBAY HIGH COURT

Edward Radbone

Vs

Juggilal Kamalapat

(Kania, J.)

01.10.1942

JUDGMENT

Kania, J.

1. This is a motion to stay the suit under Section 34 of the Indian Arbitration Act, 1940. A preliminary objection is taken on behalf of the plaintiff that the defendants have taken a step in the proceedings, to wit, made applications to the Court by consent precipes on two occasions to extend the time to file their written statement. These facts are not denied. The question is whether they amount to taking a step in the proceedings within the meaning of Section 34 of the Indian Arbitration Act.

2. The plaintiff relies on *Sarat Kumar Roy v. Corporation of Calcutta*¹ in which the defendant corporation had taken out a summons for an order that they might have further time to file their written statement. With the same they had also sent a letter to the plaintiff's attorneys informing them that before filing the written statement an application would be made to the Court for an order of reference to arbitration in terms of the contract. It was held that in spite of that letter the application for an order for extension of time was a step in the proceedings and therefore the stay was refused.

3. On the other hand the defendants relied on *Brighton Marine Palace and Pier, Limited v. Woodhouse*². In that case the solicitor of the defendant wrote to the other side and asked for an extension of time That request was granted. North J. in delivering the judgment observed (p. 488) :-In my opinion, asking for time by letter is not taking a step in the action; it is taking a step outside the action altogether.

4. In *Bhowanidas Ramgobind v. Panachand Luchmipat*³ an application was made to the Court for leave to enter an appearance. It should be noted that that application was made when Section 19 of the Indian Arbitration Act (IX of 1899) was in operation. The material part of that section was in these terms :-

...any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply....It is, therefore, clear that under the old Act no step taken before appearance was filed was considered by the express wording of the section as a step in the proceedings and could not give rise to the objection that the party had taken a step in the proceedings and was, therefore, precluded from making the application for stay. The observations of Lindley L.J. as to the meaning of the corresponding section of the English Act in *Ives & Barker v. Willows*⁴ were accepted as applicable to India. The observations were (p. 484) :-The authorities shew that a step in the proceedings means something in the nature of an application to the Court, and not mere talk between solicitors or solicitors' clerks, nor the writing of letters, but the taking of some step, such as taking out a summons or something of that kind, which is, in the technical sense, a step in the proceedings. In *Bartlett v. Ford's Hotel Company*⁵ the defendants had obtained an order for extension of time for delivery of defence on a summons. It was held that that amounted to taking a step in the proceedings within the meaning of the corresponding section in the English Act. On appeal that decision was confirmed in [1896] A.C. 1.

5. It, therefore, appears clear that according to the reported decisions a mere exchange of letters does not amount to taking a step in the proceedings, while according to the observations of Lindley L.J. (which appear to be approved of in the later decisions), anything done in the nature of an application is considered as taking a step in the proceedings. That appears to be the view of the Calcutta Court also in the abovementioned two cases. Applying the same rule, it seems to me clear that in the present case the defendants' attorneys did not merely write to the plaintiff's attorneys to obtain their consent but a further step was taken, viz. the consent precipes were filed with the Prothonotary. As the Prothonotary has jurisdiction under the High Court Rules to grant an extension of time, he made the orders granting time on the precipes. The filing of the precipes under the circumstances therefore amounts to consent applications to the Prothonotary for extensions of time, which were granted. These were steps taken in the proceedings by the defendants although with the consent of the plaintiff. The notice of motion is, therefore, dismissed with costs.

Cases Referred.

1(1907) I.L.R. 34 Cal. 443

2 [1893] 2 Ch. 486

3(1924) I.L.R. 52 Cal. 453

4[1894] 2 Ch. 478

5[1895] 1 Q.B. 850