

RAJASTHAN HIGH COURT

Sardar Harnam Puri

Vs.

Union of India

C.R.P. No. 670 of 2002
(Gopal Krishan Vyas, J.)

01.09.2005

ORDER

Gopal Krishan Vyas, J.

1. By filing the present revision petition the petitioner has challenged the order dated 20-7-2002 passed by the Addl. District Judge No. 2, Chittorgarh in Civil Original Case No. 34/99.

2. After the arguments were concluded in the matter, learned counsel for the petitioner moved application for correction of the cause-title praying that by typographical error Civil Original Case number has been mentioned as 33/99 whereas the correct number is 34/99. The application is allowed. Counsel to carry out necessary correction in the petition in his hand.

3. The facts indicate that as per the contract agreement in between the respondent and petitioner with regard to certain works there was arbitration clause in the contract agreement for adjudicating dispute in between the parties. Accordingly, when the dispute arose the petitioner requested for appointment of the arbitrator and Sri R. K. Garg, Sr. Divisional Electrical Engineer, Western Railway, Kota was appointed as the sole Arbitrator before whom the petitioner filed his claim. The respondent denied the petitioner's claim on the plea that the petitioner had not returned the excess material received by him from the respondent. On adjudication of the dispute in accordance with law the Arbitrator passed his award on 30-10-1998 (Annex.-A).

4. However, during the pendency of the arbitration proceedings the respondent filed

civil suit against the petitioner for recovery of Rs. 4,06,373/-, the amount for which the respondent had presented counter-claim before the sole Arbitrator. In that suit, the petitioner filed application under Section 34 of the Arbitration Act read with Order 7, Rule 11, C.P.C. and pleaded that the suit was not maintainable in view of the fact that Arbitrator was appointed by the respondent and it participated in the arbitration proceedings and, therefore, no cause of action further accrued to the respondent for the suit. The petitioner also pointed out that the suit filed by the respondent is also not maintainable on the principle of *res judicata*. The learned trial Court observed that the matter requires evidence and the objections of the defendant (petitioner) can be taken in the written-statement.

5. The present revision petition is grounded on the contentions that after adjudication of the dispute by the sole Arbitrator award has been passed and, therefore, the suit filed by the respondent in relation to the same subject- matter is barred by the principle of *res judicata* and cannot be carried further. Besides, the respondent could have challenged the award under the provisions of the Arbitration Act and the suit is not maintainable.

6. In their reply to the revision petition, the respondents submitted that the trial Court has passed the order for reference of the reduced claims/disputes of the petitioner for decision through arbitration. The respondent did not dispute that Mr. A. K. Garg was appointed as sole Arbitrator in the aforesaid matter. It is relevant to extract the following from the reply of the respondent:

"It is most respectfully submitted that it is material that counter claims were submitted before the learned Arbitrator. It is pertinent to mention here that as per Special Condition No. 20 of the Contract Agreement since claims/disputes of the value up to 20% could be referred and decided by the arbitrator which as per petitioner's own conduct of getting the claims/dispute reduced by himself to bring it into the limit of 20% of the Contract value establishes that the petitioners were aware of the fact that only claims up to the limit of 20% could be adjudicated by the arbitrator and if respondent's counter claims exceeded the limit of 20%, the learned Arbitrator ought not have decided the same in excess of the terms of reference of which it was to act upon as already submitted herein above, the civil suit of the respondent, U.O.I. was already pending before the learned Additional District Judge's Court at Chittaurgarh.

5. That the contents of Para 5 are not disputed to the extent of passing of the Award dated 30-10-98 by the learned Arbitrator. However, it is submitted that the learned

Arbitrator had exceeded its jurisdiction and had no authority to go beyond the terms of reference and as per terms of the reference, the counter claims of the respondent ought to have been considered by the learned Arbitrator and thus there existed an inherent lack of jurisdiction on the part of the learned Arbitrator while passing the Award dated 30-10-98."

7. Obviously, under the arbitration clause the sole Arbitrator was appointed by the respondent at the request of the petitioner and, at that moment of time, the respondent could have raised the objection that the subject-matter of dispute would exceed the jurisdiction of the Arbitrator under the terms of reference. However, the respondent did not adopt the course and appointed the Arbitrator for resolution of the dispute under its sole adjudication. Since the subject-matter once having been adjudicated upon by the sole Arbitrator resulted in passing of the award dated 30-10-1998, the remedy with the respondent was only to challenge the award and it could not have resorted to suit proceedings in the Civil Court which would stand barred by *res judicata*. In my opinion, when arbitration clause was invoked and award was passed the cause of action for the respondent would rest only against the award and not the subject-matter of arbitration. Question of *res judicata* directly hits the suit proceedings and, therefore, the trial Court was under obligation to consider the application of the petitioner under Order 7, Rule 11, C.P.C. on the question of *res judicata* as against the subject-matter.

8. In this view of the matter, the revision petition deserves to be accepted. The petition is, therefore, allowed. The impugned order dated 20-7-2002 passed by the trial Court is quashed and set aside. The petitioner's application moved under Section 34, Arbitration Act, read with Order 7, Rule 11, C.P.C. before the trial Court is ordered to be allowed and proceedings in Civil Suit No. 34/99, pending before the Addl. District Judge No. 2, Chittorgarh is quashed.

9. No order as to costs.

Petition allowed.