

(2002) 10 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 899 of 2001

Jagdish Raj and Brothers

APPELLANT

Vs

Jagdish Raj and Others

RESPONDENT

Date of Decision: Oct. 7, 2002

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 2, 7, 8
- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

Citation: (2003) 1 ARBLR 557 : (2003) 1 CivCC 367 : (2003) 133 PLR 95 : (2002) 4 RCR(Civil) 379

Hon'ble Judges: K.C. Gupta, J

Bench: Single Bench

Advocate: Arun Jain, for the Appellant; B.R. Mahajan and M.S. Sidhu, for the Respondent

Final Decision: Dismissed

Judgement

K.C. Gupta, J.

This revision petition is directed by the plaintiffs M/s Jagdish Raj & Brothers and another against the order dated 10.1.2001 passed by the Civil Judge (Jr. Div.), Amritsar, whereby the application filed by the defendants u/s 151, CPC was allowed and it was ordered that the application under Order 39 Rules 1 and 2, CPC will be taken up at a later stage and first of all application u/s 34 of the Arbitration Act 1940 read with Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") would be taken for consideration.

2. Briefly stated the facts are that M/s Jagdish Raj & Brothers etc. filed a suit for declaration that the amount of Rs. 6,72,525/- decreed in case No. 32 of 1998 and the amount of Rs. 10,02,575/- decreed in case No. 33 of 1998 had been received by defendant No. 1 on 4.4.2000 from the Court of Civil Judge (Sr. Div.) Amritsar, illegally, fraudulently and by misrepresentation in the execution proceedings as defendant No. 1 alone was not entitled to receive the said amounts. Relief of mandatory

injunction was also claimed directing defendant No. 1 and 5 to pay the amount of the shares of plaintiffs Nos. 2 and 3 i.e. 10% and 20% respectively out of the aforesaid amounts. In the said suit, the petitioners (plaintiffs) filed an application under Order 39 Rules 1 and 2 read with Section 151, CPC, for grant of ad-interim injunction.

3. On the other hand, the defendants filed an application u/s 34 of the Arbitration Act, 1940 read with Section 8 of the 1996 Act for referring the matter in dispute to the arbitration. The case was accordingly fixed for filing reply of the application as well as for reply to the application under Order 39 Rules 1 and 2 CPC. Consequently, the defendants moved an application u/s 151 CPC, stating that they were unable to file reply to the application under Order 39 Rules, 1 and 2, CPC, as it would tantamount to submitting to the jurisdiction of the Court. They further stated that once application u/s 34 of the Arbitration Act is filed then only the proceedings have to be taken on that application and not on the application under Order 39 Rules 1 and 2 CPC.

4. The petitioner filed reply stating that there was no bar for deciding application under Order 39 Rules 1 and 2 CPC, even if the defendants had filed an application u/s 34 of the Arbitration Act read with Section 8 of the 1996 Act, as filing of reply to the application under Order 39 Rules 1 and 2 CPC would not tantamount to submitting to the jurisdiction of the Court. However, learned Civil Judge (Jr. Divn.) after hearing learned counsel for the parties vide his order dated 10.1.2001 allowed the application of the defendants u/s 151, CPC by holding that if the defendants file reply to the application under Order 39 Rules 1 and 2, CPC., then it would tantamount to submitting to the jurisdiction of Court.

5. I have heard Mr. Arun Jain, learned counsel for the petitioner, Mr. B.R. Mahajan, learned counsel for respondent No. 1 and Mr. M.S. Sidhu, learned counsel for respondent No. 6 and carefully gone through the file. ,

6. It is an admitted fact that the petitioners have filed a suit for declaration with consequential relief of permanent injunction and in the said suit they have filed an application for ad-interim injunction under Order 39 Rules 1 and 2 CPC. In the said suit, the respondents (defendants) had moved an application for referring the matter in dispute to the arbitration as there is an arbitration agreement between the parties. Section 8 of the Arbitration and Conciliation Act, 1996 reads as under:-

"8. Power to the refer parties to arbitration where there is an arbitration agreement.
- (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

2. The application referred to in Sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement of a duly certified copy thereof.

3. Notwithstanding that an application has been made under Sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

Therefore, according to the said provisions a judicial authority before whom an action is brought in the matter which is the subject of an arbitration agreement can refer the parties to the arbitration on an application of a party who applies not later than when submitting his first statement on the substance of the dispute. The words used in the Section are not Court but judicial authority meaning thereby that if a civil suit is filed in a Court of Sub Judge who is not otherwise competent to deal u/s 9 of the Act, then he can refer the parties to the arbitration. Section 2(e) of the Act defines "Court" as principal Civil Court of original jurisdiction in a District and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes. Therefore, according to it the Court means principal Civil Court of original jurisdiction in a District and also includes High Court in its original jurisdiction.

7. Hence, the word used "Court" in Section 9 means the principal Civil Court of original jurisdiction i.e. the Court of District Judge. It has been observed in [P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju \(Died\) and Others](#), that a matter can be referred to arbitration u/s 8 of the 1996 Act during pendency of the Civil suit even after submission of first statement of the substance of dispute if the party which instituted the suit did not object. Therefore, according to this authority if there is an arbitration agreement though the same is mentioned by the opposite party by way of an application during the civil proceedings before submitting the first statement on the substance of dispute, then the matter could be referred u/s 8 of the 1996 Act for arbitration. However, it has been further observed in it that according to Section 2(e), 8, 34 and 42 of this Act, the Court before which arbitration award could be challenged is the Court as defined u/s (2)(e) and not before the Court in which application u/s 8 was made. Thus, if the matter is referred for arbitration by the Civil Judge (Jr.Div.) Amritsar, then that would not be the Court before which arbitration award could be challenged. However, the same would be the principal Civil Court as defined u/s 2(e) of the 1996 Act. It has been further observed by the Hon"ble Apex Court in the above mentioned authority as under:-

"The language of Section 8 is peremptory. It is, therefore, obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. There is no question of stay of the proceedings till the arbitration proceedings conclude and the award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would not be governed by the Act including the right to challenge the award. The Court to which the party shall have recourse to

challenge the award would be the court as defined in Clause (e) of Section 2 of the new Act and not the court to which an application u/s 8 of the new Act is made. An application before a court u/s 8 merely brings to the court's notice that the subject matter of the action before it is the subject matter of an arbitration agreement. This would not be such an application as contemplated u/s 42 of the Act as the court trying the action may or may not have had jurisdiction to try the suit to start with or be the competent court within the meaning of Section 2(e) of the new Act.

Thus, according to the observations of the Hon"ble Apex Court it is obligatory for the Court to refer the matter to the arbitrator in terms of the arbitration agreement. Nothing remains to be decided in the original action, meaning thereby that once an application is made by the opposite party in a civil suit for referring the matter to the arbitration in terms of the arbitration agreement, then the Court is required to do nothing further i.e. the Court thereafter cannot decide the application under Order 39 Rules 1 and 2 CPC as nothing further is required to be done. Under the new Act, an arbitrator to whom the matter is referred can pass appropriate interim orders to preserve the property. In such circumstances, there is no illegality or impropriety in the impugned order. Hence, this revision petition is dismissed.